has paid the proper fees for it, a copy of any material not deemed confidential in the archives, and may certify it if required.

2. The state librarian may charge a reasonable fee for [searching archives of the state, for producing copies of and for] certifying copies of any material in the archives.

Sec. 12. NRS 623.310 is hereby amended to read as follows:

623.310 The board shall, by regulation, adopt a [fee] schedule *of fees* which may not exceed the following:

For an examination for a certificate	$500.00
For rewriting an examination or a part or parts failed	500.00
For a certificate of registration	125.00
For initial registration or renewal of registration	200.00
For the late renewal of an expired certificate	220.00
For the restoration of an expired or revoked certificate	300.00
For change of address	5.00
For replacement of a certificate	30.00
For application forms	25.00
[For photostatic copies, each sheet	.25]

Sec. 13. NRS 623A.240 is hereby amended to read as follows:

623A.240 The following fees must be prescribed by the board and must not exceed the following amounts:

Examination fee	$250.00
Re-examination fee	250.00
Certificate of registration	160.00
Renewal fee	160.00
Reinstatement fee	160.00
Delinquency fee	100.00
Change of address fee	5.00
[Copy of a document, per page	.25]

SUMMARY--Establishes procedures for public inspection of public records. (BDR 19-397)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public records; establishing procedures for the public to inspect public records; clarifying that certain officers of the state are immune from certain related civil actions; and providing other matters properly relating thereto.

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

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *A person may request, orally or in writing, to inspect a public book or public record. The request may be made in person or by telephone or other electronic means.*

Sec. 3. *1. An officer having custody of a public book or public record which is not otherwise declared by law to be confidential shall, upon request:*

(a) Ensure that the requester has reasonable access to:

(1) The book or record; and

(2) Facilities for making copies, abstracts or memoranda of the book or record.

(b) Provide an explanation of any code which must be read by a machine or any other code or abbreviation necessary to facilitate the inspection of the book or record.

2. The officer shall not deny inspection to any person because the requested book or record contains both confidential and nonconfidential information. In such a case, before allowing the requested inspection, the officer shall cause the confidential information to be deleted, concealed or separated from the information which is not confidential.

3. The officer need not prepare a compilation or summary of the book or record unless the information for the compilation or summary is readily available or retrievable.

Sec. 4. *An officer having custody of a public book or public record which is not otherwise declared by law to be confidential may make inquiries of a person requesting inspection of the book or record only to the extent necessary to clarify the request. Except as otherwise provided in NRS 481.063, the officer shall not inquire about the intended use of the requested book or record.*

Sec. 5. *If an officer having custody of a public book or public record which is not otherwise declared by law to be confidential receives a request to inspect the book or record and he:*

1. Is not immediately able to fulfill the request;

2. Does not intend to fulfill the request; or

3. Denies the request,

he shall immediately explain to the requester his reason for not fulfilling the request and inform the requester of his right to make a written appeal to the officer.

Sec. 6. *1. An officer having custody of a public book or public record which is not otherwise declared by law to be confidential who receives a written appeal of his decision to not fulfill a request to inspect the book or record shall, within a reasonable time, but not later than 3 working days after receiving the appeal:*

(a) Allow the requester to inspect the book or record;

(b) Inform the requester that unusual circumstances have delayed the processing of the request and specify a time and date, within 13 working days after receiving the original request to inspect, on which the book or record will be available for inspection;

(c) Inform the requester that the officer does not have custody of the requested book or record and provide, if known, the name and location of the officer who has custody of the book or record; or

(d) Deny the appeal.

2. If the officer denies the appeal, he shall immediately send the requester an explanation, in writing, of his reason for denial.

3. If unusual circumstances delay the processing of the appeal for more than 3 days, the officer shall, within 13 working days after receiving the original request, allow the requester to inspect the book or record.

4. As used in this section, "unusual circumstances" includes a situation in which:

(a) The request involves an unusually large volume of books or records;

(b) The officer must conduct a search for the book or record; or

(c) The officer must consult with or obtain the book or record from another officer.

Sec. 7. NRS 239.010 is hereby amended to read as follows:

239.010 1. All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, [shall] *must* be open at all times during office hours to inspection by any person . [, and the same] *Each public book and public record* may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

3. No action may be brought pursuant to NRS 41.031 against an officer having custody of a confidential public book or public record who permits inspection of it unless the officer knew at the time he permitted the inspection

that the book or record was declared confidential by a specific statute or a court of competent jurisdiction.

SUMMARY--Defines "public record" to accommodate various forms in which records are maintained. (BDR 19-398)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public records; defining "public record" to accommodate the various forms in which records are maintained; and providing other matters properly relating thereto.

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

Section 1. Chapter 239 of NRS is hereby amended by adding thereto a new section to read as follows:

1. As used in NRS 239.010, "public record" means a letter, document, paper, final budget, proposed budget and supporting information, map, plan, photograph, film, card, tape, recording, electronic data or other material regardless of its physical form or characteristics which is prepared, owned, used, received, retained or maintained by a governmental entity in connection with the transaction of public business, the expenditure of public money or the administration of public property.

2. As used in this section, "governmental entity" means the state, a county, city, district, governmental subdivision, quasi-municipal corporation or any board or commission thereof which is supported at least in part by public money or is established by the government to carry out the public's business.

SUMMARY--Makes various changes regarding access to public books and records. (BDR 19-399)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public records; categorizing certain records as public; limiting the disclosure of certain public records; removing the criminal penalty for the failure of a public officer or employee to disclose 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:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. As used in this section and NRS 239.010:*

(a) "Governmental entity" means the state, its officers, agencies, political subdivisions, and any office, board or commission thereof which is funded, at least in part, by public money, or is established by the government to carry out the public's business.

(b) "Public record" means a book, letter, document, paper, final budget, proposed budget and supporting information, map, plan, photograph, film, card, tape, recording, electronic data or other material regardless of its physical form or characteristics which is prepared, owned, used, received, retained or maintained by a governmental entity in connection with the transaction of public business, the expenditure of public money or the administration of public property.

(c) "Public record" includes, but is not limited to:

(1) Records maintained by governmental entities which evidence:

(I) The title to or encumbrances on real property;

(II) Any restrictions on the use of real property;

(III) The capacity of a person to take or convey title to real property;

(IV) The amount of any tax assessed on real or personal property, and the status of the account; or

(V) Except as otherwise provided in paragraph (d), employment information regarding a former or present officer or employee of the state.

(2) Any contract entered into by a governmental entity.

(3) A draft that has never been made final but was relied upon by the governmental entity in carrying out action or policy.

(d) "Public record" does not include:

(1) Except as otherwise provided in subparagraph (3) of paragraph (c), a temporary draft or similar material which is prepared for the originator's personal use or use by a person for whom the originator is working. A draft of

a proposed budget and the supporting information for that proposal are not temporary, for the purposes of this subsection, if the originating department or entity submits that version of the proposal for final approval or adoption.

(2) Any material which is legally owned by a person in his private capacity.

(3) Any material to which access is limited by the laws of copyright or patent, unless the copyright or patent is owned by a governmental entity. This paragraph does not grant any governmental entity the right to obtain a copyright or patent.

(4) Proprietary software.

(5) Mail or publications which consist solely of advertisements.

(6) A record that evidences employment information regarding law enforcement officers or investigators, to the extent that disclosure would impair the effectiveness of an investigation or endanger any person's safety.

(7) Books, governmental publications or other materials which are:

(I) Cataloged, indexed or inventoried; and

(II) Included,

in the collections of public libraries.

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

(9) Artifacts and nondocumentary tangible property.

2. As used in this section "employment information" includes, but is not limited to, the:

(a) Employee's name;

(b) Employee's gender;

(c) Employee's gross compensation and perquisites;

(d) Title of the position held by the employee;

(e) Description of the position held by the employee;

(f) Qualifications required for the position held by the employee;

(g) Employee's business address;

(h) Employee's business telephone number;

(i) Number of hours the employee works per pay period;

(j) Amount of annual and sick leave taken by the employee;

(k) Date on which the employee began employment; and

(l) Date, if applicable, on which the employment was terminated.

Sec. 3. *A record listed in subsection 2 of NRS 239.010 must be disclosed if, with respect to the particular record, the general policy in favor of open records outweighs an expectation of privacy or a justification for nondisclosure based on public policy.*

Sec. 4. NRS 239.010 is hereby amended to read as follows:

239.010 1. **[**All public books and**]** *Except as otherwise provided in subsection 2, all* public records of **[**state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, shall**]** *a governmental entity in this state, must* be open at all times during office hours to inspection by any person . **[**, and the same**]** *Each such public record* may be fully copied or an abstract or memorandum prepared therefrom . **[**, and any**]** *Any* copies, abstracts or

memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way [in which the same may be used] to the advantage of the owner thereof or of the general public.

2. [Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and the records as provided in subsection 1 is guilty of a misdemeanor.] *Except as otherwise provided in section 3 of this act, a public record must not be disclosed if:*

(a) Access to the record is restricted:

(1) By a specific federal statute or regulation;

(2) By a specific statute of this state;

(3) As a condition of participation in a state or federal program; or

(4) As a condition of receiving state or federal money.

(b) It contains information regarding a person's medical, psychiatric or psychological history, diagnosis, condition, treatment, evaluation or similar data, but only to the extent that the information would reveal the person's identity.

(c) It is a record customarily retained in the personnel files of a governmental entity, but only to the extent that the disclosure would reveal the person's home telephone number, home address, medical history or other information of a personal or familial nature that is not related to obtaining the employment, retaining the employment, promotion, demotion or the termination of employment.

(d) It contains information regarding auditing techniques, procedures or policies the disclosure of which may facilitate the circumvention of an audit.

(e) It contains information relating to an ongoing or planned audit, unless the final report of the audit has been released.

(f) Disclosure would jeopardize the physical security of a correctional facility, detentional facility, juvenile facility or other governmental facility or property.

(g) The information is related to a governmental investigation, unless the investigation has been closed.

(h) The information is related to the identity of a confidential informant.

(i) It has not been filed with a court and contains material which:

(1) Is directly related to an existing lawsuit; and

(2) Was prepared in anticipation of or during litigation.

(j) It relates to an existing lawsuit and contains material which:

(1) Is undiscoverable according to the applicable court rules; or

(2) Has been specifically determined by the court in which the matter is being litigated to be privileged for good cause shown pursuant to the standards set forth in Rule 26(c) of the Nevada Rules of Civil Procedure.

(k) The information is privileged from disclosure pursuant to a statute or a rule of the supreme court of this state.

(l) The information contains a trade secret, as that term is defined in NRS 600A.030.

(m) It is material in a library, archive or museum which has been donated by a private person who, as a condition of the donation, requires that his name or

the material remains confidential for a specified period and the period has not passed. If no period is specifically agreed upon by the donor and the custodian of the material, the period of nondisclosure shall be deemed to be the period of the donor's life or 30 years after the receipt of the material, whichever is longer.

(n) 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, but only to the extent that:

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

(2) A contract governing the use of the examination requires the confidentiality of the questions or answers.

(o) It contains administrative or technical information, including that contained in computer systems or programs and operating procedures or manuals, the disclosure of which would jeopardize the security of a recordkeeping system.

(p) It is information which:

(1) Is in the custody of a governmental entity that performs data processing, microfilming or similar services; and

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

Sec. 5. This act becomes effective on January 1, 1994.

INSPECTION AND CORRECTION OF AN INDIVIDUAL'S RECORDS

After providing identification, an individual may inspect, copy and request correction of public records pertaining to that person, except those portions of records that are exempt from disclosure. A correction, or a written refusal to make the correction, must be made within ten (10) calendar days. Refer these requests to the person who administers the agency or a designated custodian immediately.

Subsection (3) of Section 9-342 prohibits access to certain records pertaining to oneself, if the information: relates to exempt investigatory records of ongoing investigations; "is compiled in reasonable anticipation of litigation which is not otherwise discoverable"; relates to adoption records; or "is otherwise exempt from disclosure by statute."

DENIAL OF REQUEST

If there is any doubt about whether information should be disclosed, ask for a written request and immediately direct it to a designated custodian. It is this agency's policy that such a request shall be reviewed by the agency's attorney.

If a request for a record is denied in whole or in part, the Act requires the person who administers the agency or a designated custodian to notify the person in writing. This notice shall state that (1) the attorney for the agency has reviewed the request, or that the agency had the opportunity to consult with an attorney and has chosen not to do so; (2) the statutory basis for the denial; (3) a simple statement of the right to appeal and the time limit for appeal; and (4) a certificate of mailing. (See attached form.)

If a request to correct an individual's record is denied, written notification is required within ten (10) calendar days of the receipt of the request. The notice of refusal to amend a record must state the reasons for the refusal, and provide the statement of appeal rights and certificate of mailing mentioned above.

The time limit for filing an appeal is 180 days from the date the notice of denial is mailed. The sole remedy for protesting the public agency's decision is to file a petition in the district court of the county where the records or some part of them are located, requesting the court to compel the agency to make the information available or to correct the record.

If a request is denied, the requested records must be retained until the end of the appeal period, until there has been a decision on an appeal, or as otherwise provided by law, whichever is longer. Whenever a request is denied, there must be some indication made on the record that it shall not be purged without the approval of the person who administers the agency or a designated custodian.

PENALTY AND IMMUNITY

The law provides a penalty of up to $1,000 for a deliberate, bad faith denial of information that should be disclosed. It also provides immunity from liability for the release of records as long as there is a good faith attempt to comply with the law's requirements. Therefore, it is important to refer immediately any questions or any requests that seem doubtful to the person who administers the agency or a designated custodian.

Sample letter denying requested information

To:

Re: Request for Information

Dear _____:

On __(date)__, I received your request for _____.

Section 9-340(___) of the Idaho public records law provides:

_____.

To the extent that your request involves records that are exempt from disclosure under this section, the request is denied.

You have 180 days from the date of mailing indicated below in which to protest this decision. You have the right to file a petition in the district court of the county where the records, or some part of them, are located, requesting the court to compel disclosure of the information. The court will set a time for our response and for a hearing at the earliest possible time, not later than twenty-eight days after the petition is filed.

I regret that we could not accommodate your request.

Very truly yours,

_____
Designated Custodian

[ ] This request has been reviewed by _____, our attorney.
Approved: _____.
(signature of attorney)

[ ] Though I have had an opportunity to have this request reviewed by an attorney, I have chosen not to do so because the Idaho Public Records Law makes this information exempt from disclosure.

[ ] I have consulted with our attorney, _____, by telephone. [cc: attorney]

CERTIFICATE OF MAILING

I hereby certify that the original of this letter was deposited in the United States mail, postage prepaid, this ____ day of _____, 199__.

_____

REQUEST FOR PUBLIC RECORDS

I request to examine [ ]
copy [ ] the following records:

_____

_____

_____

_____

_____.

Mailing Address:

_____
Name (Please Print)

_____

_____

_____
Zip

_____
Date of Request

_____
Daytime Phone Number

Received by

_____
Date Received

_____
[Public Agency]

[ ]
Initial if Applicable

More than three working days are needed to locate or retrieve the requested records. A response shall be provided within ten (10) working days of the request.

Payment received for _____ copies: _____
Amount Received

_____
Receipt Number

(Model one-page procedure to post above copier, if desired)

PROCEDURE FOR COPYING RECORDS

1. If someone requests information or a copy of a record, **a written request is necessary when** [whatever the agency's policy is].

2. **Determine if the record may be made available for public inspection and copying.** Do <u>not</u> **ask why the individual wants the information.**

[List records specific to your organization that are exempt or open to the public, whichever is feasible]

_____ -

_____ -

The Idaho public records law requires the disclosure of the following:

<u>Personnel Information</u> - employment history, classification, pay grade and step, longevity, gross salary, salary history, workplace, and employing agency.

Current or former employees, or their authorized representatives, may inspect and copy their own personnel records, except for materials used to screen and test for employment.

3. **If you think the information is exempt from disclosure, if voluminous records are requested, or you have <u>any</u> doubt about whether the information can be disclosed, immediately refer the request to the following individuals:**

_____

_____

4. **(If more than ____ copies are provided,) charge** <u>5</u> **cents per page and give the money to** _____.

APPENDIX G

SUGGESTED LEGISLATION

Bill Draft Request		Page
19-393	Substitutes civil enforcement of access to public records for criminal penalty	235
R-394	Urges Department of Data Processing and Division of Archives and Records of State Library and Archives to take certain actions regarding public records stored on electronic media	239
R-395	Directs Legislative Commission to conduct interim study of exemptions to laws governing public records and books	243
19-396	Requires charges for copies of public records not to exceed cost	245
19-397	Establishes procedures for public inspection of public records	265
19-398	Defines "public record" to accommodate various forms in which records are maintained	271
19-399	Makes various changes regarding access to public books and records	273

SUMMARY--Substitutes civil enforcement of access to public records for criminal penalty. (BDR 19-393)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public information; substituting civil enforcement of access to public books and records for a criminal penalty for denial of access; conferring immunity upon public officers and employees for certain actions in good faith; and providing other matters properly relating thereto.

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

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the*

requester prevails, he is entitled to recover his costs and attorney's fees in the proceeding from the agency whose officer has custody of the book or record.

Sec. 3. *A public officer or employee who acts in good faith in disclosing or refusing to disclose information is immune from liability for damages, either to the requester or to the person whom the information concerns.*

Sec. 4. NRS 239.010 is hereby amended to read as follows:

239.010 [1.] All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, [shall] *must* be open at all times during office hours to inspection by any person, and the [same] *books and records* may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the [same] *books and records* may be used to the advantage of the owner thereof or of the general public.

[2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.]

Sec. 5. NRS 122.040 is hereby amended to read as follows:

122.040 1. Before persons may be joined in marriage, a license must be obtained for that purpose from the county clerk of any county in the state, at the county seat of that county.

2. Before issuing a marriage license, the county clerk may require evidence that the applicant for the license is of age. The county clerk shall accept a statement under oath by the applicant and the applicant's parent, if available, that the applicant is of age.

3. The county clerk issuing the license shall require the applicant to answer under oath each of the questions contained in the form of license, and, if the applicant cannot answer positively any questions with reference to the other person named in the license, the clerk shall require both persons named in the license to appear before him and to answer, under oath, the questions contained in the form of license. If any of the information required is unknown to the person responding to the question, he must state that the answer is unknown.

4. If any of the persons intending to marry is under age and has not been previously married, and if the authorization of a district court is not required, the clerk shall issue the license if the consent of the parent or guardian is:

(a) Personally given before the clerk;

(b) Certified under the hand of the parent or guardian, attested by two witnesses, one of whom must appear before the clerk and make oath that he saw the parent or guardian subscribe his name to the annexed certificate, or heard him or her acknowledge it; or

(c) In writing, subscribed to and acknowledged before a person authorized by law to administer oaths. A facsimile of the acknowledged writing must be accepted if the original is not available.

5. If the authorization of a district court is required, the county clerk shall issue the license if that authorization is given to him in writing.

6. All records pertaining to marriage licenses are public records and open to inspection pursuant to the provisions of NRS 239.010. [Any county clerk who refuses to permit an inspection is guilty of a misdemeanor.]

7. A marriage license issued on or after July 1, 1987, expires 1 year after its date of issuance.

SUMMARY--Urges Department of Data Processing and Division of Archives and Records of State Library and Archives to take certain actions regarding public records stored on electronic media. (BDR R-394)

CONCURRENT RESOLUTION--Urging the Department of Data Processing and the Division of Archives and Records of the State Library and Archives to take certain actions regarding the retention, care and preservation of public records stored on electronic media.

WHEREAS, Nevada's law governing access to public records and documents has remained largely unchanged since its enactment in 1911; and

WHEREAS, The lack of applicable definitions and clear-cut guidelines regarding new technology have resulted in confusion by those responsible for administering the law and those seeking access to public records and documents; and

WHEREAS, Such confusion has led to the destruction of records which should have been retained for historical purposes; and

WHEREAS, There is a growing need to identify, preserve and maintain public access to significant public records stored on electronic media along with maintenance of our documentary heritage; and

WHEREAS, The development of an integrated computer system for use by all state agencies would reduce the cost of retaining and preserving public

records and would increase the efficient use and preservation of information within the system; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the Department of Data Processing and the Division of Archives and Records of the State Library and Archives are hereby urged to:

1. Create and maintain an inventory of the hardware, software and computer data bases used by each state agency and the information stored thereon;

2. Develop an integrated system of hardware and software for use by all state agencies;

3. Work with all state agencies to establish schedules for the retention and disposition of records at the time such an integrated system is designed or redesigned;

4. Create a facility for the storage of information retained on an integrated system and develop procedures for maintaining that information; and

5. Establish an educational program for state officers and employees concerning their responsibilities for the retention, care and preservation of public records, with special emphasis on public records stored on electronic media;

and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Director of the Department of Data Processing and the State Librarian.

SUMMARY--Directs Legislative Commission to conduct interim study of exemptions to laws governing public records and books. (BDR R-395)

CONCURRENT RESOLUTION--Directing the Legislative Commission to conduct an interim study of the exemptions to the laws governing public records and books to determine if any exemptions should be repealed, amended or added.

WHEREAS, Assembly Concurrent Resolution No. 90 of the 66th session of the Nevada Legislature urged the Governor of Nevada to create a Blue Ribbon Executive-Legislative Panel to Study and Propose Revisions to the Laws Governing Public Records and Books during the interim; and

WHEREAS, Assembly Concurrent Resolution No. 90 resolved that the Blue Ribbon Executive-Legislative Panel include in its study a careful examination of the definitions of "records" and "public records"; and

WHEREAS, Throughout the Nevada Revised Statutes, numerous provisions provide that certain information is exempt from the definition of a public record and is thereby exempt from the laws governing public records and books; and

WHEREAS, The advisory committee of the Blue Ribbon Executive-Legislative Panel has determined that because of the number of exemptions which exist throughout the laws of the state, it was impossible to review

adequately the exemptions within the budget and time constraints of the interim; and

WHEREAS, The advisory committee of the Blue Ribbon Executive-Legislative Panel has advised that the study of the exemptions to the laws governing public records and books to determine if any exemptions should be repealed, amended or added is a worthwhile endeavor and should not be abandoned but should continue during the next interim; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the Legislative Commission is hereby directed to conduct an interim study of the exemptions to the laws governing public records and books to determine if any exemptions should be repealed, amended or added; and be it further

RESOLVED, That the Legislative Commission report the results of the study and any recommended legislation to the 68th session of the Nevada Legislature.

SUMMARY--Requires charges for copies of public records not to exceed cost. (BDR 19-396)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public information; providing that charges made for copies must approximate the cost of copying; authorizing public agencies to conduct searches of records by individual request for a fee; and providing other matters properly relating thereto.

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

Section 1. Chapter 239 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Unless free copies are provided pursuant to a specific statute, an agency of the state or of a local government which is required or permitted to furnish copies from its books or records shall charge a fee for the copies. The fee must not exceed the cost to the agency for making the copies, taking into account supplies used and the depreciation of equipment but not the time spent by its personnel.

2. Such an agency may conduct searches of its records by individual request, and charge a reasonable fee for each search which takes into account time spent by personnel as well as any cost related to equipment.

3. Such an agency fulfills its duty to provide copies by providing the information requested in the form in which the agency's records are kept. If the requester desires the information in another form, the agency may make an additional charge for reformatting which may include the cost of time reasonably spent by its personnel.

Sec. 2. NRS 2.250 is hereby amended to read as follows:

2.250 1. The clerk of the supreme court may demand and receive for his services rendered in discharging the duties imposed upon him by law the following fees:

(a) Whenever any appeal from the final judgment or any order of a district court is taken to the supreme court, or whenever any special proceeding by way of mandamus, certiorari, prohibition, quo warranto, habeas corpus, or otherwise, is brought in or to the supreme court, the appellant and any cross-appellant or the party bringing a special proceeding shall, at or before the filing of the transcript on the appeal, cross-appeal or petition in a special proceeding in the supreme court, pay the clerk of the supreme court the sum of $100, which payment is in full of all fees of the clerk of the supreme court in the action or special proceeding.

(b) No fees may be charged by the clerk in any action brought in or to the supreme court wherein the state, or any county, city or town thereof, or any

officer or commission thereof is a party in his or its official capacity, against the officer or commission.

(c) In habeas corpus proceedings of a criminal or quasi-criminal nature no fees may be charged.

(d) A fee of $30 for supreme court decisions in pamphlet form for each fiscal year, or a fee of $15 for less than 6 months' supply of decisions, to be collected from any person except those persons and agencies mentioned in NRS 2.345.

[(e) A fee from any person who requests any photostatic copy or any photocopy print of any paper or document in an amount not to exceed the cost of copying the paper or document.]

2. No other fees may be charged than those specially set forth in this section *or required by section 1 of this act,* nor may fees be charged for any other services than those mentioned in this section [.] *or section 1 of this act.*

3. The clerk of the supreme court shall keep in his office a fee book in which he shall enter in detail the title of the matter, proceeding or action, and the fees charged therein. The fee book must be open to public inspection.

4. The clerk of the supreme court shall publish and set up in some conspicuous place in his office a fee table for public inspection. He shall forfeit a sum not exceeding $20 for each day of his omission to do so, which sum with costs may be recovered by any person by an action before any justice of the peace of the same county.

5. All fees prescribed in this section must be paid in advance, if demanded. If the clerk of the supreme court has not received any or all of his fees which may be due him for services rendered by him in any suit or proceeding, he may have execution therefor in his own name against the party from whom they are due, to be issued from the supreme court upon order of a justice thereof or from the court upon affidavit filed.

6. The clerk of the supreme court shall give a receipt on demand of any party paying a fee. The receipt must specify the title of the cause in which the fee is paid and the date and the amount of the payment.

7. The clerk of the supreme court shall, when he deposits with the state treasurer money received by him for court fees, render to the state treasurer a brief note of the cases in which the money was received.

Sec. 3. NRS 4.060 is hereby amended to read as follows:

4.060 1. Except as otherwise provided in subsection 2, each justice of the peace shall charge and collect the following fees:

(a) On the commencement of any action or proceeding in the justice's court, other than in actions commenced pursuant to chapter 73 of NRS, to be paid by the party commencing the action:

If the sum claimed does not exceed $1,000	$25.00
If the sum claimed exceeds $1,000 but does not exceed $5,000	35.00
In all other civil actions	25.00

(b) For the preparation and filing of an affidavit and order in an action commenced pursuant to chapter 73 of NRS:

If the sum claimed does not exceed $500 ..... 10.00

If the sum claimed exceeds $500 but does not exceed $1,500 ..... 20.00

If the sum claimed exceeds $1,500 but does not exceed $2,500 ..... 30.00

(c) On the appearance of any defendant, or any number of defendants answering jointly, to be paid him or them on filing the first paper in the action, or at the time of appearance:

In all civil actions 10.00

For every additional defendant, appearing separately 5.00

(d) No fee may be charged where a defendant or defendants appear in response to an affidavit and order issued pursuant to the provisions of chapter 73 of NRS.

(e) For the filing of any paper in intervention 5.00

(f) For the issuance of any writ of attachment, writ of garnishment, writ of execution, or any other writ designed to enforce any judgment of the court 5.00

(g) For filing a notice of appeal, and appeal bonds 10.00

One charge only may be made if both papers are filed at the same time.

(h) For issuing supersedeas to a writ designed to enforce a judgment or order of the court 10.00

(i) For preparation and transmittal of transcript and papers on appeal 10.00

(j) For celebrating a marriage and returning the certificate to the county recorder..... 35.00

(k) For entering judgment by confession..... 5.00

(l) [For preparing any copy of any record, proceeding or paper, for each page..... .25

(m)] For each certificate of the clerk, under the seal of the court..... 2.00

[(n) For searching records or files in his office, for each year..... 1.00

(o)] *(m)* For filing and processing each bail or property bond..... 40.00

2. A justice of the peace shall not charge or collect any of the fees set forth in subsection 1 for any service rendered by him to the county in which his township is located.

3. Except as otherwise provided by an ordinance adopted pursuant to the provisions of NRS 244.207, the justice of the peace shall, on or before the fifth day of each month, account for and pay to the county treasurer all fees collected during the preceding month, except for the fees he may retain as compensation and the fees he must pay to the state treasurer pursuant to subsection 4.

4. The justice of the peace shall, on or before the fifth day of each month, pay to the state treasurer half of the fees collected pursuant to paragraph [(o)] *(m)* of subsection 1 during the preceding month. The state treasurer shall deposit the money in the fund for the compensation of victims of crime.

Sec. 4. NRS 19.013 is hereby amended to read as follows:

19.013 1. Each county clerk shall charge and collect the following fees:

On the commencement of any action or proceeding in the district court, or on the transfer of any action or proceeding from a district court of another county, except probate or guardianship proceedings, to be paid by the party commencing the action, proceeding or transfer $47

On an appeal to the district court of any case from a justice's court or a municipal court, or on the transfer of any case from a justice's court or a municipal court 35

On the filing of a petition for letters testamentary, letters of administration, setting aside an estate without administration, or a guardianship, which fee includes the court fee prescribed by NRS 19.020, to be paid by the petitioner:

Where the stated value of the estate is more than $1,000 65

Where the stated value of the estate is $1,000 or less, no fee may be charged or collected.

On the filing of a petition to contest any will or codicil, to be paid by the petitioner 37

On the filing of an objection or cross-petition to the appointment of an executor, administrator or guardian, or an objection to

the settlement of account or any answer in an estate or guardianship matter	37
On the appearance of any defendant or any number of defendants answering jointly, to be paid upon the filing of the first paper in the action by him or them	37
For filing a notice of appeal	20
For issuing a transcript of judgment and certifying thereto	2
For [preparing any copy of any record, proceeding or paper, for each page	1
For] each certificate of the clerk, under the seal of the court	2
For examining and certifying to a copy of any paper, record or proceeding prepared by another and presented for his certificate	5
For filing all papers not otherwise provided for, other than papers filed in actions and proceedings in court and papers filed by public officers in their official capacity	15
For issuing any certificate under seal, not otherwise provided for	5
[For searching records or files in his office, for each year	1]
For filing and recording a bond of a notary public, per name	15
For entering the name of a firm or corporation in the register of the county clerk	15

2. All fees prescribed in this section are payable in advance if demanded by the county clerk.

3. The fees set forth in subsection 1 are in full for all services rendered by the county clerk in the case for which the fees are paid, including the preparation of the judgment roll, but the fees do not include payment for typing, copying, certifying or exemplifying or authenticating copies.

4. No fee may be charged any attorney at law admitted to practice in the State of Nevada for searching records or files in the office of the clerk. No fee may be charged for any services rendered to a defendant or his attorney in any criminal case or in habeas corpus proceedings.

5. Each county clerk shall, on or before the 5th day of each month, account for and pay to the county treasurer all fees collected during the preceding month.

Sec. 5. NRS 78.785 is hereby amended to read as follows:

78.785 1. The fee for filing a certificate of change of location of a corporation's registered office or resident agent, or a new designation of resident agent, is $15.

2. The fee for filing a designation of resident agent is $25.

3. The fee for certifying articles of incorporation where a copy is provided is $10.

4. The fee for certifying a copy of an amendment to articles of incorporation, or to a copy of the articles as amended, where a copy is furnished, is $10.

5. The fee for certifying an authorized printed copy of the general corporation law as compiled by the secretary of state is $10.

6. The fee for certifying the reservation of a corporate name is $20.

7. The fee for executing a certificate of corporate existence which does not list the previous documents relating to the corporation, or a certificate of change in a corporate name, is $15.

8. The fee for executing, certifying or filing any certificate not provided for in NRS 78.760 to 78.785, inclusive, is $20.

9. The fee for comparing any document or paper submitted for certification, with the record thereof, to ascertain whether any corrections are required to be made before certifying, is 20 cents for each folio of 100 words of each document or paper compared.

10. [The fee for copies made at the office of the secretary of state is $1 per page.

11.] The fee for copying and providing the copy of the list of the corporate officers is the fee for copying the necessary pages.

[12.] *11.* The fee for filing a certificate of the change of address of a resident agent is $15, plus $1 for each corporation which he represents.

[13.] *12.* The fee for filing articles of incorporation, articles of merger, or certificates of amendment increasing the basic surplus of a mutual or reciprocal insurer must be computed pursuant to NRS 78.760, 78.765 and 78.770, on the basis of the amount of basic surplus of the insurer.

[14.] *13.* The fee for examining and provisionally approving any document at any time before the document is presented for filing is $100.

Sec. 6. NRS 86.561 is hereby amended to read as follows:

86.561 1. The secretary of state shall charge and collect for:

(a) Filing the original articles of organization, or for registration of a foreign company, the same fee as required by subsection 1 of NRS 88.415 for filing a certificate of limited partnership;

(b) Amending the articles of organization, or amending the registration of a foreign company the same fee as required by subsection 2 of NRS 88.415 for filing a certificate of amendment of limited partnership or restated certificate of limited partnership;

(c) Filing a statement of intent to dissolve, $5;

(d) Filing articles of dissolution, and canceling the articles of organization of a domestic or foreign company, $10;

(e) Filing a statement of change of address of records office or change of the agent for service of process, or both, $15; and

(f) The corresponding documents of a limited-liability company, the same fees as required by subsections 6 to [11,] *10,* inclusive, of NRS 88.415.

2. The secretary of state shall charge and collect at the time of any service of process on him as agent for service of process of a limited-liability company, $5 which may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

Sec. 7. NRS 88.415 is hereby amended to read as follows:

88.415 The secretary of state, for services relating to his official duties and the records of his office, shall charge and collect the following fees:

1. For filing a certificate of limited partnership, $75.

2. For filing a certificate of amendment of limited partnership or restated certificate of limited partnership, $50.

3. For filing a reinstated certificate of limited partnership, $75.

4. For filing the annual list of general partners and designation of an agent for service of process, $30.

5. For filing a certificate of the change of address of an agent for service of process, $10 plus $1 for each limited partnership he represents.

6. For certifying a certificate of limited partnership, an amendment to the certificate, or a certificate as amended where a copy is provided, $5.

7. For certifying an authorized printed copy of the limited partnership law, $5.

8. For certifying the reservation of a limited partnership name, $5.

9. For executing, filing or certifying any other document, $10.

10. For comparing any document or paper submitted for certification, with the record thereof, to ascertain whether any corrections are required to be made before certifying, 20 cents for each folio of 100 words of each document or paper compared.

[11. For copies made at the office of the secretary of state from microfiche, $1 per page.]

Sec. 8. NRS 108.630 is hereby amended to read as follows:

108.630 1. Each county recorder shall maintain a hospital lien docket in which, upon the filing of any such notice of lien, he shall enter the name of the injured person, the approximate date of the injury, the name and address of the hospital filing the notice and the amount claimed; and he shall make an index thereto in the names of the injured persons.

2. Each county recorder shall charge and collect the fees provided in NRS 247.305 for the filing of each notice of lien and for [making certified] *certifying* copies upon request.

Sec. 9. NRS 247.305 is hereby amended to read as follows:

247.305 1. Where another statute specifies fees to be charged for services, county recorders shall charge and collect only the fees specified. Otherwise county recorders shall charge and collect the following fees:

For recording any document, for the first page	$5.00
For each additional page	1.00
For recording each portion of a document which must be separately indexed, after the first indexing	2.00
[For copying any record, for each page	1.00]
For certifying, including certificate and seal, for the first seal	2.00
For each additional seal	.50
For a certified copy of a certificate of marriage	5.00
For a certified abstract of a certificate of marriage	5.00

2. Except as otherwise provided in subsection 3, a county recorder shall not charge or collect any fees for any of the services specified in this section when rendered by him to:

(a) The county in which his office is located.

(b) The State of Nevada or any city or town within the county in which his office is located, if the document being recorded:

(1) Conveys to the state, or to that city or town, an interest in land;

(2) Is a mortgage or deed of trust upon lands within the county which names the state or that city or town as beneficiary; or

(3) Imposes a lien in favor of the state or that city or town.

3. A county recorder shall charge and collect the fees specified in [this] section *1 of this act* for copying of any document at the request of the State of Nevada, and any city or town within the county. For copying, and for his certificate and seal upon the copy, the county recorder must charge the regular fee.

4. For purposes of this section, "State of Nevada," "county," "city" and "town" include any department or agency thereof and any officer thereof in his official capacity.

5. Except as otherwise provided by an ordinance adopted pursuant to the provisions of NRS 244.207, county recorders shall, on or before the fifth working day of each month, account for and pay to the county treasurer all such fees collected during the preceding month.

Sec. 10. NRS 248.275 is hereby amended to read as follows:

248.275 1. The sheriff of each county in this state may charge and collect the following fees:

For serving a summons or complaint, or any other process, by which an action or proceeding is commenced, except as a writ of habeas corpus, on every defendant	$10
For traveling and making such service, per mile in going only, to be computed in all cases the distance actually traveled, for each mile	1
If any two or more papers are required to be served in the same suit at the same time, where parties live in the same direction, one mileage only may be charged.	
For taking a bond or undertaking in any case in which he is authorized to take a bond or undertaking	3
[For a copy of any writ, process or other paper, when demanded or required by law, for each page	2]
For serving every rule or order	8
For serving one notice required by law before the commencement of a proceeding for any type of eviction	15
For serving not fewer than 2 nor more than 10 such notices to the same location, each notice	12
For serving not fewer than 11 nor more than 24 such notices to the same location, each notice	10

For serving 25 or more such notices to the same location, each notice 9

For mileage in serving such a notice, for each mile necessarily and actually traveled in going only 1

But if two or more notices are served at the same general location during the same period, mileage may only be charged for the service of one notice.

For serving a subpena, for each witness summoned 8

For traveling, per mile in serving subpenas, or a venire, in going only, for each mile 1

When two or more witnesses or jurors live in the same direction, traveling fees must be charged only for the most distant.

For serving an attachment on property, or levying an execution, or executing an order of arrest or order for the delivery of personal property, together with traveling fees, as in cases of summons 5

For making and posting notices and advertising for sale, on execution or any judgment or order of sale, not to include the cost of publication in a newspaper 5

For issuing each certificate of sale of property on execution or order of sale, and for filing a duplicate thereof with the

county recorder, which must be collected from the party receiving the certificate	3
For drawing and executing every sheriff's deed, to be paid by the grantee, who shall in addition pay for the acknowledgment thereof	12
For serving a writ of possession or restitution, putting any person into possession entitled thereto	15
For traveling in the service of any process, not otherwise provided in this section, for each mile necessarily traveled, for going only, for each mile	1
For mailing a notice of a writ of execution	1

The sheriff may charge and collect $1 per mile traveled, for going only, on all papers not served, where reasonable effort has been made to effect service, but not to exceed $20.

2. The sheriff may also charge and collect:

(a) For commissions for receiving and paying over money on execution or process, where lands or personal property have been levied on, advertised or sold, on the first $500, 4 percent; on any sum in excess of $500, and not exceeding $1,000, 2 percent; on all sums above that amount, 1 percent.

(b) For commissions for receiving and paying over money on executions without levy, or where the lands or goods levied on are not sold, on the first $3,500, 2 percent, and on all amounts over that sum, one-half of 1 percent.

(c) For service of any process in a criminal case, or of a writ of habeas corpus, the same mileage as in civil cases, to be allowed, audited and paid as are other claims against the county.

(d) For all services in justices' courts, the same fees as are allowed in subsection 1 and paragraphs (a), (b) and (c) of this subsection.

3. The sheriff is also entitled to further compensation for his trouble and expense in taking possession of property under attachment, execution or other process and of preserving the property, as the court from which the writ or order may issue certifies to be just and reasonable.

4. In service of a subpena or a venire in criminal cases, the sheriff is entitled to receive mileage for the most distant only, where witnesses and jurors live in the same direction.

5. The fees allowed for the levy of an execution, for advertising and for making and collecting money on an execution or order of sale, must be collected from the defendants, by virtue of the execution or order of sale, in the same manner as the execution is directed to be made.

6. Except as otherwise provided by an ordinance adopted pursuant to the provisions of NRS 244.207, all fees collected by a sheriff must be paid into the county treasury of his county on or before the 5th working day of the month next succeeding the month in which the fees are collected.

Sec. 11. NRS 378.270 is hereby amended to read as follows:

378.270 1. Subject to the provisions of NRS 378.310 and subsection 4 of NRS 239.090, the state librarian shall furnish, on request, to any person who

PRESENTATION TO THE LEGISLATIVE COMMISSION'S

SUBCOMMITTEE TO STUDY PUBLIC RECORDS

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THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) was enacted by the United States Congress in 1966. It established for the first time a statutory right of access to Federal governmental information. The enactment of FOIA followed a decade of debate among legislators, public interest groups and agency officials.

The legislative history of FOIA indicates that its primary purpose is to ensure an informed citizenry. An informed citizenry is fundamental to democratic government because it checks corruption and allows for accountability. However, achieving the goal of an informed citizenry often conflicts with societal interests. Among these competing interests are the public's interest in effective government, responsible use of

limited fiscal resources, and the preservation of the confidentiality of personal, commercial, and certain sensitive government information.

OVERVIEW OF FOIA

Generally, FOIA grants any person a right, enforceable in court, of access to Federal agency records, except to the extent that such records are protected from disclosure by one of nine exemptions or are excluded entirely from the law by one of three exclusions. Virtually every record possessed by a Federal agency must be available to the public in one form or another unless it is exempted or excluded.

The key to coverage by FOIA is the information sought must be a "record" maintained by an "agency." The definition of agency encompasses all executive branch agencies including independent regulatory agencies. The term "record" is not defined by statute, but the Federal courts have defined the term to include almost everything that is prepared by or used by an agency official in connection with performing his duties. Distinctions are made between "public" and "private" records. For example, such things as appointment calendars and telephone message slips, employee logs created voluntarily to facilitate work, and

personal notes of agency surveyors have been held to not constitute "agency records."

The FOIA begins with the premise that certain information should be made automatically available to the public. Two categories of information are required to be disclosed automatically by FOIA. First, a description of each Federal agency's organization, functions, procedures, substantive rules and policies must be published in the Federal Register. Second, final opinions in the adjudication of cases, specific policy statements, and certain staff manuals must be made available for public inspection.

Outside of these two categories of information that are automatically public, FOIA provides that all other records not exempted or excluded, are subject to disclosure upon an agency's receipt of a specific and proper access request from any person. The procedures for requesting information are prescribed by FOIA and each agency has some specific requirements.

The FOIA also establishes various time lines for complying with requests, procedural requirements, and a fee schedule for documents. Each of these elements will be discussed in this presentation.

NEVADA'S OPEN RECORD SCHEME COMPARED WITH FOIA

Nevada, like many other states, provides that all public books and records (state and local government) be available to the public, unless specifically exempted by law. This is also the basic approach of FOIA. If information is not covered by the automatic provisions, then it is subject to disclosure unless exempted or excluded.

The Nevada Open Record Law does not require automatic publication of records as FOIA does. Nevada also does not define public records and it has been up to the courts and individual agencies to determine what is or is not a public record or book. The FOIA defines "agency," but not "record." Nevada does not have a statutory administrative decisionmaking process. Nevada does have a series of exemptions, but not exclusions whereas FOIA contains both.

As was discussed earlier, over 300 exemptions to the Nevada Open Record Law have been identified. FOIA contains nine broad exemptions and three exclusions.

FOIA EXEMPTIONS

The Freedom of Information Act contains nine exemptions. If the information requested fits one of the exemptions, then an agency is not required to disclose the information requested.

Exemption 1

Exemption 1 protects from disclosure national security information concerning the national defense or foreign policy. The information must be properly classified in accordance with the substantive and procedural requirements of an Executive Order to qualify for the exemption.

Exemption 2

Exemption 2 protects records "related solely to the internal personnel rules and practices of an agency." The Federal courts have interpreted this exemption to protect internal agency matters so routine or trivial that they could not be subject to a genuine and significant public interest.

Exemption 3

This exemption incorporates the disclosure prohibitions that are contained in other Federal statutes. Congress amended this exemption in 1976 by placing two conditions on the exemption. The statute must:

1. Require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

2. Establish particular criteria for withholding or refer to particular types of matters withheld.

A statute falls within the exemption if it satisfies one of the disjunctive requirements.

Exemption 4

Exemption 4 of FOIA protects "trade secrets and commercial or financial information obtained from a person which is privileged or confidential." This exemption is intended to protect both the interests of commercial entities that are required to submit proprietary information to the government and the interests of the government in receiving access to such data.

Exemption 5

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party * * * in litigation with the agency." It exempts those documents normally privileged in the civil discovery context.

Exemption 6

This exemption is referred to as the privacy exemption. It applies to information about individuals in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." This exemption requires a balancing of the public's right to disclosure against the individual's right to privacy. This test is similar to the one currently used by Nevada's Office of the Attorney General in cases involving confidentiality.

Exemption 7

This exemption protects form disclosure records or information compiled for law enforcement purposes. To qualify

for the exemption the record or information must be compiled for law enforcement purposes and meet one of six additional qualifications. The production of these records or information is not required if the records or information:

1. Could reasonably be expected to interfere with enforcement proceedings;

2. Would deprive a person of the right to a fair trial or an impartial adjudication;

3. Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

4. Could reasonably be expected to disclose the identity of a confidential source in a criminal investigation;

5. Would disclose techniques, procedures, or guidelines used in law enforcement investigations or prosecutions where such disclosure could reasonably be expected to cause circumvention of the law; or

6. Could reasonably be expected to endanger the life or physical safety of any individual.

Exemption 8

Exemption 8 covers matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." In examining the legislative history of this exemption, the Federal courts have determined that it has two purposes: first, to protect the security of financial institutions by withholding from the public frank evaluations of the bank's stability; and second, to promote cooperation and communication between employees and examiners.

Exemption 9

This exemption covers "geological and geophysical information and data, including maps, concerning wells." It is a rarely invoked exemption that has little history or judicial interpretations.

FOIA EXCLUSIONS

The 1986 amendments to FOIA created a new mechanism for protecting sensitive law enforcement matters by adding three

exclusions. The exclusions have the effect of allowing law enforcement officials to treat certain especially sensitive records as not subject to the requirements of FOIA.

Exclusion 1

This exclusion is invoked where an investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation is not aware of its pendency and disclosure of the existence of its pendency could reasonably be expected to interfere with enforcement proceedings.

In circumstances where the fact of an investigation is unknown to the person being investigated, invoking Exemption No. 7 may "tip off" the person regarding the investigation. Using this exclusion, the agency may simply respond that the records do not exist, without informing the person of the investigation.

Exclusion 2

The second exclusion applies to the threatened identification of confidential informants in criminal proceedings. The exclusion allows law enforcement agencies to treat a

request by a third party regarding the name of an informant as not subject to FOIA. Like the previous exclusion, this exclusion is invoked where using the similar exemption would disclose that the informant's name is somewhere in the records, even if the records themselves are not disclosed.

Exclusion 3

This exclusion applies to certain Federal Bureau of Investigation records pertaining to foreign intelligence and terrorism. To qualify for the exclusion, the records must be classified pursuant to Executive Order.

PROCEDURES FOR FOIA REQUESTS

An access request under FOIA must "reasonably describe" the records sought and be made in accordance with the agencies published procedural regulations.

Time Frames

The agency is required to inform the requester of its decision to grant or deny access within 10 working days. The agency does not have to provide the records within 10 days, but must provide them promptly after access is granted. Extensions of time limits are provided in certain circumstances.

Appeals

A decision to deny access must contain the specific reason for denial and information regarding the right to an administrative appeal. This appeal is to the head of the agency who has 20 working days to rule on the appeal. If the appeal is denied, the requester may then seek judicial review. The requester must exhaust his administrative remedies before judicial review is allowed. If the agency fails to meet the time limits, the requester may immediately file for judicial review. In judicial cases, the Department of Justice (DOJ) represents the agency that has denied the request for access.

FEES

Three levels of fees are prescribed by FOIA that depend in part upon the identity of the requester and the intended use of the information. The Office of Management and Budget (OMB) has adopted regulations and guidelines regarding the fees.

The first level of fees includes charges for document search, duplication and review, when the records are requested for commercial use. A key element of this level is that charges are allowed for the time involved in searching the records.

The second level of fees limits charges to only document duplication costs if the records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution or member of the news media.

The third level of fees applies to all requesters not covered by levels one and two and authorizes reasonable charges for document search and duplication.

The OMB has established a uniform schedule of fees for agencies. In addition, certain federal statutes establish specific fees for information that supersede FOIA and the OMB fee schedule.

Fee Waivers and Reductions

Fees are required to be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of government and is not primarily in the commercial interest of the requester. The DOJ has established a list of six factors agencies should consider in determining whether to apply a fee waiver or reduction.

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A P P E N D I X E

"MANAGEMENT AND PRESERVATION OF NEVADA'S ELECTRONIC PUBLIC RECORDS," A REPORT TO THE STATE HISTORICAL RECORDS ADVISORY BOARD, BY MARGARET HEDSTROM, PH.D., DATED DECEMBER 1990

MANAGEMENT AND PRESERVATION OF NEVADA'S ELECTRONIC PUBLIC RECORDS

A Report to the Nevada

State Historical Records Advisory Board

Margaret Hedstrom, PhD

Albany, NY

December 1990

RECOMMENDATIONS

The State of Nevada should establish a comprehensive information policy governing all aspects of information technology management and information management. A comprehensive information policy generally covers a broad range of issues, including procurement of computing resources, information needs assessment, information processing standards, telecommunications, recruitment and training of staff, access to government information, and records retention and preservation.

The recommendations outlined below cover those aspects of information policy that concern maintenance, retention and preservation of electronic records. The recommendations can be implemented gradually and incrementally during the next decade. Each recommendation on its own will contribute to better management, increased

accessibility, and improved preservation of Nevada's government records. However, the recommendations will be even more effective if they are carried out within a broader information policy framework.

1. The State of Nevada should develop a comprehensive inventory of its information holdings that includes all public records regardless of format.

a) The records inventory of the current Division of Archives and Records records scheduling project can form the basis for the inventory, but it should be expanded to include computer records and other electronically-stored records, such as audio tapes.

b) The inventory should be maintained on-line so that it can be updated and disseminated widely.

c) The inventory should serve as a planning tool for information systems development to help identify areas where data sharing among agencies may reduce reporting burdens and eliminate maintenance of redundant data.

d) The inventory should contain information needed by the Division of Archives and Records to schedule records for disposition, and by the Board of Examiners to approve the disposal of records and monitor compliance with public records laws.

e) The inventory should serve as a public access tool by making information about the information holdings of state agencies widely available and easily accessible to the public. To ensure that access to records is provided on a fair and equitable basis and that personal privacy and confidentiality are protected, the inventory should include information about the terms and conditions under which access by the public is allowed or denied.

f) This inventory can be developed incrementally by adding data about new information systems when they are created or about older recordkeeping systems when they are redesigned.

2. The Division of Archives and Records should work with State agencies and with the Division of Data Processing to establish retention and disposition schedules for records when information systems are designed or redesigned.

a) Retention requirements and procedures for both paper and electronic records should be evaluated whenever an information system is redesigned or whenever there is a significant change in recordkeeping practices or records storage technologies.

b) Retention requirements should be evaluated every five years to ensure that measures are being taken to identify and protect electronic records with continuing and long-term value.

c) All records retention plans should be reviewed by the Board of Examiners. Sign-off by the Board of Examiners on the retention plans for electronically-stored information should be incorporated into the approval process for new information systems.

d) This approach will provide for the gradual and incremental implementation of a program to schedule electronic records for disposition.

3. The State should clarify its definition of public records to explicitly include electronically-stored information in the definition of public records, through revision of the current statute if necessary.

a) A separate task force is reporting on the definition of public record. The task force should make sure that the definition is broad and explicit enough to clearly include electronic records.

b) In conjunction with an evaluation of the definition of public records, the State should review potential barriers to public access, such as fees, copyright, licensing agreements, and other obstacles.

4. The State should develop an adequate storage facility and introduce maintenance procedures to ensure ongoing accessibility of electronic records with enduring value.

a) The storage facility should include adequate temperature and humidity controls to maintain magnetic tapes at a constant temperature of 60-70 degrees F and 40-50% RH.

b) The storage facility should be used to store back-up copies of data retained on-line as well as data that has been downloaded from active systems and retained on magnetic tape for occasional reference.

c) The storage facility should be secure from unwarranted access and designed to minimize damage from fires, floods, and other disasters.

d) The storage facility should be equipped with proper shelving and other equipment needed to store electronic records.

e) A small sample of the magnetic media in storage should be evaluated annually to detect deterioration.

f) Magnetic media should be copied to new media a minimum of once every five years or whenever a new storage format is introduced.

g) The storage facility should be developed in conjunction with a statewide disaster preparedness plan for government information resources.

h) The Division of Archives and Records should investigate upgrading the State Records Center to serve this purpose.

5. The Division of Archives and Records should undertake a program to educate state officials about their responsibilities for retention, care, and preservation of government records with special emphasis on electronically-stored public records.

a) The Archives and Records program should develop guidelines for care and maintenance of electronic records and distribute them widely to government agencies.

b) The program should educate government officials about retention requirements and train them how to maintain public records.

c) The program should monitor compliance with public records laws and regulations and report periodically to the Board of Examiners on the status of electronic records.

d) Staff in the Division of Archives and Records should acquire the technical expertise needed to preserve archival records in electronic form. Such expertise can be acquired gradually through participation in professional development activities and through hands-on experience with the acquisition and preservation of records in electronic form. Pilot projects, starting with simple data sets, should be used to develop procedures and learn techniques for preservation of records in electronic form.

e) The Division of Archives and Records needs additional resources to purchase and maintain equipment required for preservation of audio and video recordings, and to obtain access to computer services required for preservation of computer records.

f) Until such time that the State Archives develops the technical capacity to preserve and disseminate public records in electronic form, the State Archives should require agencies to retain their archival records under terms and conditions established by the Archives.

A P P E N D I X F

LETTER OF TRANSMITTAL,

DATED SEPTEMBER 11, 1990,

AND COPY OF MODEL POLICY TO ASSIST

PUBLIC ENTITIES IN IMPLEMENTING

IDAHO PUBLIC RECORDS ACT

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-240

September 11, 1990

Dear Public Official:

The Idaho Public Records Act, which went into effect on July 1, deserves careful consideration by those who serve the public. It sets the ground rules for release of government information to the public. It specifies the types of documents exempt from disclosure, while setting a simple, uniform procedure for examining and copying documents. It was designed to strike a balance between the right of citizens to have access to public documents and the necessity to maintain the confidentiality of certain categories of sensitive records.

Because of the important implications of this law for public employees, my staff has prepared a model policy to assist public entities in implementing it. A copy of the model policy is attached. It should be adaptable for public agencies at all levels of government and I would encourage you to proceed with its adoption for your agency. I hope it provides the guidance you need to insure timely compliance with the Idaho Public Records Act.

Sincerely,

JIM JONES
ATTORNEY GENERAL

JTJ/tg

Celebrate IDAHO
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PHOTOCOPIER COST ANALYSIS WORKSHEET

MACHINE COST PER COPY:		
Average copies per month	=	_____
Purchase Price	=	_____
Amortized Cost per month over copier life	=	_____
TOTAL MACHINE COST PER COPY	=	
MAINTENANCE & SUPPLY COSTS PER COPY:		
Maintenance per copy	=	_____
Supplies - Toner, Drums, etc.	=	_____
Supplies - Paper	=	_____
TOTAL COST OF SUPPLIES PER COPY	=	
TOTAL COST PER COPY	=	_____

PHOTOCOPIER COST ANALYSIS EXAMPLE

MACHINE COST PER COPY:		
Average copies per month	=	44,695
Purchase Price	=	11,995.00
Amortized Cost per month for 3 years	=	333.19
TOTAL MACHINE COST PER COPY	=	0.0075

MAINTENANCE & SUPPLY COSTS PER COPY:		
Maintenance per copy	=	0.0125
Supplies - Toner, Drums, etc.	=	0.0055
Supplies - Paper	=	0.0050
TOTAL COST OF SUPPLIES PER COPY	=	0.0230
TOTAL COST PER COPY	=	0.0305

IDAHO PUBLIC RECORDS LAW

MODEL POLICY

INTRODUCTION

Effective July 1, 1990, Idaho has a new law relating to the disclosure of information by all state and local government entities. The Idaho Public Records Act is found at Idaho Code Sections 9-337 through 9-348. The intent of this law is that all records maintained by public agencies are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law.

DEFINITIONS

Key terms are defined in the Act. Some of the law's most important concepts are:

1. Public records - These include, but are not limited to, any writing containing information relating to the conduct or administration of the public's business, prepared, owned, used or retained by a public agency. "Writing" means information maintained in many forms, including, for example, pictures, maps, tapes, magnetic or punched cards, and computer disks.

2. Inspect - This means the right to listen, view, and make notes of public records, as long as the public record is not altered or damaged.

3. Copy - This means transcribing by handwriting, photo-copying, duplicating machine, and reproducing by any other means, so long as the public record is not altered or damaged.

4. Custodian - This means any public official or employee having physical custody and control of the public records, including those who respond to requests for information on a routine basis. "Custodian" also includes the person, whether elected or appointed, who is legally responsible for administering the public agency, or that person's designee. "Designated custodians" are those employees authorized to perform specific responsibilities that are described in this policy, including denying requests for information when appropriate to do so.

DESIGNATED CUSTODIANS

The following persons are the designated custodians for this agency:

_____

_____

EXEMPTIONS

The records exempt from disclosure by this Act are listed in Idaho Code Section 9-340. All employees should be aware of the following exemptions that apply to this agency:

[List exemptions that pertain to the public agency]

_____

_____

Personnel Information

The employment history, classification, pay grade and step, longevity, gross salary and salary history, status, work place and employing agency of any current or former employee are required to be disclosed to any person who requests the information.

All other information relating to an employee or applicant, such as home address and phone number, shall not be disclosed to the public without the written consent of the employee, applicant or designated representative. Employees may inspect and copy their own records, except for material used to screen and test for employment.

* * * *

Records may contain both exempt and non-exempt material. The public agency is responsible for separating the exempt from the non-exempt information and supplying the non-exempt record. The Act prohibits denying access based upon the fact that the record contains both types of materials.

Even if an exemption applies to a record, the law allows disclosure of statistical information that does not identify any particular person.

PROCEDURE FOR REQUESTING PUBLIC RECORDS

It is this agency's policy to continue providing access to and copies of records immediately upon request whenever possible. Examination of records should be done during normal working hours, unless the person who administers the agency or a designated custodian authorizes otherwise. A certified copy, if feasible to produce or required by law, must be provided upon request.

The law prohibits asking why the information is needed. It is permissible to explain what records are available and to help identify the material that is desired. It is also permissible to allow the person to examine non-exempt files in order to select the specific records needed. Staff must maintain vigilance to see that records are not altered or destroyed, but the law prohibits examination of any copy, photograph or notes in the person's possession.

[The agency has the right to determine whether written requests will be required. Choose:

a) A written request will not be required if the information is routinely provided by this agency and is readily available. or

b) Whenever information is requested, ask the person to fill out a written request form.]

A request for records must be granted or denied within three (3) working days.

If a longer time is needed to locate or retrieve the records, ask for a written request. The person in this agency who is authorized to determine that a request cannot be granted within three working days is [the custodian who receives the request, or a designated custodian, or the person who administers the agency]. The request must be granted or denied in whole or part within ten (10) working days. If no answer is provided within ten (10) working days, the request will be deemed to have been denied.

[Policy Decision:

Some agencies have considered keeping a log of requests. Given legislative intent that there be free access to public records and that such a log would itself be a public document, it may be inappropriate to include any information identifying the person making the request.]

COSTS FOR PROVIDING PUBLIC RECORDS

[The agency must determine whether a certain number of copies will be provided without charge. Choose:

a) Due to the cost of accounting for copying fees, copies of _____ numbers of records will be provided free of charge. If the request is for a greater number of records, copying fees will be charged for all records requested. or

b) A fee will be charged for each photocopy provided.]

The Act does not require the agency to provide multiple copies of the same document.

The fee charged for locating or copying a public record cannot include any administrative or labor costs. The Act does permit public agencies to charge for the actual cost of copying records. This agency's cost of standard photocopies is currently five (5) cents per page. **[Note:** Most agencies are finding that the actual cost of photocopying averages about five cents. Insert a higher copying fee only if that is the actual cost that can be justified.

In order to determine actual costs, use the cost per copy charges to the agency if the agency pays another entity to do the copying. If copying is done in-house, the cost includes the cost of all supplies such as paper, toner and replaceable parts. To this add the cost of the maintenance agreement. Supplies and maintenance numbers should be calculated on a per copy basis. Finally, add the capital outlay costs of the photocopier, amortized over the expected life span to provide a monthly figure (divided by the average number of copies per month). See the attached "photocopier cost analysis example" and worksheet.

In addition, there is an exception for fees established by law, such as Recorder's fees. If applicable, substitute the statutory fee and citation for this paragraph.]

[The agency must determine whether advance payment of copying charges will be required. Choose:

a) Advance payment for copies will only be required if the charges are not minimal, that is, $_____ or more. **or**

b) Advance payment of the photocopying charges is required.]

The fee charged for providing information in the form of computer tapes, disks, microfilm or similar record media may not exceed the amount of the direct cost of copying. **[Note:** It appears to be legislative intent that "direct cost" does not include the regular wages of the computer operator who may be providing these copies.] If the information is also available in publication form, the agency may offer the published material to the individual at the standard cost of selling the publication.

When necessary, [the custodian who receives the request, or a designated custodian, or the person who administers the agency] may authorize examination of records to be done outside of regular working hours. If this is done, advance payment of reasonable compensation for this added expense **[choose: (a) is (b) may be]** required.

If there is a request to mail copies of documents to someone and the mailing cost is in excess of $_____, ask for a written request, advance payment, and a stamped, self-addressed envelope large enough for the number of copies.

The designated custodian or person who administers the agency may choose to allow staff, as time permits, to transmit a small number of records by FAX, with the understanding that the person requesting the records will pay the telecommunications charges if they are not minimal.

Appellants cited Houston Chronicle Pub. Co. v. City of Houston, 531 S.W.2d 177 (Tex. 1975), for the proposition that the press and the public have a constitutional right of access to information concerning crime in the community and activities of law enforcement agencies. However, as stated by that court:

> This constitutional right of access to information should not extend to such matters as a synopsis of a purported confession, officers' speculation of a suspect's guilt, officers' views as to the credibility of witnesses, statements by informants, ballistics reports, fingerprint comparisons, or blood and other laboratory tests.

Id. at 187.

Prior to 1976, FOIA's Exemption 7 pertained to "investigatory records compiled for law enforcement purposes except to the extent available by law to a private party." 5 U.S.C. § 552(b)(7). That phrase was broadly interpreted to include any records containing information garnered in the investigation of possible criminal activity. For example, in Koch v. Dept. of Justice, 376 F.Supp. 313 (D.C. 1974), three Congressmen sought disclosure of files pertaining to themselves. The files contained background information on the Congressmen, correspondence, internal memoranda, and citizen complaints and comments. The court ruled that files maintained by the FBI in aid of investigations into the possibility that a subject had engaged in criminal activity or other conduct that would disqualify the person from government service were "investigatory files" and thus exempt under Exemption 7. The *Koch* court reasoned that "[i]n order to insure such confidentiality, F.B.I. files may be withheld if law enforcement was a significant aspect of the investigation for which they were compiled. . . ." *Id.* at 315. Because all documents (investigatory and non-investigatory) had been mingled together, the court ordered an in camera inspection. It stated that the inspection "could have been avoided had the Bureau clearly segregated investigatory material from other documents. . . ." *Id.*

Because Exemption 7 was subject to broad interpretation, it was amended by Congress in 1986 to narrow its scope. As amended, records and information compiled for law enforcement purposes are exempt from disclosure. However, the exemption applies only where disclosure would result in one of six specified harms.[2]

[2]5 U.S.C. § 552(b)(7) (1988 ed.) provides:

> (b) This section does not apply to matters that are—
>
> . . . .
>
> (7) records or information compiled for law enforcement purposes,

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In Abramson v. FBI, 456 U.S. 615 (1981), the Supreme Court interpreted the meaning and scope of the 1976 version of Exemption 7.[3] *Abramson* involved a professional journalist who invoked the FOIA in an attempt to obtain information compiled by the FBI regarding certain politicians. The desired reports had been incorporated into a document transmitted to the White House. The Bureau denied the request on grounds that the information was exempt from disclosure under Exemptions 6 and 7 of the FOIA. However, the Bureau did provide the journalist with 84 documents, some of which had been partially redacted. The issue was whether the FBI reports lost their exempt status when joined with records compiled for other than law enforcement purposes.

The *Abramson* court approached the issue with the following analysis:

> The language of the Exemption indicates that judicial review of an asserted Exemption 7 privilege requires a two-part inquiry. First, a requested document must be shown to have been an investigatory record "compiled for law enforcement purposes." If so, the agency must demonstrate that release of the material would have one of six results specified in the Act.

Id. at 622. The court of appeals had ordered disclosure on the basis that the record did not qualify for the exemption. It reasoned that the record transmitted to the White House had not been compiled for law enforcement purposes, even though it contained information that was. The Supreme Court reversed, holding that:

---

but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence information, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

[3]The 1976 version of Exemption 7 is substantially the same as the current Exemption 7. The amendment substituted the words "records and information" for the words "investigatory records."

> If a requested document . . . contains or essentially reproduces all or part of a record that was previously compiled for law enforcement reasons, it is reasonably arguable that the law enforcement record does not lose its exemption by its subsequent inclusion in a document created for a non-exempt purpose.
>
> . . . .
>
> [T]he statutory language is reasonably construable to protect that part of an otherwise non-exempt compilation which essentially reproduces and is substantially the equivalent of all or part of an earlier record made for law enforcement uses.

Id. at 624-25.

In the instant matter, the subject report unquestionably satisfies the threshold inquiry. The investigation commenced to determine whether bribery or other misconduct was a factor in the dismissal of charges against Conforte. Appellants contend, however, that because the report did not result in a prosecution and was subsequently labeled "administrative" in nature, the report is subject to disclosure. I do not agree.

Under the *Abramson* ruling, if a report is initially prepared for law enforcement purposes, the threshold requirement is met, and the subsequent use to which the report is committed or name it is given is of no significance. As declared by the court in Arenberg v. DEA, 849 F.2d 579 (11th Cir. 1988):

> The information gathered by the agency need not lead to a criminal prosecution in order to meet the threshold requirement. Courts should be hesitant to reexamine a law enforcement agency's decision to investigate if there is a plausible basis for the agency's decision.

Id. at 581.

Under the foregoing federal authorities interpreting the FOIA, it is apparent that the investigative report compiled by the Reno Police Department would qualify as exempt under subsection 7. However, the inquiry does not end there. Next, an agency claiming the Exemption 7 privilege must demonstrate that one of six "harms" within Exemption 7 would result.

Appellants contend that because the investigative report has not been declared by law to be confidential, at the very least a balancing test should be used to determine whether the report should be disseminated to the public. According to the Supreme Court, the FOIA does not require such a test. The *Abramson* court interpreted the federal act to mean that "[c]ongress . . . created a scheme of categorical exclusion; it did not invite a

judicial weighing of the benefits and evils of disclosure on a case-by-case basis. *Abramson*, 456 U.S. at 631.

In U.S. Dept. of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989), the court discussed the categorical balancing approach to the FOIA exemptions. Reporters there sought to obtain the "rap sheets" of individuals believed to have improper dealings with a corrupt Congressman. The FBI invoked Exemption 7(C) in refusing the request. The court rejected an ad hoc balancing approach in favor of categorical balancing. Under the latter test, once a report falls into an exempted category, it is exempt from disclosure without the need for case-by-case balancing. The court reasoned that:

> *establishing a discrete category of exempt information* implements the congressional intent to provide "workable" rules. . . . Only by construing the Exemption to provide a categorical rule can the Act's purpose of expediting disclosure by means of workable rules be furthered.

(Emphasis in original.) *Id.* 489 U.S. at 779 (quoting FTC v. Grolier Inc., 462 U.S. 19 at 27-28). The court declared that this approach may be undertaken for an "appropriate class of law-enforcement records or information." Reporters Comm., 489 U.S. at 777. Thus, the court held:

> as a categorical matter that a third party's request for law-enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no "official information" about a Government agency, but merely records that a Government happens to be storing, the invasion of privacy is "unwarranted."

Id. 489 U.S. at 780.

However, protection from disclosure is not limited to persons in their individual capacity. In Buhovecky v. Dept. of Justice, 700 F.Supp. 566 (D.C. 1988), an inmate convicted of bank robbery sought access to FBI records. The investigative file consisted of grand jury material, "rap sheets," information obtained through interviews with law enforcement officials and individuals, and other materials. The FBI released some of the requested material, but withheld information which included the names of individuals and FBI personnel and the rap sheets. After undergoing a two-part inquiry to determine whether Exemption 7 was applicable, the court ruled that:

> The type of information defendants seek to protect is information which would lead to discovery of the identity of

> participants in a criminal investigation. The interest in nondisclosure is obvious here; there is a need to protect from harassment those who participate, in either an official capacity or as investigative sources, in FBI investigations.

Id. at 570.

Here, among the reasons respondents refused disclosure is the invasion of privacy of those who were investigated and against whom no charges were brought. Appellants claim the invasion is "minimal" and thus the public's need to know should be balanced favorably against the minimal intrusion. Such reasoning is inconsistent with the Supreme Court's interpretation of Exemption 7.

Categorical balancing is consistent with the second prong of the *Abramson* court's two-part analysis of Exemption 7. That is, once *one* of the six "harms" is demonstrated, the exemption is applicable. Moreover, it would appear that a "categorical balancing" would be both administratively and judicially efficient. In handling a records request, a government agency should be able to rely on bright-line procedures for disseminating information rather than awaiting a case-by-case judicial determination.

I have belabored federal case law concerning the FOIA by way of analogy only. In those limited instances where "public records" are of an uncertain confidential status, I suggest that the categorical balancing approach would be preferable to the ad hoc balancing fashioned by the majority. Despite the absence of Exemption 7 in Nevada's PRA, it would appear that the categories contained therein could be accorded judicial deference by Nevada courts as guidelines for implementing a categorical balancing approach. In so doing, we would assume no greater liberties with the language of the PRA than the majority rule limiting access to investigative and intelligence reports under the PRA to material sifted by an ad hoc judicial balancing.

Unfortunately, my preoccupation with the categorical balancing test amounts to little more than vented frustration over the burdensome judicial screening imposed by the majority under circumstances that, I respectfully submit, justify no balancing requirements at all. To me, it is beyond cavil that the PRA operates only on "public records," and that criminal investigative and intelligence reports are not, and were never intended to be, classified as public records. NRS Chapter 179A mandates the dissemination of specific criminal history information, expressly excluding investigatory and intelligence reports. The PRA mandates a complete dissemination of "public records." It is illogical to assume that what the Legislature specifically excluded from dissemination under the former, it intended to mandatorily

release in full under the latter. Such contortive reasoning renders meaningless the exclusion under Chapter 179A.

For the reasons hereinbefore expressed, I am convinced that the district court judge was both perceptive and correct and should be affirmed. I therefore dissent.

A P P E N D I X C

"COMPARISONS OF STATE PUBLIC RECORDS LAWS,"

DATED JANUARY 10, 1992

PRESENTATION TO THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE LAWS GOVERNING PUBLIC RECORDS AND BOOKS

COMPARISONS OF STATE PUBLIC RECORDS LAWS

January 10, 1992

Dennis Neilander, Senior Research Analyst
Research Division, Legislative Counsel Bureau

This presentation provides a comparison of various aspects of state public records laws. Attached are Table I "Comparison Of Certain Provisions Of State Public Records Laws" and Attachment 1 "Definitions Of Public Records In State Laws."

Overview

As with many policy areas in state law, a comparison of the general public records laws in the 50 states reveals a wide variety of approaches and provisions dealing with the primary issue of guaranteeing access to public records. Probably the only consistent feature of state public records laws is that all states have some provision that asserts the right of access to

public records. Beyond that feature, there appears to be little, if any, consistency concerning the organization and structure of states' laws on public records.

This comparison deals only with states' general laws on public records. No attempt was made to thoroughly research all aspects of every state's laws or to check cross references throughout a state's statutes.

Table I, under "Statutory Citation," provides the initial reference for each state's public or open records law. Copies of these laws were compiled by and are available from the Research Division of the Legislative Counsel Bureau (LCB). In general, most of these state laws reflect the provisions in effect as of the end of 1990, although a few include changes made in 1991 legislative sessions, based on the references available in Nevada's Supreme Court Law Library.

Most states' laws in this area are known as public or open records laws, but 12 states specifically name their laws in the statutes. Five states use "Public or Open Records Act," 5 states call it the "Freedom of Information Act," Hawaii names its law the "Uniform Information Practices Act" and Minnesota uses the "Government Data Practices Act."

The remainder of this presentation highlights and summarizes the other categories of comparisons shown in Table I.

Policy Statement

Twenty-one states have policy statements or statements of purpose or intent that introduce their public records laws. In general, these statements express the importance and principles of open records to the adequate functioning of a democratic and open government whose sovereignty resides in the people. The policy statements range from a couple of sentences to several paragraphs in length.

Definition

A formal definition of the term "public records" or its equivalent is contained in the general public records laws of 37 states. In addition, another 3 states (Nebraska, New Jersey and North Dakota) have no formal definition but their general laws include language that specifies what is included, deemed to be or shall be a public record.

Attachment I provides a complete listing of the formal definitions of public records that are found in the 37 states' laws. These definitions usually include a listing of the various types

of formats of records (such as books, papers, maps, tapes, etc.) and a catchall reference to other materials "regardless of physical form or characteristics" which appears in 25 of the 37 definitions. A few states define public records in terms of public writing and then further define that term.

Exemptions

Only 6 states do not specifically list the types of records that are confidential or exempt from disclosure in their general public records laws. The other 44 states list a variety of exemptions or types of confidential records ranging from 1 listed in 4 states up to a list of 46 exemptions in Virginia's general law.

A couple states' laws indicate that the exemptions listed in the general law are the only ones that are allowed, but most states designate other records as exempt in other sections of their statutes. A preliminary compilation by the Legal Division of LCB indicates about 248 references in Nevada Revised Statutes to records that are classified as confidential or not subject to disclosure.

Access Provisions

The general laws in at least 30 states could be classified as containing detailed provisions and deadlines concerning access to public records. States were classified under this category if they had provisions in their laws dealing with specific access procedures such as how the public is to request access to records, deadlines for agency response, hours of availability and so on. Many states authorize agencies to promulgate rules and regulations governing access procedures.

Recourse Upon Denial of Access

Almost every state's public records law includes some provision for a recourse of action if a person is denied access to a public record, and the recourse in nearly every state is to take the issue to the courts.

Only 11 states have some provision for an intermediate review or determination of denial of access before a person may take the issue to court. Among these states, 4 allow for review or petition to the attorney general or district attorney (Kentucky, Nebraska, Oregon and Wisconsin), 3 states provide for appeal to the agency head (Illinois, New York and Rhode Island), 2 allow for administrative review (Alaska and Maryland), Hawaii provides

for an appeal to the Office of Information Practices and Massachusetts allows a petition to the supervisor of records.

Most states' laws establish deadlines or require the courts to give priority to or expedite the handling of cases involving the denial of access to public records.

Electronic Records

Many states have definitions or brief references to include computer or electronic records within the purview of public records laws. However, only 9 states could be identified as having specific provisions or special sections within their public records laws that deal directly with electronic records.

Confidentiality/Privacy Criteria

At least 12 states' general public records laws could be identified as having specific provisions dealing with confidential personal records or privacy aspects, such as authorizing a person to review and correct personal information in state public records. This representation may not be entirely accurate since these types of provisions could be covered elsewhere in a state's statutes outside the public records law.

Cost/Fee Provisions

This comparison reveals that nearly all states have some provisions in their laws regarding fees and charges for public records. In general, most state laws specify that no charges are to be made for the examination or review of a public record. For copies of records, most laws specify only recovery of the actual cost of reproduction, or designate a specific or maximum fee for copies per page. Several states allow fees to be set by agency rules or regulations. Most of the states' laws reflect the principle that fees and charges for public records should only be established as necessary to recover the actual costs and not to provide a profit. Several states have provisions that allow or establish criteria for the waiver of fees for public records.

Enforcement

A review of states' enforcement and penalty provisions for violations of public records laws indicates that the most popular is to classify an offense as a misdemeanor. However, as shown in Table I, the penalty provisions vary considerably, even among those offenses classified as misdemeanors.

Several states' laws require the payment of court costs and attorney fees to persons who prevail in a case of denial of

access to public records, and a few states specify amounts for damages or punitive damages in such cases.

Conclusion

This review and comparison of state laws on public records would seem to indicate that, while all states are consistent on the basic principle of widest possible access to public records, the provisions for implementation of the concept vary considerably. It would be difficult to point out one or two state's laws that might serve as a model since, as in many areas of state laws, the public records provisions in most states probably have evolved in response to specific or perceived needs in the application of the basic principle within the individual states.

BLD/llp;records,x8

TABLE I

COMPARISON OF CERTAIN PROVISIONS OF STATE PUBLIC RECORDS LAWS

State	Statutory Citation	Formal Name of Law
Alabama	Code of Ala. 36-12-40	
Alaska	Stat. 09.25.110	
Arizon	ARS 39-121	
Arkansas	Code 25-19-101	Freedom of Information Act of 1967
California	Govt. Code 6250	Ca. Public Records Act
Colorado	CRS 24-72-201	
Connecticut	Gen. Stat. 1-15	
Delaware	Code Title 29, 10001	
Florida	FSA 119.01	
Georgia	Code 50-18-90	Georgia Records Act
Hawaii	HRS 92F-1	Uniform Information Practices Act (Modified)
Idaho	Id. Code 9-337	
Illinois	Stat. 116, § 201	Freedom of Information Act
Indiana	ISA 5-14-3-1	
Iowa	Code 22.1	
Kansas	KSA 45-215	Open Records Act
Kentucky	KRS 61.870	
Louisiana	LRS 44:1	
Maine	MRS Title 1, § 408	
Maryland	State Govt. Code 10-611	
Massachusetts	Ch. 66	
Michigan	MPL 15.231	Freedom of Information Act
Minesota	MSA 13.01	Minn. Government Data Practices Act
Mississippi	Code 25-61-1	Miss. Public Records Act of 1983
Missouri	Stat. 109.180	
Montana	MCA 2-6-101	
Nebraska	RSN 84-712	
Nevada	NRS 239.101	
New Hampshire	RSA 91-A:1	
New Jersey	NJSA 47:1A-1	
New Mexico	Stat. 14-2-1	

New York	Public Officers Law, § 84	
North Carolina	Gen. Stat. 132-1	
North Dakota	Century Code 44-04-18	
Ohio	ORC 149.43	
Oklahoma	OSA Title 52, § 24A.1	Ok. Open Records Act
Oregon	ORS 192.410	
Pennsylvania	PSA Title 65, § 66.1	
Rhode Island	Gen. Laws 38-2-1	
South Carolina	Code of Laws 30-4-10	Freedom of Information Act
South Dakota	Codified Laws 1-27-1	
Tennessee	Code 10-7-503	
Texas	Civil Stat. Art. 6252-17a	
Utah	UCA 63-2-60 and 78-26-1	
Vermont	VSA Title 1, § 315	
Virginia	Code 2.1-340	Va. Freedom of Information Act
Washington	RCW 42.17.250	
West Virginia	Code 29B-1-1	
Wisconsin	WSA 19.31	
Wyoming	Stat. 16-4-201	

BLD/11p;Records,X3

State	Policy Statement	Formal Definition of Public Records	Exemptions Listed in General Law (No.)	Detailed Access Provisions and Deadlines	Recourse Upon Denial of Access
North Carolina		X	X (2)		Court review.
North Dakota			X (7)		
Ohio		X	X (8)		Mandamus action in court.
Oklahoma	X	X	X (17)	X	Civil suit.
Oregon		X	X (38)	X	Petition Attorney General. Court review.
Pennsylvania		X	X (3)		Appeal to court.
Rhode Island	X	X	X (22)	X	Appeal to agency's Chief Administrative Officer. Complaints to Attorney General and court proceedings.
South Carolina	X	X	X (18)	X	Apply to Circuit Court.
South Dakota			X (1)		
Tennessee			X (12)		Petition to court.
Texas	X	X	X (23)	X	Seek a writ of mandamus.
Utah	X	X	X (1)		District Court.
Vermont	X	X	X (20)	X	Superior Court.
Virginia	X	X	X (46)	X	Petition to court.
Washington			X (24)	X	Judicial review.
West Virginia	X	X	X (8)	X	Circuit Court.
Wisconsin	X	X	X (6)	X	Request to District Attorney. Court action.
Wyoming		X	X (18)		District Court.

BLD/llp:Records.X4

TABLE I

COMPARISON OF CERTAIN PROVISIONS OF STATE PUBLIC RECORDS LAWS

State	Specific Provisions on Electronic Records	Confidentiality/ Privacy Criteria	Cost/ Fee Provisions	Enforcement/ Penalty Provisions
Alabama			"Payment of legal fees"	
Alaska	X		X	Injunctive relief. Cause of action.
Arizona			Fee authorized	Misdemeanor $200 fine. 30 days jail.
Arkansas				
California	X	X	X	Injunctive relief.
Colorado			X	Misdemeanor $100 fine. 90 days jail.
Connecticut	X	X	X	
Delaware			X	Injunction, etc.
Florida	X		X	Suspension and removal or impeachment and misdemeanor offense.
Georgia		X	X	
Hawaii		X		Misdemeanor.
Idaho		X	X	Civil penalty up to $1,000.
Illinois	X		X	Injunction.
Indiana	X	X	X	Misdemeanor.
Iowa		X	X	Injunction.
Kansas	X		X	Misdemeanor.
Kentucky			X	Injunction or order.
Louisiana			X	Injunction or order. $25 daily fee.
Maine			X	Injunction, etc. Damages at $100 per day.
Maryland			X	Civil violation not more than $500.
Massachusetts			X	Damages, disciplinary action.
Michigan			X	Misdemeanor.
Minnesota			X	Judicial order.
Mississippi			X	Judicial order. Punitive damages $500.
Missouri			X	Civil liability not to exceed $100. Removal on impeachment. Misdemeanor. $100 fine. 90 days jail.

State	Specific Provisions on Electronic Records	Confidentality/ Privacy Criteria	Cost/ Fee Provisions	Enforcement/ Penalty Provisions
Montana	X	X	X	Court order.
Nebraska				Removal or impeachment.
Nevada				Misdemeanor
New Hampshire			X	Misdemeanor
New Jersey			X	Injunction and fees.
New Mexico				Court order, Attorney's fee.
New York		X	X	Court costs and fees.
North Carolina				
North Dakota				Misdemeanor.
Ohio				Infraction.
Oklahoma			X	Misdemeanor. $500 fine, 1 year in jail.
Oregon			X	
Pennsylvania				
Rhode Island			X	
South Carolina			X	Misdemeanor, $100 fine, 30 days jail.
South Dakota			X	
Tennessee			X	
Texas		X	X	Misdemeanor. $1,000 fine, 6 months jail.
Utah		X		Damages from $100 to $1,000.
Vermont			X	Disciplinary action.
Virginia			X	Civil penalty from $25 to $1,000.
Washington		X	X	Court costs and fees and up to $25 per day for denial.
West Virginia			X	Misdemeanor, $500 fine, 10 days jail.
Wisconsin	X		X	Court costs, fees and punitive damages.
Wyoming			X	Misdemeanor, $100 fine.

BLD/llp;records,x5

N O T E S

Alabama	Brief law; uses "public writing."
Alaska	Requirement to pay personnel costs under certain circumstances. Fee waiver provision. New law on access to electronic services and products.
Arizona	Provisions on "commercial purpose."
Arkansas	
California	Computer software not itself a public record.
Colorado	Extensive provisions on criminal justice records.
Connecticut	
Delaware	
Florida	Includes provisions on copyright of data processing software created by governmental agencies, remote electronic access to public records, and periodic legislative review of exemptions.
Georgia	
Hawaii	Includes specific lists of records to be disclosed. Provisions on Office of Information Practices.
Idaho	
Illinois	Detailed procedural provisions. Fee waiver provision.
Indiana	
Iowa	Extensive enforcement provisions. Includes Fair Information Practices Act.
Kansas	No liability for damages for violation of act.
Kentucky	
Louisiana	
Maine	
Maryland	Provision for temporary denials. Fee waiver provision.
Massachusetts	
Michigan	Fee waiver provision.
Minnesota	Provision on copyright or patent for computer program. Distinguishes between public and nonpublic data.
Mississippi	
Missouri	
Montana	Defines broadly "public writings" and public records as class of public writings.

Nebraska	The examination of public records, and making memoranda and abstracts from them, are all free of charge. No formal definition but the law specifies what is included as a public record.
Nevada	
New Hampshire	
New Jersey	No formal definition but the law specifies what is deemed to be public records.
New Mexico	
New York	Provision on access to state legislative records. Mention of committee on access to public records and committee on open government.
North Carolina	
North Dakota	No formal definition but the law indicates what shall be public records.
Ohio	
Oklahoma	
Oregon	Fee waiver provision. Detailed procedures on Attorney General and court review of denial cases.
Pennsylvania	
Rhode Island	Commercial use of public records prohibited.
South Carolina	Fee waiver provision. Includes list of specific matters declared public information.
South Dakota	
Tennessee	
Texas	Contains list of specific information which is public. Fee waiver provision.
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	Public records classified as "official public records" and "office files and memoranda."

BLD/11p;records,x6

ATTACHMENT 1

DEFINITIONS OF PUBLIC RECORDS IN STATE LAWS

ALASKA

> * * * books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs.

ARKANSAS

> * * * writings, recorded sounds, films, tapes, or data compilations in any form, required by law to be kept or otherwise kept, and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

CALIFORNIA

> * * * any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
> "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

COLORADO

* * * includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.
"Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

CONNECTICUT

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

DELAWARE

* * * information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.

FLORIDA

* * * all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law, or ordinance or in connection with the transaction of official business by any agency.

GEORGIA

"Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency.

HAWAII

"Government record" means information maintained by an agency in written, auditory, visual, electronic, or other physical form.

IDAHO

* * * includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.
"Writing" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

ILLINOIS

* * * all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of any public body.

INDIANA

* * * any writing, paper, report, study map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, or any other material, regardless of form or characteristics.

IOWA

* * * includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any [subdivision].

KANSAS

* * * any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency.

KENTUCKY

* * * all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.

LOUISIANA

All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records," except as otherwise provided in this Chapter or as otherwise specifically provided by law.

MARYLAND

* * * the original or any copy of any documentary material that: (i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and (ii) is in any form, including 1. a card; 2. a computerized record; 3. correspondence; 4. a drawing; 5. film or microfilm; 6. a form; 7. a map; 8. a photograph or photostat; 9. a recording; or 10. a tape.

"Public record" includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision.

MASSACHUSETTS

* * * all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency [etc.], unless such materials or data fall within the following [certain] exemptions.

MICHIGAN

* * * a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

MINNESOTA

"Government data" means all data collected, created, received, maintained, or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.

MISSISSIPPI

* * * all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work duty or function of any public body, or required to be maintained by any public body.

MONTANA

Public writings are: (a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country; (b) public records, kept in this state, of private writings [exceptions]. Public writings are divided into four classes: (a) laws; (b) judicial records; (c) other official documents; (d) public records, kept in this state, of private writings.

NEW YORK

"Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawing maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

NORTH CAROLINA

* * * all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

OHIO

"Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

OKLAHOMA

"Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property.

OREGON

* * * includes any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristic.
"Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

PENNSYLVANIA

Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided [exceptions]* * *

RHODE ISLAND

* * * all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

SOUTH CAROLINA

> * * * all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. [Exceptions.]

TEXAS

> * * * the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copies, or developed materials which contains public information.

UTAH

> * * * all books, papers, letters, documents, maps, plans, photographs, sound recordings, management information systems, or other documentary materials, regardless of physical form or characteristics, made or received, and retained by any state public office under state law or in connection with the transaction of public business by the public offices, agencies, and institutions of the state and its counties, municipalities, and other political subdivisions.

VERMONT

> * * * all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business [exceptions] * * * .

VIRGINIA

> "Official records" means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

WEST VIRGINIA

* * * includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.
"Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

WISCONSIN

"Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. [Includes and does not include]

WYOMING

* * * when not otherwise specified includes the original and copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law * * *

BLD/llp;records,x7

A P P E N D I X D

EXPLANATION OF THE FREEDOM OF INFORMATION ACT

PRELIMINARY LIST OF SECTIONS OF ADMINISTRATIVE AGENCY REGULATIONS (NAC) ENACTED TO CARRY OUT THE STATUTES WHICH DECLARE RECORDS CONFIDENTIAL:

Explanation--Matter included in brackets [ ] is for informational purposes only.

STATE PERSONNEL SYSTEM

Section 1. 284.346 Review of examination.

1. Within 10 working days after the date of the postmark on a notification of a grade pertaining to a written or oral examination, a candidate or a representative he has designated by a signed authorization card may review the results of the candidate's examination as follows:

(a) If the examination was written:

(1) The department of personnel will review with the candidate or his representative the cover sheet of his examination which lists both the areas of subject matter included in the written examination and the number of correct and incorrect responses in those areas.

(2) The candidate or his representative may also review a copy of the questions which he answered incorrectly with the correct answers. This does not apply to written examinations which are copyrighted, standardized, on loan from other jurisdictions, used for more than one class or used on a continuous basis.

(b) If the examination was oral, the department of personnel will review with the candidate or his representative the taped record of the candidate's oral examination. The candidate or his representative may also review general areas of the oral examination in which he gave incorrect answers, the oral questions and the procedures or methods of examination.

2. Items which are reviewed by the department of personnel and found to be incorrect must be revised or eliminated.

3. In the case of an oral examination, answers suggested as a guideline and board members' remarks and individual ratings are **confidential** and may not be reviewed by the applicant or his representative.

4. If the candidate disagrees with and wishes to appeal the results of his examination, he must submit a written grievance to the department of personnel within 10 working days after the review. The grievance must contain the information required in subsection 2 of NAC 284.678. If the candidate is not satisfied with the department of personnel's response, and if he is a state employee, he may file an appeal with the committee.

[Personnel Div., Rule IV § N, eff. 8-11-73]--(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 8-28-85; 9-30-88)

Sec. 2. 284.714 Official roster open to inspection.

1. The official roster of employees in the public service maintained by the department of personnel is a public record and will be **open to inspection** under reasonable conditions during business hours in the department's offices or the offices where the records are kept.

2. Except as provided in subsection 3, the roster must contain, for each employee:

(a) His name;

(b) The class title of the position he holds;

(c) His salary or pay;

(d) Any change in his class title, pay or status; and

(e) Other pertinent data as determined by the director.

3. For **public inspection** purposes, the roster may exclude the actual names of employees who are in sensitive law enforcement positions where public access to the employees' identities could jeopardize their personal safety or job performance, in which case the employee will be shown on the roster as an unidentified employee.

[Personnel Div., Rule XVI § B, eff. 8-11-73]--(NAC A by Dep't of Personnel, 10-26-84)

Docket 77617 Document 2019-20623

Sec. 3. 284.718 **Confidential** records.

1. The following types of information, which are maintained by the department of personnel or the personnel office of an agency, are **confidential**:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the department of personnel on the condition that the source remain **confidential**;

(b) Any document which is used by the department of personnel or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board;

(d) Materials used in examinations, including suggested answers for oral examinations;

(e) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(f) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(g) Any information contained on a person's application or relating to his status as an eligible person; and

(h) Information in an employee's file or record of employment which relates to his:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against him;

(3) Race, ethnic identity or affiliation, sex or handicap; or

(4) Home telephone number.

2. If the employee has requested that his personal mailing address be listed as **confidential**, his file must be so designated and list his business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]--(NAC A by Dep't of Personnel, 8-28-85; 7-21-89)

Sec. 4. 284.726 Access to confidential records.

1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of paragraph (b) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee, or the designated representative of either.

2. Access to an employee's file of employment containing any of the items listed in paragraphs (e) to (h), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee;

(b) The employee's representative when a signed authorization from the employee is presented or is in his employment file;

(c) The appointing authority or a designated representative of the agency by which the employee is employed;

(d) The director of the department of personnel or his designated representative;

(e) An appointing authority, or his designated representative, who is considering the employee for employment in his agency; and

(f) Persons who are authorized pursuant to any state or federal law or an order of a court.

3. Upon request, the department of personnel will provide the personal mailing address of any employee on file with the department to the state controller's office and the Internal Revenue Service.

4. The director [of the Department of Personnel] or the appointing authority, or his designated representative, shall authorize the release of any **confidential** records under his control which are requested by the committee, a hearings officer, the commission, [Personnel Commission of the Department of Personnel] the Nevada equal rights commission or a court. If the director or his designated representative determines that the release of any **confidential** record is not necessary for those purposes, the decision may be appealed.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]--(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90)

PROGRAMS OF INSTRUCTION FOR
EXCEPTIONAL PUPILS

Sec. 5. 388.289 Confidentiality of records.

1. Each school district shall:

(a) Protect the **confidentiality** of personally identifiable information at its collection, storage, disclosure and destruction;

(b) Appoint one official to assume responsibility for ensuring the **confidentiality** of any personally identifiable information;

(c) Train or instruct all persons collecting or using personally identifiable information regarding these policies and procedures; and

(d) Maintain a current listing for public inspection of the names and positions of those employees within the district who may have access to personally identifiable information.

2. Each school district shall:

(a) Inform the parents when the personally identifiable information is no longer needed to provide educational services to the minor; and

(b) Maintain a permanent record of the minor's name, address, telephone number, grades, attendance, classes he attended, grades he completed and the year he completed them.

3. A school district shall not disclose any **confidential** information on a minor contained in educational files to any person who is not employed by the school district, department [Department of Education] or other authorized agency without first obtaining the consent of the parents in writing.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88)

PRIVATE EDUCATIONAL INSTITUTIONS
AND ESTABLISHMENTS

Sec. 6. 394.685 Confidentiality of sheriffs' investigations; allowance or termination of employment.

1. If an institution employs a person in violation of NRS 394.465, the administrator [of the Commission on Postsecondary Education] shall order the institution to terminate immediately the employment of that person.

2. All sheriffs' investigations are **confidential.** If the administrator finds that a person who is required to be certified or investigated has been convicted within the last 10 years of a felony or a crime involving moral turpitude or has ever been denied a work permit, the administrator shall notify the institution and applicant. If the institution still desires to employ the person, the application will be reviewed by the commission in a closed meeting to determine whether the person may be employed by the institution. The commission will vote on the determination in an open meeting.

3. If the administrator finds that a person who is required to be certified or investigated was convicted more than 10 years ago of a felony or a crime involving moral turpitude, the administrator shall notify the institution and applicant. If the institution still desires to employ the applicant and the applicant is able to demonstrate to the satisfaction of the administrator that he is qualified for that employment, the administrator may allow the institution to employ the applicant.

4. Before an institution:

(a) Employs a person; or

(b) Reemploys a person who has been discharged or voluntarily left employment for 1 year, who is required to be certified or investigated,

the institution shall furnish the administrator with his name, social security number and, if applicable, the number of his certificate and its date of expiration. If the person does not have a valid certificate or if the sheriff's investigation has not been received by the administrator within 90 days after the institution furnishes the administrator with the required information and the applicant has not requested a certificate or investigation, the administrator shall order the institution to terminate immediately the person's employment.

(Added to NAC by Comm'n on Postsecondary Educ., eff. 6-23-86; A 12-17-87; 4-2-90)

EDUCATION OF HANDICAPPED PERSONS

Sec. 7. 395.090 Confidentiality of records by department of education. The department of education will keep **confidential** all records of transactions pertaining to the handicapped person. All information which can be identified as related to the handicapped person will be treated in a secure and **confidential** manner.

[Bd. of Education, Handicapped Persons § 16, eff. 2-12-81]

BENEFITS AND PRIVILEGES FOR BLIND AND DEAF PERSONS

Sec. 8. 426.095 Confidentiality of information. Information furnished to the members of the Nevada committee of blind vendors to enable them to carry out their official responsibilities may be used only for that purpose. The members shall not release information about an applicant for a license, a licensee or an operator without his consent.

[Bur. of Services to the Blind, § 6, eff. 10-14-82]

SERVICES AND FACILITIES FOR CARE OF CHILDREN

Sec. 9. 432A.360 Limitation on disclosure of information pertaining to child.

1. The licensee of a facility **shall not disclose** to any person who is not a member of the staff of the facility or a member of the licensing staff of the bureau information pertaining to any child, unless:

(a) The parent has given written permission for the **disclosure**; or

(b) There is an emergency as determined by the director or the member of the staff who is in charge at the time of the emergency.

2. The licensee of a facility shall have available forms which allow a parent to release information pertaining to his child.

[Bd. for Child Care, Child Care Facilities Reg. §§ 5.5 & 5.6, eff. 2-28-80]

Sec. 10. 432A.460 Institutions: Records.

1. Each licensee of an institution shall maintain an individual record for each child accepted for care. The record is **confidential** and must be protected from examination by unauthorized persons.

2. Every record must contain the following:

(a) The child's full name, birthplace and date of birth;

(b) The religion of the child and his parents;

(c) Both parents' full names;

(d) If the child's parents are deceased, the date, place and cause of death;

(e) If the child's parents are divorced or separated, the date and place of the divorce or separation;

(f) The names, addresses and dates of birth of other children in the family;

(g) The names and addresses of close relatives;

(h) The name of a person to whom the child may be referred for care;

(i) The date and reason for placement of the child;

(j) The financial terms of the placement;

(k) The report of the original study and investigation of the child, including:

(1) All information concerning the educational, economic and cultural background of the child's family; and

(2) All personal information about the child, including his:

(I) History of development and health;

(II) Personality;

(III) Placement and adjustment in school;

(IV) Previous placements in institutions; and

(V) Relationships with his family.

(l) Any available documents pertaining to the current legal custody of the child;

(m) Every written contract between the licensee of an institution and the child's parents, except an authorization to provide medical care, which must be kept in the records of the health of the child;

(n) Reports and records of schools attended by the child, including his grades, progress and adjustment;

(o) Records or summarized reports of the child's progress and development while under care, the work done with the child's family, and plans for care and supervision of the child after discharge;

(p) If members of the staff of another agency or institution are also working with the child, the licensee of an institution mainly providing care to the child shall periodically provide the staff members of the other agency or institution with summary reports of the services it is providing and shall formulate plans for continuing the services, for maintaining an appropriate staff and for arranging conferences with other agencies and institutions who are also providing care for the child; and

(q) Reports of the staff of the institution concerning the child's adjustment to the institutional setting.

[Bd. for Child Care, Child Care Facilities Reg. § 18.6, eff. 2-28-80]

RETARDED PERSONS

Sec. 11. 435.340 Confidentiality of records. The center must maintain the enrollee's records in a manner which ensures confidentiality. Information may only be released to persons with authority to examine the information or others who have been designated in a signed release.

[Men. Hygiene & Men. Retardation Div., Training Centers Art. IX subart. B, eff. 5-6-82]

Sec. 12. 435.700 Confidentiality of records.

1. All information and records obtained in the course of providing services to any resident are confidential.

2. Any person employed in a residence shall respect the confidentiality of such information and records, however received, and may release such information or records only upon the written consent of the person or his representative, except as otherwise provided in subsection 3.

3. The operator of a residence shall inform each resident that officers and employees of the department of human resources may examine his records without prior permission.

[Men. Hygiene & Men. Retardation Div., Residences § 43, eff. 2-5-82]

RESTRAINING COSTS OF HEALTH CARE

Sec. 13. 439B.470 Procedure to determine whether prohibited contract between hospital and practitioner exists.

1. The division [division repealed now the Department of Human Resources] shall:

(a) Establish a schedule for the submission of copies of the contracts between a hospital and practitioners for review by the division.

(b) Request by registered mail the submission of those copies from hospitals pursuant to that schedule. Each hospital which receives such a request shall submit the copies within 30 days after receipt of the written request.

(c) Within 60 days after receipt of the copies from a hospital:

(1) Review the information to determine if a violation of NRS 439B.420 has occurred;

(2) Forward to the director any information which would support a determination that a violation of NRS 439B.420 has occurred; and

(3) Inform the hospital in writing of its determinations concerning all copies of the documents submitted.

2. Within 30 days after receiving from the division information which would support a determination that a violation of NRS 439B.420 has occurred, the director shall allow the hospital or any other party to an agreement with the hospital who is under investigation to provide additional information. The hospital shall provide that information within 30 days after receipt of the written notice from the director informing the hospital or party that it may provide such additional information.

3. Within 30 days after receipt of the additional information or after the period for submitting the information has expired, the director shall:

(a) If he determines that there is reason to believe a violation of NRS 439B.420 has occurred, schedule and hold a hearing pursuant to NAC 439B.520; or

(b) If he determines that there is not a sufficient reason to believe that a violation of NRS 439B.420 has occurred, notify the hospital in writing of his determination.

4. The failure of the director to take action within the periods specified in subsection 2 or 3 of this section shall not be deemed an abandonment of the action or a determination that no violation occurred.

5. Unless a public hearing is held pursuant to subsection 3, all information submitted pursuant to this section is **confidential.** The division or department [Department of Human Resources] shall not disclose that information to any person.

(Added to NAC by Dep't of Human Resources, eff. 4-13-88)

Sec. 14. 439B.490 Preliminary procedure to determine whether prohibited transaction between hospital and related entity has occurred.

1. The division [division repealed now the department of Human Resources] shall:

(a) Establish a schedule for the submission and review of the copies of the contracts, agreements and records concerning transactions between the hospitals and related entities pursuant to NRS 439B.430. The schedule must require the submission of the copies from each hospital at least annually.

(b) Notify each hospital in writing at least 30 days before the date for submission of copies of all contracts, agreements and records concerning transactions between the hospital and its related entities.

2. A hospital shall, within 30 days after receipt of the written notice from the division or the date for submission contained in the notice, whichever is later, submit the requested information to the division. Unless an action is taken by the department [Department of Human Resources] against the hospital to determine if a violation of NRS 439B.430 has occurred, all information submitted pursuant to this section is **confidential.** The division or department [Department of Human Resources] shall not disclose the information to any person.

3. The division shall, within 60 days after receipt of the information from the hospital, review the information and determine if there is reason to believe a violation of NRS 439B.430 has occurred.

4. If the division determines that:

(a) There is reason to believe that a violation has occurred, it shall forward the information and its determination to the director and notify the hospital in writing of its determination;

(b) There is no reason to believe a violation has occurred, it shall notify the hospital in writing of its determination; or

(c) Additional information is required to determine if a violation has occurred, it shall request the additional information from the hospital or its related entity. The hospital or its related entity shall provide the additional information within 30 days after receipt of the request therefor.

5. This section does not prohibit the director from conducting an examination pursuant to subsection 3 of NRS 439B.430 at any time.

(Added to NAC by Dep't of Human Resources, eff. 4-13-88)

MATERNAL AND CHILD HEALTH;ABORTION

Sec. 15. 442.060 Confidential records.

1. Any information concerning personal facts and circumstances obtained by the state or a local staff administering the maternal and child health and crippled children's program is a privileged communication and must be held **confidential.**

2. The information must not be divulged without the consent of the person seeking or receiving services or the consent of his parent or guardian if he is a minor.

3. The information may be disclosed without consent if it is in a summary, statistical or other form which does not identify the person receiving or seeking services.

[Bd. of Health, Confidentiality of Records Reg. § 1, eff. 6-5-72; A and renumbered as § 1.0, 12-20-79]

TUBERCULOSIS AND SILICOSIS

Sec. 16. 443.250 Publicity prohibited. No person making any of the reports required in NAC 443.010 to 443.270, inclusive, nor any other person, may **disclose** the name or address of any diseased person, except where the **disclosure** is authorized by regulation or any prosecution for violations of the regulations.

[Bd. of Health, Tuberculosis Reg. § 13, eff. 2-16-62; A and renumbered as § 14, 10-24-65; A 3-6-71]

Sec. 17. 443.340 Publicity prohibited. No person making any of the reports or examinations required in NAC 443.300 to 443.350, inclusive, nor any other person may **disclose** to any person the name or address of any person afflicted with silicosis except where the **disclosure** is authorized or required by NAC 443.300 to 443.350, inclusive.

[Bd. of Health, Silicosis Reg. § 3 subsec. C, eff. 10-2-63]

WATER CONTROLS; AIR POLLUTION

Sec. 18. 445.149 Public access to information; confidentiality.

1. The director [of the State Department of Conservation and Natural Resources] shall ensure that any application, reporting or related forms (including the draft permits prepared pursuant to subsection 1 of NAC 445.145), or any public comment upon those forms pursuant to subsection 3 of NAC 445.146 are available to the public for inspection and copying. The director may also make available to the public any other records, reports, plan or information obtained by the state pursuant to its participation in the permit program.

2. The director [of the State Department of Conservation and Natural Resources] shall protect any information (other than effluent data) contained in such forms or other records, reports or plans as **confidential** upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of that person. If, however, the information being considered for **confidential** treatment is contained in any NPDES form, the director shall forward the information to the regional administrator for his concurrence in any determination of **confidentiality**. If the regional administrator issues a decision to the department [State Department of Conservation and Natural Resources] that the information is not entitled to protection as a trade secret, the information must be made available to the public by the department.

3. Any information accorded **confidential** status, whether or not contained in any NPDES form, must be disclosed, upon request, to the regional administrator or his authorized representative, who shall maintain the disclosed information as **confidential**.

4. The director [of the State Department of Conservation and Natural Resources] shall provide facilities for the inspection of information relating to application, reporting and permit forms and shall ensure that state employees honor requests for such inspection promptly without undue restrictions. The director shall either:

(a) Ensure that copying machines are available for a reasonable fee; or

(b) Otherwise provide for copying services so that requests for copies of nonconfidential documents may be honored promptly.

[Environmental Comm'n, Water Pollution Control Reg. §§ 4.5.1-4.5.4, eff. 2-26-75]

Sec. 19. 445.42445 Confidentiality of information submitted to director.

1. Any information submitted to the director pursuant to NAC 445.422 to 445.4278, inclusive, may be claimed as **confidential** by the person submitting the information. If the person submitting the information wants the director to consider the information **confidential** pursuant to NRS 445.311, the claim must be asserted at the time of submission by stamping or writing "**confidential** business information" on each page containing the information. If a claim is not made at the time of submission, the director may make the information available to the public without further notice.

2. In addition to the information described in NRS 445.311, the director must deny a claim of **confidentiality** for the name and address of any applicant for a permit or any holder of a permit.

3. The **confidential** information must be disclosed, upon request, to the Administrator of the Environmental Protection Agency or his authorized representative, who shall maintain the disclosed information as **confidential**.

(Added to NAC by Environmental Comm'n, eff. 7-22-87; A 10-21-87)

Sec. 20. 445.662 Confidential information.

1. Information concerning the emission of an air contaminant which has an ambient air quality standard or emission standard or has been designated as a hazardous air pollutant by the United States Environmental Protection Agency cannot be certified as being **confidential**.

2. Any information other than emission data received by the commission, the director or local air pollution control agency which is certified to be **confidential** by the owner or operator disclosing it, may, unless the owner expressly agrees to its publication or availability to the public, be used only:

(a) In the administration or formulation of air pollution controls;

(b) In compiling or publishing analyses or summaries relating to the condition of the atmosphere which do not identify any owner or operator or reveal any **confidential** information; or

(c) In complying with federal statutes, rules and regulations.

3. **Confidential** information may be used in the prosecution of a violation of any air pollution control statute, ordinance or regulation.

[Environmental Comm'n, Air Quality Reg. §§ 2.7.1 & 2.7.2, eff. 11-7-75]

Sec. 21. 445.993 Conduct of hearing.

1. The parties may appear in person and may be represented by counsel. All testimony must be given under oath and recorded verbatim by human or electronic means. The matter must then be heard in the following manner:

(a) Prior to testifying, the witness must state his name, address and business, employment or position. Subsequent comments and testimony may be preceded by name only;

(b) Opening statement and presentation of the state's evidence followed by cross-examination by appellant;

(c) Opening statement and presentation of evidence by appellant followed by cross-examination by the state;

(d) The parties may then respectively offer rebutting testimony only, unless the commission, in its discretion, permits additional evidence. In the exercise of its discretion, the commission will consider the relevance and necessity of the new matter expected to be brought out by the additional testimony; and

(e) Closing argument of the state, closing argument of appellant and rebuttal by the state.

2. Hearings are open to the public until such time as **confidential** information, within the meaning of chapter 445 of NRS or applicable sections of this chapter of NAC, is admitted to the record, at which time the hearing will be closed.

[Environmental Comm'n, Practice Rule 8, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 13, 1-9-76]

MEDICAL AND OTHER RELATED FACILITIES

Sec. 22. 449.273 Records and reports.

1. Each facility must maintain records and make reports which are necessary for proper administration and as the health division may prescribe.

2. Each facility must report immediately to the health division any unusual occurrence, such as an unusual death, serious injury or accident to a resident, major fire or other emergency.

3. Written admission policies with criteria for the selection of the residents must be maintained and available to the public.

4. A record for each employee must be maintained and contain the information outlined in NAC 449.237.

5. A record of all meals served in the facility must be maintained for 90 days.

6. The facility must establish and maintain an adequate record in individual folders for each resident.

7. Records of residents accepted for service must include the following information:

(a) Identifying information including full name, address, race, religion, education, occupation, names and addresses of relatives, names of any referring agency and the person to notify in an emergency.

(b) Selective recording of significant information obtained or observed by members of the staff in their contacts with residents, including incident reports.

(c) Reports of initial and subsequent physical examinations which include statements as to the mental competence and ambulatory status of the person, including transfer summaries.

(d) Correspondence of permanent value, referral summaries, financial and other agreements.

8. Records must be kept in a locked file which is resistant to fires and must be available only to authorized personnel. The records must be kept **confidential**.

[Bd. of Health, Group Care Facilities §§ 19.1-19.8, eff. 12-18-75]

Sec. 23. 449.403 Other facilities: Medical records.

1. In accordance with accepted professional standards, a medical record must be maintained for every patient admitted to an extended care facility or nursing home. The medical record must contain the following:

(a) Identification of the patient, his address and next of kin.

(b) Medical notations.

(c) Physician's orders.

(d) Physical examination.

(e) History and progressive notes which must be signed by the attending physician.

(f) Nursing notations.

(g) Incident reports.

(h) Laboratory and X-ray reports.

(i) Consultation reports.

(j) Reports of all tests, examinations, medical procedures and services rendered to the patient in the facility by allied health professionals.

2. All records must be kept current and must be completed within 48 hours, if possible. Medical records must be completed within 15 days of discharge or the death of the patient. The records must be filed and retained for a period required by the statute of limitations of Nevada.

3. Suitable storage space must be provided for safe, **confidential** retention of records. A system of identification and filing for rapid location of records must be provided, and a designated employee must be assigned the responsibility for maintaining completed records.

[Bd. of Health, Health Facilities Reg. Part III Ch. II § VI, eff. 10-9-69]

Sec. 24. 449.512 Medical records: General requirements.

1. There must be a system of identification and filing of medical records that ensures the rapid location of a patient's records.

2. A patient's records must be available only to persons authorized by the administrator. The **confidentiality** of these records must be maintained in accordance with professional ethics. The written consent of the patient or legal guardian must be presented as authority for the release of medical information. Medical records must not be removed from the facility except upon the issuance of an order by a court with legal authority for issuing such an order.

3. Medical records must contain sufficient information to justify the diagnosis, warrant treatment and vindicate the end result. Only members of the medical and house staff may write or dictate medical histories and physical examinations. Records must be authenticated and signed by the licensed attending physician.

4. Current records as well as those on discharged patients must be completed promptly. Current records must be completed within 48 hours following admission. Records of discharged patients must be completed within 15 days following their discharge.

[Bd. of Health, Mental Health Facilities Reg. § VI subsecs. C-G, eff. 12-16-71]

Sec. 25. 449.963 Information concerning discharged patients: Submission; limitation on disclosure.

1. Each hospital shall prepare and submit to the department, [Department of Human Resources] for each patient discharged by the hospital during each month, a copy of the UB-82 form specified by the Health Care Financing Administration. The hospital shall submit the required forms for each month within 45 days after the last day of the month, and include the following information on each form:

(a) UB-82 field number 3, the Patient Control Number (Patient ID);

(b) UB-82 field number 8, Medical Number (Hospital ID);

(c) UB-82 field number 11, Patient Address (ZIP code only will be used by the division in its data system);

(d) UB-82 field number 12, Birth Date;

(e) UB-82 field number 13, Sex;

(f) UB-82 field number 15, Admission Date;

(g) UB-82 field number 17, Admission Type;

(h) UB-82 field number 18, Admission SRC (Source);

(i) UB-82 field number 21, STAT (Discharge Status);

(j) UB-82 field number 22, Discharge Date;

(k) UB-82 field numbers 51a through 51w, inclusive, Revenue Codes;

(l) UB-82 field numbers 52a through 52w, inclusive, Service Units;

(m) UB-82 field numbers 53a through 53w, inclusive, Total Charges;

(n) UB-82 field numbers 57A through 57C, inclusive, Payer (including the 5-digit Payer Classification Code Number);

(o) UB-82 field number 68, patient social security number (only last six digits will be used in the division's data system);

(p) UB-82 field number 77, Principal Code (Principal Diagnosis Code-ICD-9-CM);

(q) UB-82 field numbers 78-81, inclusive, Other Diagnosis Codes (ICD-9-CM);

(r) UB-82 field number 84a, Principal Procedure CD (Procedure Code-ICD-9-CM);

(s) UB-82 field numbers 85A through 86A, inclusive, Other Procedure Codes (ICD-9-CM);

(t) UB-82 field number 92, Attending Physician ID; and

(u) UB-82 field number 93, Other Physician ID.

2. The department [Department of Human Resources] and any person with whom the department may contract for the development and operation of the division's UB-82 data system shall not **disclose** any information from the data system which may be used to identify any patient of a hospital.

3. A hospital with more than 200 beds which submits the information required by this section by means other than a magnetic tape shall pay the costs of entering the data into the data system. The division [Mental Hygiene and Mental Retardation Division of the Department of Human Resources] shall prepare a bill for such entry on a quarterly basis and submit it to the hospital. The hospital shall pay the bill within 30 days after receipt of the bill.

4. As used in this section, "hospital" has the meaning ascribed to it in NRS 449.012.

(Added to NAC by Dep't of Human Resources, eff. 4-29-86; A 1-2-90)

CANCER

Sec. 26. 457.060 Confidentiality of information. All documents in the possession of the registry which contain names of patients, physicians or hospitals are **confidential** except the list of names of hospitals which report information to the registry.

(Added to NAC by Bd. of Health, eff. 12-3-84)

Sec. 27. 457.070 Procedures for maintaining confidentiality of information. Each employee of the health division who has access to **confidential** information of the registry shall comply with the following procedures for maintaining the **confidentiality** of that information:

1. All files containing **confidential** information, including the indexes for access to other files, must be locked when not in use.

2. All documents containing **confidential** information must be out of sight when an employee is away from his desk.

3. Keys to the office of the registry may be issued to and used only by employees so authorized by the state health officer.

4. The doors to the registry must be locked at all times when the office is vacant.

(Added to NAC by Bd. of Health, eff. 12-3-84)

Sec. 28. 457.100 Persons with whom the state health officer contracts. If the state health officer contracts with another person to perform data processing or other services using the **confidential** information of the registry, the other person shall maintain the **confidentiality** of the information to the same extent as is required in this chapter and shall not disclose any of the information to a third person without the prior approval of the state health officer.

(Added to NAC by Bd. of Health, eff. 12-3-84)

Sec. 29. 457.110 Disclosure of information: Authorized recipients; verification of identity.

1. The state health officer or person employed in the registry shall not disclose the existence or nonexistence in the registry of a record concerning any patient or disclose other information about the patient except to:

(a) The physician who treated the patient;

(b) The hospital where the patient was treated;

(c) A health and care facility or a registry connected with that facility which has participated or is participating in treating the patient; or

(d) A qualified researcher in cancer.

2. If a request for information about a patient is made over the telephone by the physician who treated the patient or by a representative of the hospital in which the patient was treated, and the caller is not known to the employee who receives the call at the registry, he must verify the identity of the caller in the manner described in NAC 457.130.

(Added to NAC by Bd. of Health, eff. 12-3-84)

Sec. 30. 457.120 Disclosure of information: Requirements of person seeking information. The state health officer may provide confidential medical information in the registry concerning a patient's medical treatment for cancer with any health and care facility, or registry connected with the facility which has participated or is participating in treating that patient's illness if the person seeking the information:

1. Has been identified in the manner described in NAC 457.130;

2. Furnishes the employee of the registry with specific information, other than the patient's name, which is sufficient to identify the patient without using his name; and

3. Gives assurances to the employee of the registry that the confidentiality of the information will be maintained to the same extent as is required in this chapter.

(Added to NAC by Bd. of Health, eff. 12-3-84)

Sec. 31. 457.140 Disclosure of information: Scientific research.

1. A person who desires to use the confidential records of individual patients or the statistical data of the registry for the purpose of scientific research into cancer must apply in writing to the state health officer. The applicant must:

(a) Set forth in his application:

(1) His qualifications as an epidemiologist, physician or employee of a bona fide program of research into cancer or other qualification for using confidential information and statistical data in the registry; and

(2) A description of the research project in which that information will be used.

(b) Sign a statement, on a form furnished by the state health officer, in which the applicant agrees not to make any copies of the records, and to maintain the confidentiality of the information in the records in the manner required by this chapter; and

(c) Agree to submit to the state health officer for review and approval any proposed publication which is based on or contains information obtained from the registry.

2. The state health officer must:

(a) Before a researcher is allowed access to information in the registry, make a written finding that he is qualified as a researcher and has a need for the information; and

(b) Before any material based on or containing information from the registry is published by the researcher, examine and give written approval for the proposed publication.

(Added to NAC by Bd. of Health, eff. 12-3-84)

ABUSE OF ALCOHOL AND DRUGS

Sec. 32. 458.340 Personnel.

1. The operator of a program shall have on duty at all times of operation a sufficient number of qualified employees to carry out the policies and furnish the services of the program.

2. The administrator of the program or his qualified delegate shall be present and responsible for the operations of the program during normal working hours.

3. The operator of a program for detoxification shall provide for the availability of a professional nurse and emergency medical care which is adequate to protect the health and safety of patients undergoing detoxification.

4. The operator of a residential program must provide for the ready availability of emergency medical service, either directly or by written agreement with qualified persons or organizations.

5. A program for treatment with methadone must have a medical adviser on the staff or available as a consultant. The medical adviser must be a physician who is licensed to practice medicine by the board of medical examiners.

6. A description of each position of employment in a program must be available to all employees on request. These descriptions must clearly specify the duties to be performed and the qualifications required for each position.

7. A personnel record must be maintained for each employee. It must contain:

(a) The application for employment;

(b) The letters of recommendation;

(c) The records of the investigation of references;

(d) The verification of education, training, experience and certification;

(e) The evaluations of performance in employment;

(f) Copies of any reports of incidents and disciplinary actions taken;

(g) Information on salaries, including documents on all changes in salaries; and

(h) A background check.

8. A consultant employed for the program must be employed under a written contract which clearly specifies the nature and amount of services to be provided and the compensation to be paid.

9. Personnel records must be kept **confidential** and may be made available only to persons having written authorization except that an employee must be allowed to inspect his own personnel file upon request.

10. A course of orientation must be provided for each new employee and a record of it must be kept in his file. The course must include a study of all the policies and procedures governing the program and the services required to be performed under the program.

(Added to NAC by Bur. of Alcohol and Drug Abuse, eff. 10-16-84)

HAZARDOUS MATERIALS

Sec. 33. 459.236 Specific licenses: Filing of application.

1. Applications for specific licenses must be filed on a form prescribed by the division [Health Division of the Department of Human Resources] and accompanied by the appropriate fee as prescribed in NAC 459.310.

2. The division may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the division to determine whether the application should be granted or denied or whether a license should be modified or revoked.

3. Each application must be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

4. An application for a license may include a request for a license authorizing one or more activities.

5. In his application, the applicant may incorporate by reference information contained in previous applications, statements or reports filed with the division provided such references are clear and specific.

6. Applications and documents submitted to the division may be made available for **public inspection** except that the division may withhold any document or part thereof from **public inspection** if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

[Bd. of Health, Radiation Control Reg. §§ 3.5-3.5.1.6, eff. 2-28-80]--(NAC A 9-1-89)

Sec. 34. 459.792 Inspections: Requests by employees.

1. Any worker or representative of workers who believes that a violation of chapter 459 of NRS, NAC 459.010 to 459.794, inclusive, or license conditions exists or has occurred in work under a license or a registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the division. [Health Division of the Department of Human Resources] Any such notice must be in writing, set forth the specific grounds for the notice, and must be signed by the worker or representative of the workers. A copy must be given to the licensee or registrant by the division no later than at the time of inspection except that, upon the request of the worker giving

the notice, his name and the name of the persons referred to therein must not be disclosed in any copy or on any record published, released or made available by the division, except for good cause shown.

2. If, upon receipt of the notice, the division determines that the complaint meets the requirements in subsection 1, and that there is a reasonable ground to believe that the alleged violation exists or has occurred, the division shall cause an inspection to be made as soon as practicable, to determine whether the alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

3. No licensee or registrant may discharge or in any manner discriminate against any worker because the worker has filed any complaint, instituted or caused to be instituted any proceeding under NAC 459.010 to 459.794, inclusive, or has testified or is about to testify in any such proceeding or because the worker, on behalf of himself or others, has exercised any option afforded by NAC 459.780 to 459.794, inclusive.

[Bd. of Health, Radiation Control Reg. §§ 10.7-10.7.3, eff. 2-28-80]

Sec. 35. 459.794 Inspections: Informal review.

1. If the division [Health Division of the Department of Human Resources] determines, with respect to the complaint under NAC 459.792, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the division must notify the complainant in writing of that determination.

2. The complainant may obtain a review of the determination by submitting a written statement of his position with the state health officer, who shall provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, name of the complainant. The licensee or registrant may submit an opposing written statement of position with the state health officer, who shall provide the complainant with a copy of the statement by certified mail. Upon request of the complainant, the state health officer may hold an informal conference, pursuant to subsection 2 of NAC 459.136, in which the complainant and licensee or registrant, may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant may be made only following receipt of his written authorization. After considering all written or oral views presented, the state health officer shall affirm, modify or reverse the determination of the division and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefore.

3. If the informal conference does not result in resolution of the problem, formal consideration by the state board of health may be requested by the complainant or the licensee or registrant pursuant to subsection 3 of NAC 459.136. The board shall affirm, modify or reverse the determination of the division and furnish the complainant and the licensee or registrant a written notification of its decision and the reason for it.

4. If the division determines that an inspection is not warranted because the requirements of subsection 1 of NAC 459.792 have not been met, the division shall notify the complainant in writing of that determination. Such a determination is without prejudice to the filing of a new complaint meeting the requirements of that subsection.

[Bd. of Health, Radiation Control Reg. §§ 10.8-10.8.4, eff. 2-28-80]

HUMAN BLOOD AND BLOOD PRODUCTS

Sec. 36. 460.030 Identifying data.

1. The communicable disease section [of the Health Division of the Department of Human Resources] is responsible for the maintenance of data concerning persons identified as having viral hepatitis.

2. A diagnosis must be made by the attending physician and reported in a confidential case report given either directly to the communicable disease section or to the local health authority if the diagnosis is made within his jurisdiction.

3. The report must include the name, address, date of birth and social security number of the person with viral hepatitis and any relevant clinical data. Reports must be mailed to the office of each blood bank at the end of the month.

[Bd. of Health, Hepatitis Reg. §§ 2.0 & 2.1, eff. 12-3-75]

Sec. 37. 466.530 Report of veterinarian who treats horse.

1. A veterinarian who treats a horse within the enclosure must report to the commission's veterinarian on a form prescribed by the commission and in a manner prescribed by him:

(a) The name of the horse treated;

(b) The name of the trainer of the horse;

(c) The time of treatment; and

(d) Any other information requested by the commission's veterinarian.

2. The report is **confidential** and its contents may not be disclosed except in a proceeding before the stewards or the commission, or in exercise of the commission's jurisdiction.

[Racing Comm'n, Horse Racing Reg. § 466.093 subsec. 11, eff. 8-6-80]

TRAFFIC LAWS

Sec. 38. 484.820 Retention of documents.

1. The operator of a school shall retain:

(a) A copy of the report prescribed in NAC 484.810;

(b) A student's preliminary and final examinations;

(c) The student's record of attendance in class;

(d) His evaluation of the course and teacher; and

(e) Any agreement signed by a teacher who is a guest pursuant to subsection 3 of NAC 484.785,

for 3 years after the student has completed the course.

2. These documents are **not public records** but must be made available to a representative of the department [Department of Motor Vehicles and Public Safety] or judicial system during any inspection of the school.

(Added to NAC by Dep't of Motor Veh., eff. 3-15-84; A by Dep't of Motor Veh. & Pub. Safety, 8-20-86)

FINANCIAL RESPONSIBILITY FOR LIABILITY

Sec. 39. 485.060 Application for certificate.

1. Before applying for a certificate of self-insurance, an applicant must submit a complete list of his motor vehicles to the chief of the drivers' license division [of the Department of Motor Vehicles and Public Safety] or his appointed agent. The list must contain the identification number, registration number and the name of the make and model of each vehicle.

2. After the list is submitted, the number of vehicles registered in the name indicated on the application must not drop below 11. Any vehicle acquired after a certificate of self-insurance is issued to the applicant is covered by that certificate until the date of its renewal, if the vehicle is registered in the name indicated on the application.

3. An application for a certificate of self-insurance must be made on a form approved by the drivers' license division. The application must contain a statement by the applicant that he realizes that in self-insuring, he is performing an insurance function and expressly agrees, as a condition to the granting of a certificate of self-insurance, to abide by the statutes of this state concerning unfair practices in settling claims and any regulations adopted thereunder by the commissioner of insurance.

4. Except as otherwise provided in this subsection, each applicant for a certificate of self-insurance must submit a copy of his annual balance sheet and profit and loss statement, including notes, for the **confidential** use of the department of motor vehicles and public safety. These financial statements must be verified by a certified public accountant. If the applicant is a natural person who does not have such statements, he must submit copies of his returns for federal income tax for the preceding 3 years.

5. An applicant for self-insurance may be required by the division [Driver's License Division of the Department of Motor Vehicles and Public Safety] to submit evidence of excess insurance or reinsurance written by an insurer authorized to do business in this state to provide protection against large or numerous judgments. This insurance may be in excess of the amount of security deposited with the department. To determine if excess insurance or reinsurance will be required, the chief

of the division or his appointed agent will consider the number of vehicles registered to the applicant, the manner in which they are being used and the applicant's financial ability to pay claims.

[Dep't of Motor Veh., Self-insurance Reg. § IV, eff. 4-29-82]--(NAC A by Dep't of Motor Veh. & Pub. Safety, 7-29-86)

COMMISSION ON MINERAL RESOURCES

Sec. 40. 513.070 Confidentiality of information.

1. Except as otherwise provided in subsection 4, any information submitted to the executive director pursuant to the provisions of NAC 513.010 to 513.120, inclusive, may be classified as **confidential** by the person submitting the information. If the person submitting the information wishes the executive director to consider the information **confidential**, the claim must be asserted at the time of submission by stamping or writing "**confidential** business information" on each page containing the information.

2. If a claim is asserted, the information so kept must remain **confidential** except that the information may be used in connection with other data if use of that information would not disclose the identity of the **confidential** information.

3. If a claim is not made at the time of submission, the executive director may make the information available to the public without further notice.

4. The executive director will not classify as **confidential** any information required to be submitted to him pursuant to the provisions of NAC 513.010 to 513.120, inclusive, if the information relates to:

(a) The name and address of the person conducting the operation of the mine;

(b) The annual production of the commodity;

(c) The amount of the tax on the net proceeds of a mine and the amount of the tax on the property of the operation; or

(d) The number of persons employed by a mine.

(Added to NAC by Comm'n on Mineral Resources, eff. 2-18-88)

RECLAMATION OF LAND SUBJECT TO MINING OPERATIONS OR EXPLORATION PROJECTS

Sec. 41. 519A.170 Treatment of information as confidential.

1. An operator may request when the information is submitted that the information submitted to the division [Division of Environmental Protection of the State Department of Conservation and Natural Resources] with the request for a permit be treated as **confidential**. The division shall consider a request only if the operator, when the information is submitted, stamps or writes "**confidential** business information" on each page.

2. The operator must show to the satisfaction of the division that the information contained in the application for a permit is entitled to protection as a trade secret.

3. Except as otherwise provided in subsection 4, if the division determines that the information is not entitled to protection as a trade secret it must not make the information public until the division has:

(a) Notified the operator; and

(b) Allowed at least 10 working days after the notice has been sent for the informant to appeal the decision.

4. If the request is not made at the time the information is submitted, the division may make the information available to the public without notice to the operator.

5. "Trade secret":

(a) Includes the location of exploration drill holes and a formula, pattern, compilation, program, device, method, technique or process that:

(1) Derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) Does not include the name and address of the operator.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)

Sec. 42. 522.540 Confidentiality of well records.

1. Records concerning a well will not be kept **confidential** by the department [Department of Minerals] unless the owner of the well requests **confidentiality** in writing or marks "**confidential**" on the logs of an exploratory well. Upon receiving such a request or log, the department will keep the records **confidential** for 6 months after their receipt unless the owner provides a written authorization for an earlier release.

2. An operator who plans to drill a series of exploratory wells within a given region or area may apply to the department to have the records for all his exploratory wells kept **confidential**. Such an application must specifically describe the area to be explored and the number and location of exploratory wells contemplated. Upon approval of the application, the executive director will keep all records of the project **confidential** for 6 months after receipt of the record. The operator may amend the plan of the project with the written approval of the director.

(Added to NAC by Dep't of Minerals, eff. 7-22-87)

GEOTHERMAL RESOURCES

Sec. 43. 534A.140 Hole logs: Subsurface information; confidentiality. Information about the subsurface obtained as a result of exploration drilling disclosed on hole logs as required by NAC 534A.130 must be filed with the state engineer within 30 days after it is acquired. Such information together with other information concerning the exploration appearing on the logs and the cards containing the notice of intent to drill is **confidential** for a period of 5 years from the date of filing the cards or logs and must not be disclosed during that time without the express written consent of the driller's client.

[St. Engineer, Exploration Drilling Reg. Art. VIII, eff. 12-13-77]

STATE DEPARTMENT OF AGRICULTURE

Sec. 44. 561.150 Confidentiality; applicability of chapter 241 of NRS. Information and documents filed with or obtained by the mediator or the department [State Department of Agriculture] are **confidential**. The provisions of chapter 241 of NRS do not apply to any mediation of an agricultural debt.

(Added to NAC by Dep't of Agriculture, eff. 10-30-90)

DAIRY PRODUCTS AND SUBSTITUTES

Sec. 45. 584.2851 Use, disclosure of information prohibited. No officer, employee or agent of any state or local governmental agency may use for his own advantage or reveal to any unauthorized person any information obtained pursuant to the provisions of NAC 584.1611 to 584.2881, inclusive, which is entitled to protection as a trade secret, including information as to the quantity, quality, source or disposition of milk or a milk product or the results of an inspection or tests of any of them.

[Bd. of Health, Raw Milk Reg. § 7.5, eff. 1-7-82]

Sec. 46. 584.6211 Distributor's price list: Contents; confidentiality; amendments.

1. A distributor shall file with the commission [of Food and Drugs] by January 31 of each year a list of the peddler-distributors with whom he does business. The list must contain the following information concerning each peddler-distributor:

(a) His name and address.

(b) The location where the products are delivered to or picked up by the peddler-distributor.

2. A price list must:

(a) Clearly state the marketing area and zone in which the prices apply;

(b) Include all terms and conditions of service which are applicable in determining the net price ultimately available to wholesale customers; and

(c) Designate its effective date.

3. Any price list filed by a distributor is **confidential** and not open for public inspection. Information contained in the price list will not be made available to any person, other than members of the commission and authorized members of its staff, except when the information is to be used in judicial proceedings or administrative proceedings under NRS 584.325 to 584.690, inclusive.

4. Whenever a distributor amends a price list filed in accordance with subsection 5 of NRS 584.583, he shall file a complete list of all his current prices, including his prices then on file and not changed by the amendment. The filing of an amended price list renders void all previous price lists.

5. Any information or price list required to be provided to the commission by chapter 584 of NRS or NAC 584.5551 to 584.6391, inclusive, must be filed in an office of the commission.

[Dairy Comm'n, Stabiliza. & Mktg. Plan - ENMA Art. VI part § A, eff. 9-1-80]--(Substituted in revision for NAC 584.332)

Sec. 47. 584.7041 Distributor's price list: Contents; confidentiality; amendments.

1. A distributor shall file with the commission by January 31 of each year a list of the peddler-distributors with whom he does business. The list must contain the following information concerning each peddler-distributor:

(a) His name and address.

(b) The location where the products are delivered to or picked up by the peddler-distributor.

2. A price list must:

(a) Clearly state the marketing area and zone in which the prices apply;

(b) Include all terms and conditions of service which are applicable in determining the net price ultimately available to wholesale customers; and

(c) Designate its effective date.

3. Any price list filed by a distributor is **confidential** and not open for public inspection. Information contained in the price list will not be made available to any person, other than members of the commission and authorized members of its staff, except when the information is to be used in judicial proceedings or administrative proceedings under NRS 584.325 to 584.690, inclusive.

4. Whenever a distributor amends a price list filed in accordance with subsection 5 of NRS 584.583, he shall file a complete list of all his current prices, including his prices then on file and not changed by the amendment. The filing of an amended price list renders void all previous price lists.

5. Any information or price list required to be provided to the commission by chapter 584 of NRS or NAC 584.6411 to 584.7281, inclusive, must be filed in an office of the commission.

[Dairy Comm'n, Stabiliza. & Mktg. Plan - SNMA Art. VI § A, eff. 5-5-80]--(Substituted in revision for NAC 584.532)

Sec. 48. 584.8131 Distributor's price list: Contents; confidentiality; amendments.

1. A distributor shall file with the commission by January 31 of each year a list of the peddler-distributors with whom he does business. The list must contain the following information concerning each peddler-distributor:

(a) His name and address.

(b) The marketing area and number of the zone which he serves.

(c) The location where the products are delivered or picked up.

2. A price list must:

(a) Clearly state the marketing area and zone in which the prices apply;

(b) Include all terms and conditions of service which are applicable in determining the net price ultimately available to wholesale customers; and

(c) Designate its effective date.

3. Any price list filed by a distributor is **confidential** and not open for public inspection. Information contained in the price list will not be made available to any person, other than members of the commission and authorized members of its staff, except when the information is to be used in judicial proceedings or administrative proceedings under NRS 584.325 to 584.690, inclusive.

4. Whenever a distributor amends a price list filed in accordance with subsection 5 of NRS 584.583, he shall file a complete list of all his current prices, including his prices then on file and not changed by the amendment. The filing of an amended price list renders void all previous price lists.

5. Any information or price list required to be provided to the commission by chapter 584 of NRS or NAC 584.7291 to 584.8371, inclusive, must be filed in an office of the commission.

[Dairy Comm'n, Stabiliza. & Mktg. Plan - WNMA Art. VI § A, eff. 4-7-80]--(Substituted in revision for NAC 584.732)

DRUGS AND COSMETICS

Sec. 49. 585.620 Confidentiality of records. All records acquired or compiled by the commissioner [Commissioner of food and drugs] relating to formulas, processing procedures, earnings, revenue and other internal financial matters of any applicant or licensee are **confidential** and will not be revealed in whole or in part except:

1. For the necessary administration of NAC 585.010 to 585.640, inclusive; or

2. Upon the order of a court of competent jurisdiction.

[Comm'r of Food & Drugs, Amygdalin and Procaine Hydrochl. §§ 10.1-10.1.2, eff. 5-15-78]

APPRENTICESHIPS

Sec. 50. 610.980 Equal opportunity: Intimidation and retaliation.

1. Any intimidation, threat, coercion or retaliation by or with the approval of any sponsor against any person which is made:

(a) For the purpose of interfering with any right or privilege secured by Title VII of the Civil Rights Act of 1964, as amended, or Executive Order 11246 of September 24, 1965, as amended; or

(b) Because the person made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under NAC 610.510 to 610.990,

is a violation of the standards of equal opportunity set forth in NAC 610.530.

2. The identity of complainants must be kept **confidential** except when disclosure is necessary to carry out the purpose of NAC 610.510 to 610.990, inclusive, including conducting any investigation, hearing or judicial proceeding arising from NAC 610.510 to 610.990, inclusive.

[Apprenticeship Council, Equal Employment Opportunity, § 15, eff. 9-11-76, A 10-6-78]

UNEMPLOYMENT COMPENSATION

Sec. 51. 612.252 Confidentiality of proceedings. Hearings and reviews are **confidential** proceedings under NRS 612.265 and are closed to the public.

(Added to NAC by Employm't Security Dep't, eff. 9-5-84)

OCCUPATIONAL SAFETY AND HEALTH

Sec. 52. 618.6449 Trade secrets. If, during the conference at the beginning of an inspection, the employer identifies areas in the establishment which contain or might reveal a trade secret, the inspector shall label any information obtained in those areas, including negatives and prints of photographs and environmental samples, as "**confidential-trade** secrets" and shall not disclose the information except in accordance with NRS 618.365.

(Added to NAC by Div. of Occupational Safety & Health, eff. 8-26-83)

Sec. 53. 618.764 Confidential information.

1. Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the **confidentiality** of which is protected by the act, the board will issue such orders as may be appropriate to protect the **confidentiality** of these matters.

2. An interlocutory appeal from an adverse ruling under this section will be granted as a right.

[Dep't of Occupational Safety & Health, Rule No. 11, eff. 11-9-73]

LANDSCAPE ARCHITECTS

Sec. 54. 623A.240 Examination to be directed by board; disclosure of examination materials.

1. The examination will be conducted under the direction and control of the board. The board may employ assistants to prepare questions, conduct the examination and submit recommended grades for the examination.

2. Examination questions, together with the answers or keys, will not be **disclosed** before the examination has been completed.

[Bd. of Landscape Arch., § 3.7, eff. 9-9-76]

ACCOUNTANTS

Sec. 55. 628.420 Confidentiality. The classification of any report and any documentation submitted to the board pursuant to NAC 628.320 is **confidential.**

(Added to NAC by Bd. of Accountancy, eff. 1-21-88)

VETERINARIANS

Sec. 56. 638.245 Confidentiality of proceedings; investigation.

1. All proceedings and investigations after the filing of a complaint are **confidential,** except to the extent necessary for the conduct of an investigation, until the board determines to proceed with disciplinary action. If the board dismisses the complaint, the proceedings remain **confidential.** If the board proceeds with disciplinary action, **confidentiality** concerning the proceedings is no longer required.

2. If the board conducts an investigation upon a complaint against a licensee, the board will not limit the scope of its investigation to the matters set forth in the complaint but may extend the investigation to any additional matters which appear to constitute a violation of any provision of chapter 638 of NRS or of this chapter.

3. If, after its investigation, the board dismisses the complaint, the dismissal does not operate as a limitation on or a deterrent to any subsequent investigation or other action by the board.

4. Whenever the board directs that an investigation be conducted into a disciplinary matter, the results of the investigation or any information relating to the investigation will not be examined by and must not be disclosed to, the members of the board before the board's hearing on the matter.

(Added to NAC by Bd. of Veterinary Med. Exam'rs, eff. 3-19-86)

PRIVATE INVESTIGATORS, PRIVATE PATROLMEN, POLYGRAPHIC EXAMINERS, PROCESS SERVERS, REPOSSESSORS AND DOG HANDLERS

Sec. 57. 648.380 Reports of intern's progress.

1. Each supervising examiner shall prepare and submit to the board quarterly reports of the progress of the intern during the first year of his internship. The quarterly reports must be made on a form provided by the board. Each quarterly report must be delivered to the board's secretary no later than 2 weeks before the regularly scheduled meeting of the board for the quarter in which the report is due.

2. If the board requests the supervising examiner to do so, he shall submit semiannual reports of the intern's progress during the remaining 2 years of the internship.

3. Upon the board's request, the supervising examiner and the intern shall furnish it with charts, logs and other documents showing the polygraphic examinations performed by the intern. The board will maintain in strict **confidentiality** the identities of the persons examined. All such documents furnished to the board will be returned to the supervising examiner.

(Added to NAC by Priv. Investigator's Lic. Bd., eff. 12-28-83)--(Substituted in revision for NAC 648A.050)

THRIFT COMPANIES

Sec. 58. 677.400 Waiver; confidentiality of reports; method for ascertaining amount of hypothecated certificates.

1. The administrator of financial institutions may waive filing any of the reports required by this chapter upon specific application of the licensee.

2. All of the reports required by this chapter will be held in confidence between the administrator and the licensee.

3. Each licensee shall establish and maintain a method for readily ascertaining the amount of its thrift certificates which have been hypothecated to it for loans to the owners of the certificates.

[Dep't of Commerce, Thrift Companies Reg. § 15 subsecs. 15.7-15.8, eff. 5-20-76; A 1-4-78; A and renumbered as § 14 subsecs. 14.7-14.9, 12-14-78]--(NAC A by Admstr. of Financial Institutions, eff. 6-29-84)

CREDIT UNIONS

Sec. 59. 678.180 Conversion from federal to state charter.

1. A federal credit union desiring to convert to a state- chartered credit union must provide the administrator of financial institutions with the following:

(a) A confidential report of the credit union's officials, with their social security numbers;

(b) The completed forms for filing articles of incorporation with the secretary of state;

(c) An agreement to serve, executed by the board of directors, and, if applicable, by the credit committee and supervisory committee;

(d) A copy of the last three monthly financial and statistical reports;

(e) A copy of the last two year-end financial and statistical reports furnished to the National Credit Union Administration;

(f) A copy of the delinquent loan schedule as of the last month's end, accompanied by notations on the collectibility of each loan;

(g) A copy of the last audit report of the credit union's supervisory committee;

(h) A copy of the last examination report of the National Credit Union Administration; and

(i) Any other information the administrator may consider necessary or desirable.

2. Within 30 days after receipt of the items listed in subsection 1, the administrator will inform the credit union, in writing, of his decision provisionally to accept or not to accept the credit union's conversion.

3. If the administrator has provisionally accepted the conversion of a credit union from a federal to a state charter, he will issue a charter to the credit union upon a satisfactory demonstration by the credit union that it has completed all of the conversion requirements imposed upon it by the National Credit Union Administration.

[Comm'r of Credit Unions, § M, eff. 12-14-78; renumbered as § N, 2-6-81]--(NAC A by Admstr. of Financial Institutions, eff. 6-29-84)

PUBLIC SERVICE COMMISSION OF NEVADA

Sec. 60. 703.2481 Notice to public and customers.

1. When a public utility files an application to adjust any rate or charge for the service or commodities furnished by it to increase its return on investment, to increase its rate base or to cover expenses not related to fuel or purchased power, the public utility shall:

(a) Within 10 days after filing the application, make available at each of its business offices a complete copy of the application in such form and place as to be readily accessible and conveniently inspected by the public;

(b) Within 10 days after filing the application, print in plain type and post at each of its business offices in such form and place as to be readily accessible to and conveniently inspected by the public, a notice stating that the application has been filed with the commission, describing briefly the purpose of the application, indicating that the complete application is available for public inspection on the premises and listing the locations at which additional information may be obtained; and

(c) Within 20 days after filing the application, submit to the commission affidavits of that filing and the posting required in paragraphs (a) and (b) of this subsection.

2. When a public utility files an application to adjust any rate or charge for the service or commodities furnished by it to increase its return on investment, to increase its rate base or to cover expenses not related to fuel or purchased power and the commission has set a date and location for a hearing on the application, the applicant shall provide notice to its customers who are affected by the proposed increase. The notice must state the date, time and place of the hearing, the amount of the proposed increase in dollars and the reasons for seeking the increase. The notice must specifically identify the percentage of increase for each class of customer or class of service which would, pursuant to the applicant's filing, receive a percentage of increase in rates which is at least 10 percent greater than the average percentage of increase in rates for which the applicant is applying. The notice must also state that additional information may be obtained from the commission or at the offices of the public utility filing the application. The notice must be given at least 10 days before the hearing, by two of the three following methods:

(a) Inclusion in the regular bill of charges transmitted to the applicant's customers.

(b) Separate mailing to each of the applicant's customers.

(c) Prominent presentation in one or more forms of the media, such as newspapers, television or radio, so that the notice will reach the applicant's customers.

3. At or before the hearing, the applicant must submit a verified statement to the commission that the notice required in subsection 2, has been given. The statement must:

(a) List the means by which and the dates and times when the notice was mailed, published or broadcast; and

(b) Include as an attachment, a copy of the notice as mailed, published or transcribed.

[Pub. Service Comm'n, Gen. Order 3 Rule 16 § 56, eff. 10-14-82]--(NAC A 1-6-84; 3-19-87)

REGULATION OF PUBLIC UTILITIES GENERALLY

Sec. 61. 704.522 Procedure for changing level of rate; confidentiality.

1. The utility may change the level of a rate within an established range of rates by filing a memorandum with the commission stating the new level of the rate, the name of the affected customer and the effective date of the change. The memorandum may not take effect before it is filed with the commission.

2. Upon request by the utility, the information regarding a memorandum will be kept **confidential**, except from the affected customer and the advocate for customers of public utilities, for 90 days after the memorandum is filed.

(Added to NAC by Pub. Service Comm'n, eff. 12-15-86)

Sec. 62. 704.776 Confidentiality of exploration and subsurface information. If any exploratory or subsurface information concerning a project to obtain geothermal energy for use in a process which changes raw or unfinished materials into another form or generates electric power is filed with the commission, the commission will keep that information **confidential** for 5 years after the date on which it was first filed with the state engineer and will not disclose it during that period without the express written consent of the operator of the project.

(Added to NAC by Pub. Service Comm'n, eff. 12-16-82)

DONREY OF NEVADA, INC., AND RENO NEWSPAPERS, APPELLANTS, *v.* ROBERT BRADSHAW, RENO POLICE DEPARTMENT, ROBERT L. VAN WAGONER AND THE CITY OF RENO, RESPONDENTS.

No. 20057

September 19, 1990

798 P.2d 144

Appeal from a district court order denying appellants' petition for a writ of mandamus. Second Judicial District Court, Washoe County; William N. Forman, Judge.

[1]The Honorable Jerry Carr Whitehead, Judge of the Second Judicial District, was designated by the Governor to sit in the place of THE HONORABLE JOHN MOWBRAY, Justice. Nev. Const., art. 6, § 4.

Newspaper filed a petition for writ of mandamus under the statute which provides for disclosure of public records, seeking disclosure of a police investigative report concerning the City Attorney's dismissal of charges against a defendant, which dismissal police opposed. The district court denied the petition, and newspaper appealed. The Supreme Court, YOUNG, C. J., held that a balancing of the interests involved required disclosure of the entire report.

Reversed.

STEFFEN, J., dissented.

Woodburn, Wedge & Jeppson, and *James W. Hardesty*, Reno, for Appellants.

Georgeson, McQuaid, Thompson & Angaran, Reno; *Patricia Lynch*, Reno City Attorney, and *Stephen F. Volek*, Deputy City Attorney, Reno, for Respondents.

RECORDS.

Under statute which provides for disclosure of public records, balancing of interests involved required disclosure of police investigative report on the City Attorney's dismissal of charges against defendant, which dismissal was opposed by police; general policy is in favor of open government, and there were no privacy or law enforcement policy justifications for nondisclosure, as there was no pending or anticipated criminal proceeding, there were no confidential sources or investigative techniques to protect, there was no possibility of denying someone fair trial, and there was no potential jeopardy to law enforcement personnel. NRS 239.010.

OPINION

By the Court, YOUNG, C. J.:

In March 1986, pursuant to a plea bargain, the Reno City Attorney's office dismissed charges against Joe Conforte for contributing to the delinquency of a minor. Because the Reno Police Department opposed the dismissal, it undertook an investigation of the circumstances of the dismissal and prepared a written report. The report, which concluded that there was no evidence of criminal wrongdoing (*e.g.* no bribery of a public official), was sent to the City Attorney's office, the District Attorney, and a municipal judge. Thereafter, both the City Attorney's office and the Police Department refused to release a copy of the report to petitioners Donrey of Nevada, dba KOLO-TV (Donrey), and Reno Newspapers, Inc., dba Reno Gazette-Journal (Reno Newspapers).

In April 1986, Donrey and Reno Newspapers filed a petition for a writ of mandamus based on NRS 239.010 which provides for disclosure of public records. In March 1989, the district court denied the petition, concluding that the report was a police investigative report intended by the legislature to be confidential under NRS Chapter 179A. The court further concluded that Chapter 179A did not involve a balancing test to determine whether such reports could be released if public policy considerations outweighed privacy and/or security interests. The court also found, following an in camera review, that the report was approximately 85 percent criminal investigation and 15 percent recommendations on future administrative procedures.

Appellants contend that the district court erred in concluding that the entire report was a police investigative report and in failing to release at least the 15 percent of the report that the court found administrative. As discussed below, because we conclude that the entire report was subject to disclosure based on a balancing of the interests involved, we need not address this argument.

Appellants principally contend that the investigative report prepared by the Reno Police Department is a public record subject to disclosure under NRS 239.010 because no statutory provision declares the contents of this type of report confidential. Pursuant to NRS 239.010, "all public books and public records of . . . government[] . . . officers and offices . . . *the contents of which are not otherwise declared by law to be confidential*, shall be open at all times during office hours to inspection by any person . . . ." (Emphasis added.) Specifically, appellants maintain that the district court erred in concluding that NRS Chapter 179A declares investigative and intelligence information confidential and not subject to disclosure.

NRS Chapter 179A was enacted in 1979 in response to the federal government's requirement that states "provide an acceptable plan concerning the dissemination of criminal history records, or be subject to certain budgetary sanctions." *See* 83 Op. Att'y Gen. No. 3 (May 2, 1983). NRS 179A.100(5) provides that

> [r]ecords of criminal history must be disseminated by an agency of criminal justice upon request, to the following persons or governmental entities:
>
> . . .
>
> (i) Any reporter for the electronic or printed media in his professional capacity for communication to the public.
>
> . . .

A "record of criminal history" is defined at NRS 179A.070 and

specifically excludes investigative or intelligence information.[1] Although this court has never interpreted the criminal history records statute, in 1983 the Attorney General rendered an opinion that criminal investigative reports were confidential and were not public records subject to NRS 239.010. *See* 83 Op. Att'y Gen. No. 3, *supra*.

Appellants maintain that the exclusion of the records listed in NRS 179A.070(2) from the definition of "record of criminal history" does not constitute a declaration of their confidentiality. Accurately observing that other excluded records are clearly not considered confidential, (*e.g.*, posters of wanted persons, court records of public judicial proceedings), appellants assert that the

[1]NRS 179A.070 provides:

"Record of criminal history" defined.

1. "Record of criminal history" means information contained in records collected and maintained by agencies of criminal justice, the subject of which is a natural person, consisting of descriptions which identify the subject and notations of arrests, detention, and indictments, informations or other formal criminal charges and dispositions of charges, including dismissals, acquittals, convictions, sentences, correctional supervision and release, occurring in Nevada. The term includes only information contained in memoranda of formal transactions between a person and an agency of criminal justice in this state. The term is intended to be equivalent to the phrase "criminal history record information" as used in federal regulations.

2. *"Record of criminal history" does not include:*

(a) *Investigative or intelligence information*, reports of crime or other information concerning specific persons collected in the course of the enforcement of criminal laws.

(b) Information concerning juveniles.

(c) Posters, announcements or lists intended to identify fugitives or wanted persons and aid in their apprehension.

(d) Original records of entry maintained by agencies of criminal justice if the records are chronological and not cross-indexed in any other way.

(e) Records of application for and issuance, suspension, revocation or renewal of occupational licenses, including permits to work in the gaming industry.

(f) Court indices and records of public judicial proceedings, court decisions and opinions, and information disclosed during public judicial proceedings.

(g) Records of traffic violations constituting misdemeanors.

(h) Records of traffic offenses maintained by the department to regulate the issuance, suspension, revocation or renewal of drivers' or other operators' licenses.

(i) Announcements of actions by the state board of pardons commissioners and the state board of parole commissioners.

(j) Records which originated in an agency other than an agency of criminal justice in this state.

(Emphasis added.)

Attorney General's opinion that investigative reports are confidential is inconsistent with the public status of the other records listed in NRS 179A.070(2).

Furthermore, appellants note that while Chapter 179A was patterned after the federal regulations concerning criminal history records, the Nevada legislature specifically deviated from the federal regulations when it excluded, along with other records, investigative and intelligence information from the definition of "criminal history records." *See* NRS 179A.070(2). Under the federal regulations, while the definition of "criminal history record information" is qualified not to extend to investigative information, a separate subpart specifically excludes various other records from the regulations governing disclosure of criminal history records. *See* 28 C.F.R. §§ 20.3(b), 20.20(b) and (c), and Appendix—Commentary on § 20.3(b) (1989). Unlike the federal regulations, the Nevada statute lists investigative and intelligence information together with other excluded records in the same subsection, NRS 179A.070(2), as not included in the definition of "record of criminal history" contained in NRS 179A.070(1). Appellants assert that the inescapable conclusion is that the Nevada legislature intended investigative reports to be subject to disclosure as are the other records.

Respondents maintain that this "overlap" does not appear to be intentional and they note that NRS 179A.070(1) states that "[t]he term [record of criminal history] is intended to be equivalent to the phrase 'criminal history record information' as used in the federal regulations." However, we reject respondents' argument that the legislature mistakenly lumped investigative reports together with other exclusions which are public records disclosable under NRS 239.010. Rather, we hold that the legislature deviated from the federal regulations with an intent to clarify that investigative reports are subject to disclosure if policy considerations so warrant.

Because NRS 179A.070 does not expressly declare criminal investigative reports to be confidential, we must determine to what extent they are disclosable under NRS 239.010. While NRS 239.010 mandates unlimited disclosure of all public records, other courts considering this question have recognized the common law limitations on disclosure of such records. *See, e.g.*, Carlson v. Pima County, 687 P.2d 1242, 1245 (Ariz. 1984); *see also* Records and Recording Laws, 66 Am.Jur.2d § 12 (1973).[2]

[2]The dissent argues that if the reports are non-confidential and subject to disclosure under NRS 239.010, then "the reports are to be made available to any person, at all times during office hours, for any advantage and for copying in full." Stating that this is an untenable conclusion, the dissent

Appellants argue that, under common law, criminal investigative reports were not confidential unless confidentiality was made necessary by considerations of public policy and on a case-by-case basis. Appellants note that the Attorney General's 1983 opinion lists a number of public policy considerations in support of the conclusion that criminal investigative reports are confidential.[3] In the present case, appellants argue that those same policy considerations favor disclosure of the report in question. Thus, appellants contend that the court erred in refusing to apply a balancing test to determine whether the investigative report should have been released.

Respondents assert that in enacting Chapter 179A, the legislature performed the necessary balancing between the public's right to know and individuals' rights to privacy and that consequently no additional judicial balancing is required. However, while the legislature may have balanced interests in deciding to require the release of criminal history records to the media, this is not dispositive of whether a court must balance public policy considerations when release of records other than those specifically defined as criminal history records is sought.

In support of their contention that the court should have used a balancing test to determine disclosure, appellants rely on a number of cases from other jurisdictions. *See, e.g., Carlson*, 687 P.2d at 1245; Irvin v. Macon Telegraph Publishing Co., 316 S.E.2d 449, 452 (Ga. 1984). Although respondents contend that these cases are inapposite, we hold that a balancing of the interests involved is necessary regardless of the case law from other jurisdictions.[4] Moreover, in applying a balancing test to this

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asserts that we have rewritten NRS 239.010 with a balancing limitation regarding investigative and intelligence files. Rather than rewriting the Public Records Act, however, we simply recognize a common law limitation on the otherwise unlimited provisions of NRS 239.010.

[3]The opinion states:

> The legitimate public policy interests in maintaining confidentiality of criminal investigation records and crime reports include the protection of the elements of an investigation of a crime from premature disclosures, the avoidance of prejudice to the later trial of the defendant from harmful pretrial publicity, the protection of the privacy of persons who are not arrested from the stigma of being singled out as a criminal suspect, and the protection of the identity of informants.

83 Op. Att'y Gen. No. 3 (May 2, 1983).

[4]The dissent suggests that we should adopt a "categorical" balancing test similar to that involved in the federal Freedom of Information Act, 5 U.S.C. § 552(b)(7) (1988). Contrary to the dissent's characterization of our balancing test as "ad hoc," however, we do not believe that there is a meaningful

case, none of the public policy considerations identified in the case law and the Attorney General's opinion as justifying the withholding of investigative information is present. There is no pending or anticipated criminal proceeding; there are no confidential sources or investigative techniques to protect; there is no possibility of denying someone a fair trial; and there is no potential jeopardy to law enforcement personnel. Even the district court acknowledged in its order that "if a [balancing] test were applied under the circumstances of this case, petitioners would undoubtedly prevail."

Accordingly, weighing the absence of any privacy or law enforcement policy justifications for nondisclosure against the general policy in favor of open government, we reverse the district court's denial of appellants' petition and remand with instructions to issue a writ of mandamus ordering respondents to release to appellants the entire police investigative report.

SPRINGER, MOWBRAY and ROSE, JJ., concur.

STEFFEN, J., dissenting:

Respectfully, I dissent.

Police investigative and intelligence reports are not subject to disclosure under NRS Chapter 179A, Nevada's Records Of Criminal History Act (the Act). They are specifically exempted from disclosure under the terms of the Act. Appellants contend that because other records are also specifically exempted that are not confidential, the Act intended to treat criminal investigative and intelligence reports as public records subject to disclosure to the media. The most that can be said for appellants' position is that the Act does not classify such reports as confidential or non-confidential. Appellants' contention that the Attorney General's opinion declaring investigative reports confidential is inconsistent with the public status of other records listed in NRS 179A.070(2) appears to me to be unsound. All the referenced exemptive provision does is exclude various items from the mandatory disclosure requirements of the Act.

Appellants also contend that police investigative and intelligence reports are "public records" subject to disclosure under NRS 239.010 because they have not been accorded a confidential

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difference between the two tests, especially where a number of the considerations listed in federal Exemption 7 are virtually identical to policy considerations mentioned here. Furthermore, we do not perceive that it would be any less burdensome to judicially screen these records under the dissent's proposed categorical test, if indeed judicial screening is unduly burdensome at all.

status by statute. By so contending, appellants are seeking the realignment of two strongly favored and juxtaposed public policies involving open government and effective law enforcement. Heretofore, law enforcement agencies have released to the media selective information on criminal investigations and procedures consistent with the ongoing interests of effective and efficient police operations and the right of the public to be reasonably informed. Obviously, if appellants had succeeded in achieving their optimum position, serious problems would have resulted in the law enforcement community. Considerations of safety for officers and informants, investigative methodology and efficacy, and cooperative efforts between agencies, to name but a few, would be seriously impacted.

The majority appears to have assumed a position of "neither fish nor fowl" concerning the status of criminal investigative and intelligence reports. As a result of the majority's rule of equivocation, law enforcement agencies will be unable to predict with assurance the status of their investigative and intelligence reports in any given case until they have been subjected to the uncertainties of a judicial balancing test. I expect that the end result of such a rule will be an altered method of maintaining or memorializing ongoing police investigations. In any event, I suggest that the majority rule is unnecessarily vexatious and disruptive to law enforcement. There is, I submit, a preferable alternative that I will address in due course.

As noted previously, appellants maintain that because some of the records excluded from the definition of criminal history records are not confidential in nature, all excluded records are public records and subject to dissemination under NRS 239.010. Aside from the fact that the premise is a non sequitur, it would be highly unlikely that the Legislature would exclude investigative and intelligence records from mandatory dissemination in one statute and require their disclosure in another. Appellants also assert, and the majority agrees, that because the Act deviated from the parent federal regulations by excluding investigative and intelligence records along with other records, the "inescapable conclusion" is that the Nevada Legislature intended such records to be subject to disclosure. I have reached a contrary conclusion.

The fact that certain records are excluded from the definition of "criminal history records" does not make them public records. For example, 28 C.F.R. § 20.20(b) of the parent federal regulations (hereinafter, in general, Federal Regulations) does not exclude information concerning juveniles. However, that category of records is among the records excluded from NRS 179A.070. NRS Chapter 62 prescribes a procedure for handling

juvenile records, including the sealing thereof. Although juvenile records are not explicitly declared confidential by statute, their general inaccessibility to the public and the procedures provided for their sealing compel the inference that they are confidential.

Similarly, criminal investigative and intelligence records are not among the enumerated documents excluded from the definition of "criminal history records" in the Federal Regulations. For this reason, the majority concludes that the Nevada Legislature deviated from the Federal Regulations with the intention that such records be subject to disclosure. It is clear, however, that NRS 179A.070(2) is not a "deviation" from the Federal Regulations. Subsection 20.21(g)(6) of the Code of Federal Regulations provides that:

> The individual's right to access and review of criminal history record information *shall not* extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3(b).

(Emphasis added.)

The quoted section limits an individual's right of access to his criminal history records. An individual who is the subject of a criminal history record is among those who *must* be given access to such records under NRS 179A.100(5). It is unreasonable to assume that the Federal Regulations, after which Chapter 179A was patterned, would preclude an individual from obtaining investigatory information on himself while mandating the release of the same information to the media. It is equally incredible that the Nevada Legislature, also precluding an individual from accessing investigative data concerning himself (NRS 179A.150(1)), would mandate the disclosure of such information to the media. I suggest, therefore, that Nevada's Act does not constitute a deviation from its federal counterpart and that the majority improperly concludes that the non-existent deviation was purposefully enacted in order to "clarify that investigative reports are subject to disclosure if policy considerations so warrant."

In Branzburg v. Hayes, 408 U.S. 665 (1972), the Supreme Court noted that "[i]t has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *Id.* at 684. The court also observed that the press is regularly excluded from grand jury proceedings and crime scenes to which the public has no access, despite the fact that news gathering may be impeded. *Id.* Grand jury proceedings and crime

scenes are generally loci of investigations and intelligence which law enforcement agencies seek to protect from public access. Thus, even the public's right to know must at times be subordinate to criminal detection and investigation.

As previously noted, NRS 179A.070(2) does not make a declaration of confidentiality, but rather of exemption. NRS 179.100(5) (Supp. 1989) mandates that records of criminal history *must* be disseminated to certain enumerated individuals and entities, including the media. By excluding investigative and intelligence information from criminal history records, the statute is exempting such information from mandatory access. This position is supported by the Opinion of the Attorney General 83-3 (5-2-1983) in regards to NRS 239.010 as follows:

> Criminal investigation and intelligence reports are confidential as internal intelligence and investigative records collected in the course of the enforcement of criminal laws and are not public records subject to inspection under this section.

Because appellants' contentions are founded on the Public Records Act (PRA) embodied in NRS 239.010, it is illuminating to review cases in other jurisdictions interpreting similar statutes and their federal counterpart, the Federal Freedom of Information Act (FOIA).[1]

Appellants cite the PRA in support of the proposition that "absent an express declaration that a record is confidential, its disclosure is mandatory." They contend that because investigative and intelligence records have not been expressly declared confidential, they are public records subject to mandatory disclosure under the PRA. Importantly, however, that statute provides that "[a]ll *public* books and *public* records . . . the contents of which are not otherwise declared by law to be confidential" shall be available to the public. (Emphasis added.) Equally important, before a document comes within the purview of the statute, it must be a "public record." And, if the public record is declared to be confidential, it is exempt from disclosure under the PRA. Unfortunately, "public record" is not defined in the statute.

I am convinced that an investigative report is not, and was never intended to be, a public record subject to the disclosure mandates of the PRA. It has been stated that:

> "A public record, strictly speaking, is one made by a public officer in pursuance of a duty, the immediate *purpose of which is to disseminate information to the public*, or to serve as a memorial of official transactions *for public reference*."

[1] 5 U.S.C. § 552.

> Also a record is a "public record" which is *required by law to be kept*, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done. . . . It has also been held that a written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by express provisions of law or not, is admissible as a public record.

Matthews v. Pyle, 251 P.2d 893, 895 (Ariz. 1952) (emphasis supplied).

Moreover, the mere fact that a record is prepared by a public official or employee does not make it a public record. Cowles Pub. Co. v. Murphy, 637 P.2d 966, 968 (Wash. 1981) (en banc). Similarly, a document does not become a public record merely because public officials collectively act upon it. *Id.* Nor does the fact that a document is kept by a public officer make it a public record. Looby v. Lomenzo, 301 N.Y.S.2d 163 (1969). In *Looby*, the court ruled that a card index file was not a public record because it was created to promote office efficiency rather than to satisfy statutory mandate. *Id.* at 165.

In the case of In re Toth, 418 A.2d 272 (N.J.Super.A.D. 1980), the Right to Know Law defined a public record as one "required by law to be made, maintained or kept on file" by government officials. *Toth* was, in essence, an inverse disclosure action. An officer was appealing a disciplinary action for disclosing an investigatory report on the chairman of the Casino Control Board. His defense was that the record was public under the State's Right to Know Law. The court held that because the statute did not require a written record or report to be made, it was not a public record within the purview of the statute.

By its very nature, a criminal investigative report does not fit the category of a public record. It is not prepared for dissemination to the public or to memorialize official transactions for public reference. Neither is it required by Nevada law to be prepared, maintained, or filed, unlike the situation in Carlson v. Pima County, 687 P.2d 1242 (Ariz. 1984), relied on by appellants. In *Carlson*, the report at issue dealt with an altercation between inmates and was required by law to be made.

The court in Westchester Rockland Newspapers, Inc. v. Mosczydlowski, 396 N.Y.S.2d 857 (1977), noted that "records of law enforcement agencies have traditionally been held exempted from public disclosure." *Id.* at 860. That case involved an Internal Affairs Division investigation into the untimely death of an inmate. As here, the inquiry focused on whether any crimes had

been committed and the extent to which any police department personnel were guilty of breach of duty. The IAD prepared its report, and the district attorney concluded that no evidence of criminal wrongdoing existed. The press, dissatisfied with a summary of the report, unsuccessfully sought access to the original. One of the grounds for denial was that the report was outside the purview of the Freedom of Information Law because it was part of a police investigatory file. The lower court ordered disclosure under the rationale that because the investigation had been closed without determining a basis for any criminal action, the report was no longer protected by the statute.

In reversing, the appellate court recognized that the New York Public Officers Law (akin to the Nevada's Public Records Law) subjected some police records to disclosure (e.g., police blotter and booking entries). The court nevertheless stated that:

> The subject report is not such a record. . . . [I]t is akin to an intra- or inter-agency memorandum within the contemplation of the Federal Freedom of Information Act (U.S. Code, tit. 5, § 552[b][5]), upon which our law is patterned, or is, perhaps, a final agency opinion on the facts and circumstances surrounding the death of an individual while in police custody. . . . So viewed, the competing interests at bar are best satisfied by directing disclosure of only so much of the subject report as represents purely factual matter, with the names of police officers and jail personnel deleted.

Id. at 860. The competing interests in the instant case appear to have been satisfied by the City Attorney's disclosure of the facts surrounding the dismissal of charges against Joe Conforte, portions of the report, and corresponding data.

I suggest, therefore, that only if a record can be properly construed to be both "public" and non-confidential in nature is it subject to mandatory dissemination. Although the majority has rewritten the PRA with a balancing limitation regarding investigative and intelligence files, if, as appellants contend, such files are non-confidential and subject to the terms of the PRA, then, under its express terms, the reports are to be made available to any person, at all times during office hours, for any advantage and for copying in full. In my opinion, such a conclusion is untenable and inimical to society's interests.

Appellants also assert that publication of the investigation report is necessary so that the public is not "left in the dark" about the policies and procedures of the City Attorney's office. However, as emphasized by cases interpreting FOIA and its state counterparts, there are some documents to which the public should not be privy.

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Appellant, vs. THE CENTER FOR INVESTIGATIVE REPORTING, INC., A CALIFORNIA NONPROFIT ORGANIZATION, Respondent.	Supreme Court Case Nos.: 77617/77965 Appeal from the Eighth Judicial District Court, the Honorable Elizabeth Gonzalez Presiding

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<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Philip R. Erwin (dated 11/14/18)</td><td>Vol. 2,
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<tr><td>A</td><td>Legislative Counsel Bureau Bulletin No. 93-9</td><td>Vol. 2,
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<tr><td>B</td><td>Legislative Summary for AB 365</td><td>Vol. 4,
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Respondent Las Vegas Metropolitan Police Department's Response to Motion for Attorneys' Fees and Costs (cont.)</td><td></td></tr>
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<tr><td>C</td><td>LVMPD's Privilege Log</td><td>Vol. 4,
Bates Nos. 756–772</td></tr>
<tr><td colspan="2">Respondent Las Vegas Metropolitan Police Department's Notice of Appeal (filed 12/04/18)</td><td>Vol. 4,
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<tr><td colspan="2">The Center for Investigative Reporting Inc.'s Reply in Support of Motion for Attorneys' Fees and Costs (filed 12/12/18)</td><td>Vol. 4,
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<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order, Las Vegas Review-Journal v. Clark Cty. Office of the Coroner/Med. Exam'r, 2018 WL 1896250 (Nev. Dist. Ct. Feb. 1, 2018)</td><td>Vol. 4,
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<tr><td>2</td><td>Order, Las Vegas Review-Journal v. Clark Cty. School Dist., 2018 WL 1896249 (Nev. Dist. Ct. Mar. 22, 2018)</td><td>Vol. 4,
Bates Nos. 810–821</td></tr>
<tr><td>3</td><td>Order Granting, in Part, Petitioners' Motion for Attorneys' Fees and Costs in Carson City District Court Case No. 14OC000031B (filed 04/11/14)</td><td>Vol. 4,
Bates Nos. 822–831</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
Exhibits to The Center for Investigative Reporting Inc.'s Reply in Support of Motion for Attorneys' Fees and Costs (cont.)		
Exhibit	**Document Description**	
4	Defendant Stephens Media, LLC's Motion for Attorney's Fees in Clark County District Court Case No. A669057 (filed 03/30/15)	Vol. 4, Bates Nos. 832–862
5	Order in Clark County District Court Case No. A669057 (filed 06/22/15)	Vol. 4, Bates Nos. 863–873
6	Discovery Commissioner's Report and Recommendation in Clark County District Court Case No. A722259 (filed 01/18/17)	Vol. 4, Bates Nos. 874–879
December 21, 2018 Minute Order Granting Motion for Fees and Costs		Vol. 4, Bates No. 880
Notice of Entry with Order Granting Fees and Costs (filed 01/08/19)		Vol. 4, Bates Nos. 881–889
Respondent Las Vegas Metropolitan Police Department's Notice of Appeal (filed 01/16/19)		Vol. 4, Bates Nos. 890–899
Respondent Las Vegas Metropolitan Police Department's Case Appeal Statement (filed 01/16/19)		Vol. 4, Bates Nos. 900–903
Docket of District Court Case No. A773883		Vol. 4, Bates Nos. 904–905

PUBLIC WEIGHMASTERS

Sec. 145. 582.120 Records of public weighmaster: Contents; inspection; preservation. All public weighmasters shall keep and preserve correct and accurate records of all public weighings, measurings or countings. The records shall at all times be open for inspection by the state sealer of weights and measures or his deputy. The records shall be kept in a safe place for 4 years, after which time the weighmasters may destroy or otherwise dispose of the records.

[3:92:1923; NCL § 8309]--(NRS A 1971, 242; 1977, 616)

DAIRY PRODUCTS AND SUBSTITUTES

Sec. 146. 584.573 Restrictions on sale of substitute dairy products by distributor.

1. A distributor shall not sell a substitute dairy product, as defined in NRS 584.176, below its cost to him.

2. A distributor who sells or distributes a substitute dairy product shall file with the commission [state dairy commission] a statement of the cost of the substitute dairy product to him. The statement must be supplemented periodically as required by regulations adopted by the state dairy commission. The commission shall keep all statements **confidential** except when used in a judicial proceeding or an administrative proceeding relating to the provisions of this chapter.

(Added to NRS by 1981, 680)

Sec. 147. 584.583 Sale of milk, cream, butter or fresh dairy products below cost.

1. No distributor or retailer may sell fluid milk, fluid cream, butter or any fresh dairy product below cost.

2. In determining the cost for a distributor who processes or manufactures fluid milk, fluid cream, butter or any fresh dairy product, the following factors, in addition to any other factor acceptable to the commission, must be considered:

(a) Cost of raw products based on actual cost or on current and prospective supplies of fluid milk and fluid cream in relation to current and prospective demands for fluid milk and fluid cream.

(b) Cost of production.

(c) Reasonable return on capital investment.

(d) Producer's costs for transportation.

(e) Cost of compliance with health regulations.

(f) Overhead.

3. In determining the cost for a peddler- distributor or retailer, the following factors, in addition to any other factor acceptable to the commission, must be considered:

(a) Purchase price of the product.

(b) Overhead for handling.

(c) Reasonable return on capital investment.

4. For the purposes of subsections 2 and 3:

(a) Reasonable return on capital investment must be calculated per unit of production by dividing the product of:

(1) The net capital investment; and

(2) The reasonable rate of return on capital investment,

by the total sales per unit of production. "Net capital investment" includes land, buildings, equipment and any other capital asset used as a rate base. A reasonable rate of return on capital investment shall be deemed to be the rate fixed for 6- month United States treasury bills at the auction in the first week of the month of January or July immediately preceding the date that the reasonable return on capital investment is calculated.

(b) Costs for overhead must be determined according to generally accepted principles of accounting and allocated proportionately to each unit of production. Costs for overhead include salaries for executives and officers of the company, all other costs of labor, including indirect costs, rent, depreciation, costs for maintenance, costs incurred in delivering the product, fees for licenses, taxes and insurance, cost of materials, costs for repairs, the cost of electricity and other public utilities and all other costs that relate to the sale and distribution of the product. Any expense incurred in the marketing of a finished or manufactured dairy product which cannot be attributed directly to a particular product must be apportioned to the product on a basis consistent with generally accepted principles of accounting relating to costs.

5. Each distributor who processes or manufactures fluid milk, fluid cream, butter or any fresh dairy product and each peddler-distributor shall file with the commission a statement of costs, listing separately, and as applicable, the items set forth in subsection 2 or 3 of this section and any other applicable factors relating to cost. The statements must be kept current as prescribed by regulations adopted by the commission. All statements must be kept **confidential** by the commission except when used in judicial or administrative proceedings pursuant to NRS 584.325 to 584.690, inclusive.

6. Each distributor who processes or manufactures fluid milk, fluid cream, butter or any fresh dairy product and each peddler-distributor shall file with the commission lists of wholesale prices and of minimum retail, distributor and dock prices. No distributor may sell at wholesale prices other than, or at retail, distributor or dock prices less than, those contained in the appropriate list, except in the case of bids to departments or agencies of federal, state and local governments. In no case may the distributor sell or offer to sell below cost.

(Added to NRS by 1959, 900; A 1975, 1495; 1979, 1311; 1983, 1239; 1987, 155)

Sec. 148. 584.655 Confidentiality of records and reports. Any record or report made to the commission pursuant to the provisions of NRS 584.650 to 584.665, inclusive, shall be **confidential** and shall not be divulged except when necessary for the proper determination of any court proceedings or hearing before the commission.

[71:387:1955]

PESTICIDES; DANGEROUS CAUSTIC OR CORROSIVE SUBSTANCES

Sec. 149. 586.410 Disclosure of information relative to formulas unlawful; exceptions. It shall be unlawful for any person to use for his own advantage, or to reveal, other than to the executive director [executive director of the State Department of Agriculture] or proper officials or employees of the state, or to the courts of this state in response to a subpena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of NRS 586.280.

[Part 3:269:1955]--(NRS A 1961, 570)

COMMERCIAL FERTILIZERS AND AGRICULTURAL MINERALS

Sec. 150. 588.270 Reports of executive director concerning sale, production and analyses of fertilizers and agricultural minerals: Form; nondisclosure of information concerning operation of business.

1. At least annually, the executive director [executive director of the State Department of Agriculture] shall publish, in such form as he may deem proper:

(a) Information concerning the sales of commercial fertilizers and agricultural minerals, together with such data on their production and use as he may consider advisable.

(b) A report of the results of the analyses based on official samples of commercial fertilizers or agricultural minerals sold within the state as compared with the analyses guaranteed under NRS 588.170 to 588.200, inclusive.

2. The information concerning production and use of commercial fertilizers or agricultural minerals shall be shown separately for the periods of July 1 to December 31 and January 1 to June 30 of each year.

3. No disclosure shall be made of the operations of any person.

[11:203:1951]--(NRS A 1961, 579)

MISCELLANEOUS TRADE REGULATIONS, DECEPTIVE TRADE PRACTICES AND PROHIBITED ACTS

Sec. 151. 598.540 Restraining orders; injunctions; assurances of discontinuance.

1. Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, when the commissioner [commissioner of consumer affairs] or director [director of the Department of Commerce] has cause to believe that a person has engaged or is engaging in any deceptive trade practice, knowingly or otherwise, he may request in writing that the

attorney general represent him in instituting an appropriate legal proceeding, including, without limitation, an application for an injunction or temporary restraining order prohibiting the person from continuing the practices. The court may make orders or judgments necessary to prevent the use by the person of any such deceptive trade practice or to restore to any other person any money or property which may have been acquired by the deceptive trade practice.

2. Where the commissioner or director has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he may accept an assurance of discontinuance of any deceptive trade practice. This assurance may include a stipulation for the payment by the alleged violator of the costs of investigation and the costs of instituting the action or proceeding and for the restitution of any money or property acquired by any deceptive trade practice. Except as provided in this subsection, any assurance of discontinuance accepted by the commissioner or director and any stipulation filed with the court is **confidential** to the parties to the action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1 of this section, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice as had previously been enjoined, the assurance of discontinuance or stipulation becomes a public record. Proof by a preponderance of evidence of a violation of an assurance constitutes prima facie evidence of a deceptive trade practice for the purpose of any civil action or proceeding brought thereafter by the commissioner or director, whether a new action or a subsequent motion or petition in any pending action or proceeding.

(Added to NRS by 1973, 1485; A 1983, 884; 1985, 1480, 2258)

Sec. 152. 598.550 Disclosure of information by commissioner or director.

1. NRS 598.360 to 598.640, inclusive, do not prohibit the commissioner or director from disclosing to the attorney general, any district attorney or any law enforcement officer the fact that a crime has been committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of NRS 598.360 to 598.640, inclusive.

2. Subject to the provisions of subsection 2 of NRS 598.540, the commissioner or director may not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not prevent the commissioner or director from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice.

(Added to NRS by 1973, 1486; A 1983, 884; 1985, 1481)

UNFAIR TRADE PRACTICES

Sec. 153. 598A.110 Investigative demands: Confidentiality. Any procedure, testimony taken, document or other tangible evidence produced, or answer made under NRS 598A.100 shall be kept **confidential** by the attorney general prior to the institution of an action brought under this chapter for the alleged violation of the provisions of this chapter under investigation, unless:

1. **Confidentiality** is waived by the person upon whom the written investigative demand is made;
2. Disclosure is authorized by the district court; or
3. Disclosure is made pursuant to NRS 598A.080.

(Added to NRS by 1975, 947)

SOLICITATION BY TELEPHONE

Sec. 154. 599B.090 Seller's license: Application; organizational information; security; fee.

1. An applicant for a license as a seller must submit to the division [consumer affairs division of the Department of Commerce], in such form as it prescribes, a written application for the license. The application must:

(a) Set forth the name of the applicant, including each name under which he intends to do business;

(b) Set forth the name of any parent or affiliated entity that:

(1) Will engage in a business transaction with the purchaser relating to any sale solicited by the applicant; or

(2) Accepts responsibility for any statement or act of the applicant relating to any sale solicited by the applicant;

(c) Set forth the complete street address of each location, designating the principal location, from which the applicant will be doing business;

(d) Contain a list of all telephone numbers to be used by the applicant, with the address where each telephone using these numbers will be located;

(e) Set forth the name and address of each:

(1) Principal officer, director, trustee, shareholder, owner or partner of the applicant, and of each other person responsible for the management of the business of the applicant;

(2) Person responsible for a location from which the applicant will do business; and

(3) Salesman to be employed by the applicant; and

(f) Be accompanied by a copy of any:

(1) Script, outline or presentation the applicant will require a salesman to use when soliciting or, if no such document is used, a statement to that effect;

(2) Sales information or literature to be provided by the applicant to a salesman, or of which the applicant will inform the salesman; and

(3) Sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation.

2. The information provided pursuant to paragraph (f) of subsection 1 by an applicant for a license as a seller is **confidential** and may only be released to a law enforcement agency, to a court of competent jurisdiction or by order of a court of competent jurisdiction.

3. If the applicant is other than a natural person, or if any parent or affiliated entity is identified pursuant to paragraph (b) of subsection 1, the applicant must, for itself and any such entity, identify its place of organization and:

(a) In the case of a partnership, provide a copy of any written partnership agreement; or

(b) In the case of a corporation, provide a copy of its articles of incorporation and bylaws.

4. An application filed pursuant to this section must be verified and accompanied by:

(a) A bond, letter of credit or certificate of deposit satisfying the requirements of NRS 599B.100;

(b) A fee for licensing in the amount of $5,000; and

(c) If subsection 5 applies, the additional bond, letter of credit or certificate of deposit and the additional fee required by that subsection.

5. If an applicant intends to do business under any assumed or fictitious name, he must, for each such name:

(a) File an additional bond, letter of credit or certificate of deposit satisfying the requirements of NRS 599B.100; and

(b) Pay an additional fee for licensing in the amount of $5,000.

(Added to NRS by 1989, 1382; A 1991, 984)

TRADE SECRETS (Uniform Act)

Sec. 155. 600A.070 Preservation of secrecy. In an action under this chapter, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding hearings in camera, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without previous court approval.

(Added to NRS by 1987, 21)

COMPUTERS

Sec. 156. 603.070 Use by governmental agency of proprietary program or data. A governmental agency which obtains a proprietary program or the data stored in a computer must keep the program or data **confidential**. The governmental agency may only use the program or data for the purpose for which it was obtained, and may not release the program or data without the prior written consent of the owner.

(Added to NRS by 1983, 1350)

Sec. 157. 612.265 Disclosure of information by employment security department.

1. Except as otherwise provided in this section, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is **confidential** and may not be disclosed or be open to **public inspection** in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or his legal representative is entitled to information from the records of the employment security department, to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the employment security department for any other purpose.

3. Subject to such restrictions as the executive director [executive director of the Employment Security Department] may by regulation prescribe, such information may be made available to:

(a) Any agency of this or any other state or any federal agency charged with the administration or enforcement of an unemployment compensation law, public assistance law, workman's compensation or labor law, or the maintenance of a system of public employment offices;

(b) Any state or local agency for the enforcement of child support; or

(c) The Internal Revenue Service of the Department of the Treasury.

Information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or a public assistance program.

4. The executive director may provide information on the names of employers, their geographic locations, their type or class of business or industry, and the approximate number of employees employed by each employer to the commission on economic development for its use in developing and diversifying the economic interests of this state.

5. Upon request therefor the executive director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits pursuant to this chapter.

6. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this state may submit a written request to the executive director that he furnish, from the records of the employment security department, the name, address and place of employment of any person listed in the records of employment of the department. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of such a request, the executive director shall furnish the information requested. He may charge a reasonable fee to cover any related administrative expenses.

7. The executive director shall provide lists containing the names and addresses of employers, the number of employees employed by each employer and the total wages paid by each employer to the department of taxation, upon request, for use in verifying returns for the business tax. The executive director may charge a reasonable fee to cover any related administrative expenses.

8. The manager of the state industrial insurance system may submit to the executive director a list of each person who received benefits pursuant to chapter 616 or 617 of NRS during the preceding month and request that he compare the information so provided with the records of the employment security department regarding persons claiming benefits pursuant to chapter 612 of NRS for the same period. The information submitted by the manager must be in a form determined by the executive director and must contain the social security number of each such person. Upon receipt of such a request, the executive director shall make such a comparison and provide to the manager a list of the name, address and social security number of each person who appears, from the information submitted, to be simultaneously claiming benefits under chapter 612 of NRS and under chapter 616 or 617 of NRS. The executive director shall charge a reasonable fee to cover any related administrative expenses. The manager shall use the information obtained pursuant to this subsection only to further a current investigation. The manager shall not disclose the information for any other purpose.

9. The executive director may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this

chapter, and may in connection with the request transmit any such report or return to the Comptroller of the Currency of the United States as provided in Section 3305(c) of the Internal Revenue Code of 1954.

10. If any employee or member of the board of review or the executive director or any employee of the executive director, in violation of the provisions of this section, discloses information obtained from any employing unit or person in the administration of this chapter, or if any person who has obtained a list of applicants for work, or of claimants or recipients of benefits pursuant to this chapter uses or permits the use of the list for any political purpose, he is guilty of a gross misdemeanor.

11. All letters, reports or communications of any kind, oral or written, from the employer or employee to each other or to the employment security department or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of this chapter.

[Part 4:59:1941; A 1945, 119; 1955, 518]--(NRS A 1965, 115; 1967, 627; 1971, 749; 1983, 409, 858; 1987, 1463; 1989, 1170; 1991, 351, 2464, 2466)

EMPLOYMENT PRACTICES

Sec. 158. 613.075 Inspection of records of employer or referring labor organization by employee or person referred for employment relating to his qualifications or employment; limitations; correction.

1. Any person or governmental entity who employs and has under his direction and control any person for wages or under a contract of hire, or any labor organization referring a person to an employer for employment, shall, upon the request of that employee or person referred:

(a) Give him a reasonable opportunity, during the usual hours of business, to inspect any records kept by that employer or labor organization containing information used:

(1) By the employer or labor organization to determine the qualifications of that employee and any disciplinary action taken against him, including termination from that employment; or

(2) By the labor organization with respect to that person's position on its list concerning past, present and future referrals for employment; and

(b) Subject to the provisions of subsection 5, furnish him with a copy of those records.

The records to be made available do not include confidential reports from previous employers or investigative agencies or information concerning the investigation, arrest or conviction of that person for a violation of any law.

2. Upon termination of employment, the employer shall allow the employee to inspect those records within 60 days after his termination of employment and, subject to the provisions of subsection 5, shall, if requested by that former employee within that period, furnish him with a copy of those records.

3. The employer or labor organization may only charge that person an amount equal to the actual cost of providing access to and copies of those records.

4. The employee or person referred shall, if he contends that any information contained in the records is inaccurate or incomplete, notify his employer or the labor organization in writing of his contention. If the employer or organization finds that the contention of that employee or person is correct, it shall change the information accordingly.

5. No copies may be furnished to an employee or former employee under this section unless he has been or was employed for more than 60 days.

(Added to NRS by 1985, 1080, 1081)

VOCATIONAL REHABILITATION

Sec. 159. 615.290 Misuse of lists or records. It is unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program [bureau of vocational rehabilitation in the rehabilitation division of the Department of Human Resources] or any other arrangements, agreements or plans pursuant to this chapter, and in accordance with regulations of the bureau, for any person to solicit, disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for

or receiving any services under this chapter, directly or indirectly derived from the records, papers, files or communications of the bureau, or acquired in the course of the performance of its official duties.

(Added to NRS by 1967, 832; A 1973, 1406)

INDUSTRIAL INSURANCE

Sec. 160. 616.1701 Creation; purpose; status as public agency; executive and legislative review; state services; classification of employees; public records.

1. The state industrial insurance system is hereby established as an independent actuarially funded system for the purpose of insuring employers against liability for injuries and occupational diseases for which their employees may be entitled to benefits under this chapter or chapter 617 of NRS, and the federal Longshoremen's and Harbor Workers' Compensation Act.

2. The system is a public agency which administers and is supported by the state insurance fund. The executive and legislative departments of the state government shall regularly review the system.

3. The system is entitled to use any services provided to state agencies, and must use the services of the purchasing division of the department of general services. The system is not required to use any other service. Except as otherwise provided for specified positions, its employees are in the classified service of the state.

4. The official correspondence and records, other than the files of individual claimants and policyholders, and the minutes and books of the system are public records and must be available for **public inspection**.

(Added to NRS by 1981, 1449)

Sec. 161. 616.192 Confidentiality and disclosure of information; penalty for use of information for political purposes; privileged communications.

1. Except as otherwise provided in this section and in NRS 616.193 and 616.550, information obtained from any employer or employee is **confidential** and may not be disclosed or be open to **public inspection** in any manner which would reveal the person's identity.

2. Any claimant or his legal representative is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under this chapter.

3. The department [Department of Industrial Relations] and administrator [administrator of the division of industrial insurance regulation of the Department of Industrial Relations] are entitled to information from the records of the insurer which is necessary for the performance of their duties. The manager [manager of the State Industrial Insurance System] may, by regulation, prescribe the manner in which otherwise **confidential** information may be made available to:

(a) Any agency of this or any other state charged with the administration or enforcement of workers' compensation law, unemployment compensation law, public assistance law or labor law;

(b) Any state or local agency for the enforcement of child support; or

(c) The Internal Revenue Service of the Department of the Treasury.

Information obtained in connection with the administration of a workers' compensation program may be made available to persons or agencies for purposes appropriate to the operation of a workers' compensation program.

4. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this state may submit a written request to the manager that he furnish from the records of the insurer, the name, address and place of employment of any person listed in the records of the insurer. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of a request, the manager shall furnish the information requested. He may charge a reasonable fee to cover any related administrative expenses.

5. The manager shall provide lists containing the names and addresses of employers, the number of employees employed by each employer and the total wages paid by each employer to the department of taxation, upon request, for its use in verifying returns for the business tax. The manager may charge a reasonable fee to cover any related administrative expenses.

6. If any employee or member of the board of directors [board of directors of the State Industrial Insurance Commission] or manager or any employee of the manager, in violation of this section, discloses information obtained from files of

claimants or policyholders, or if any person who has obtained a list of claimants or policyholders under this chapter uses or permits the use of the list for any political purposes, he is guilty of a gross misdemeanor.

7. All letters, reports or communications of any kind, oral or written, from the insurer, or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of this chapter.

(Added to NRS by 1989, 1189; A 1991, 2465)

Sec. 162. 616.2935 Notification of change in ownership or control of self-insured employer; automatic termination of certification; extension. A self-insured employer shall notify the commissioner [Commissioner of Insurance] not less than 60 days before any change in ownership or control of the employer. The certification of the self-insured employer terminates automatically on the date of the change unless the commissioner extends the certification. The commissioner, upon request, may declare as **confidential** any documents which are submitted in support of a request for such an extension.

(Added to NRS by 1985, 582)

OCCUPATIONAL SAFETY AND HEALTH

Sec. 163. 618.341 Records of division: Public inspection; copying; confidentiality.

1. Except as otherwise provided in this section, the public may inspect all records of the division [division of enforcement of industrial safety and health of the Department of Industrial Relations] which contain information regarding:

(a) An oral or written complaint filed by an employee or a representative of employees alleging the existence of an imminent danger or a violation of a safety or health standard that threatens physical harm;

(b) The manner in which the division acted on any such complaint;

(c) Any citation issued by the division to an employer and the reason for its issuance; and

(d) Any penalty imposed by the division on an employer and the reason therefor.

2. The division shall, upon oral or written request and payment of any applicable charges, provide to any person a copy of any record of the division which is open to **public inspection** pursuant to subsection 1. The first six pages reproduced pursuant to each such request must be provided without charge. The charge for each additional page copied must not exceed the cost of reproduction.

3. The division shall keep **confidential**:

(a) The name of any employee who filed any complaint against an employer or who made any statement to the division concerning an employer; and

(b) Any information which is part of a current investigation by the division, but the fact that an investigation is being conducted is public information.

For the purposes of this subsection, "current investigation" means any investigation conducted before the issuance of a citation or notice of violation or, if no citation or notice of violation is issued, an investigation which is not closed.

(Added to NRS by 1989, 468)

Sec. 164. 618.365 Scope of chapter; limited disclosure of information of division; protection of trade secrets.

1. This chapter does not supersede or in any manner affect the Nevada Industrial Insurance Act, the Nevada Occupational Diseases Act or enlarge, diminish or affect in any other manner the common law or statutory rights, duties or liabilities of employers and employees under the laws of this state with respect to injuries, occupational or other, diseases or death of employees arising out of or in the course of employment.

2. Statements, reports and information obtained or received by the division in connection with an investigation under, or the administration or enforcement of, the provisions of this chapter must not be admitted as evidence in any civil action other than an action for enforcement, variance hearing or review under this chapter.

3. Any report of investigation or inspection or any information concerning trade secrets or secret industrial processes obtained under this chapter must not be disclosed or open to **public inspection** except as such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any court proceeding under this chapter.

4. The division, the courts, and where applicable, the review board may issue such orders as may be appropriate to protect the **confidentiality** of trade secrets.

(Added to NRS by 1973, 1021; A 1975, 769; 1981, 1510; 1989, 469)

ARCHITECTS

Sec. 165. 623.131 Confidentiality of certain records of board; exception.

1. Except as otherwise provided in subsection 2, the records of the board [state board of architects] which relate to:

(a) An employee of the board;

(b) An examination given by the board; or

(c) Complaints and charges filed with the board and the material compiled as a result of its investigation of those complaints and charges,

are **confidential.**

2. The board may report to other related professional boards and organizations an applicant's score on an examination given by the board.

(Added to NRS by 1985, 1454)

CONTRACTORS

Sec. 166. 624.110 Offices; maintenance, inspection and confidentiality of records and reports.

1. The board [state contractors' board] may maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter, but it shall maintain one office in which there must be at all times open to **public inspection** a complete record of applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses.

2. Credit reports, references, investigative memoranda, financial information and data pertaining to a licensee's net worth are **confidential** and not open to **public inspection.**

[1:Art. V:186:1941; 1931 NCL § 1474.27]--(NRS A 1963, 145; 1967, 1592; 1987, 1138)

PROFESSIONAL ENGINEERS AND SURVEYORS

Sec. 167. 625.425 Confidentiality of information regarding investigation.

1. Any information obtained during the course of an investigation by the board and any record of an investigation is **confidential** until the investigation is completed. If no disciplinary action is taken against a registrant, the information in any investigative file remains confidential. If a formal complaint is filed, all pleadings and evidence introduced at hearing are public records.

2. The provisions of this section do not prohibit the board or its employees from communicating and cooperating with another licensing board or any other agency that is investigating a registrant.

(Added to NRS by 1991, 2237)

HEALING ARTS GENERALLY

Sec. 168. 629.061 Health care records: Inspection; use in public hearing; immunity of certain persons from civil action for disclosure.

1. Each provider of health care shall make the health care records of a patient available for physical inspection by:

(a) The patient or a representative with written authorization from the patient;

(b) An investigator for the attorney general or a grand jury investigating an alleged violation of NRS 422.540 to 422.570, inclusive; or

(c) Any authorized representative or investigator of a state licensing board during the course of any investigation authorized by law.

The records must be made available at a place within the depository convenient for physical inspection, and inspection must be permitted at all reasonable office hours and for a reasonable length of time. The provider of health care shall also furnish a copy of the records to each person described in paragraphs (a) and (c) of this subsection who requests it and pays the actual cost of postage, if any, the costs of making the copy, not to exceed 60 cents per page for photocopies and a reasonable cost for copies of X-ray photographs and other health and care records produced by similar processes. No administrative fee or additional service fee of any kind may be charged for furnishing such a copy.

2. Each person who owns or operates an ambulance in this state shall make his records regarding a sick or injured patient available for physical inspection by:

(a) The patient or a representative with written authorization from the patient; or

(b) Any authorized representative or investigator of a state licensing board during the course of any investigation authorized by law.

The records must be made available at a place within the depository convenient for physical inspection, and inspection must be permitted at all reasonable office hours and for a reasonable length of time. The person who owns or operates an ambulance shall also furnish a copy of the records to each person described in paragraphs (a) and (b) of this subsection who requests it and pays the actual cost of postage, if any, and the costs of making the copy, not to exceed 60 cents per page for photocopies. No administrative fee or additional service fee of any kind may be charged for furnishing a copy of the records.

3. Records made available to a representative or investigator must not be used at any public hearing unless:

(a) The patient named in the records has consented in writing to their use; or

(b) Appropriate procedures are utilized to protect the identity of the patient from public disclosure.

This subsection does not prohibit a state licensing board from providing to a provider of health care or owner or operator of an ambulance against whom a complaint or written allegation has been filed, or to his attorney, information on the identity of a patient whose records may be used in a public hearing relating to the complaint or allegation, but the provider of health care or owner or operator of an ambulance and his attorney shall keep the information **confidential**.

4. A provider of health care or owner or operator of an ambulance, his agents and employees are immune from any civil action for any disclosures made in accordance with the provisions of this section or any consequential damages.

(Added to NRS by 1977, 1313; A 1985, 2246; 1987, 728, 1040; 1989, 2049; 1991, 1055, 1947)

PHYSICIANS AND ASSISTANTS

Sec. 169. 630.336 Confidentiality of certain proceedings, records and information of board; exceptions.

1. Any proceeding of a committee of the board [board of medical examiners] investigating complaints is not subject to the requirements of NRS 241.020, unless the licensee under investigation requests that the proceeding be subject to those requirements. Any deliberations conducted or vote taken by:

(a) The board or panel regarding its decision; or

(b) The board or any investigative committee of the board regarding its ordering of a physician to undergo a physical or mental examination or any other examination designated to assist the board or committee in determining the fitness of a physician,

are not subject to the requirements of NRS 241.020.

2. Except as otherwise provided in subsection 3, all applications for a license to practice medicine, any charges filed by the board, financial records of the board, formal hearings on any charges heard by the board or a panel selected by the board, records of such hearings and any order or decision of the board or panel must be open to the public.

3. Except as otherwise provided in NRS 630.352 and 630.368, the following may be kept **confidential**:

(a) Any statement, evidence, credential or other proof submitted in support of or to verify the contents of an application;

(b) All investigations and records of investigations;

(c) Any report concerning the fitness of any person to receive or hold a license to practice medicine;

(d) Any communication between:

(1) The board and any of its committees or panels; and

(2) The board or its staff, investigators, experts, committees, panels, hearing officers, advisory members or consultants and counsel for the board; and

(e) Any other information or records in the possession of the board.

4. This section does not prevent or prohibit the board from communicating or cooperating with any other licensing board or agency or any agency which is investigating a licensee, including a law enforcement agency. Such cooperation may include providing the board or agency with minutes of a closed meeting, transcripts of oral examinations and the results of oral examinations.

(Added to NRS by 1977, 826; A 1985, 2241; 1987, 201; 1989, 664)

OSTEOPATHIC MEDICINE

Sec. 170. 633.611 Confidentiality of proceedings. All proceedings subsequent to the filing of a complaint are **confidential**, except to the extent necessary for the conduct of an examination, until the board [state board of osteopathic medicine] determines to proceed with disciplinary action. If the board dismisses the complaint, the proceedings remain **confidential**. If the board proceeds with disciplinary action, **confidentiality** concerning the proceedings is no longer required.

(Added to NRS by 1977, 951)

CHIROPRACTIC

Sec. 171. 634.212 Records of proceedings relating to licensing and disciplinary action; confidentiality of information; notice of disclosure of contents.

1. The board [state board of chiropractic examiners] shall keep a record of its proceedings relating to licensing and disciplinary actions. These records must be open to **public inspection** at all reasonable times and must contain the name, known place of business and residence, and the date and number of the license of every chiropractor licensed under this chapter. The board may keep such other records as it deems desirable.

2. Except as provided in this subsection, all information pertaining to the personal background, medical history or financial affairs of an applicant or licensee which the board requires to be furnished to it under this chapter, or which it otherwise obtains, is **confidential** and may be disclosed in whole or in part only as necessary in the course of administering this chapter or upon the order of a court of competent jurisdiction. The board may, under procedures established by regulation, permit the disclosure of this information to any agent of the Federal Government, of another state or of any political subdivision of this state who is authorized to receive it.

3. Notice of the disclosure and the contents of the information disclosed pursuant to subsection 2 must be given to the applicant or licensee who is the subject of that information.

(Added to NRS by 1983, 419)

DISPENSING OPTICIANS

Sec. 172. 637.085 Records open to public; limitations.

1. Except as otherwise provided in subsection 2, all applications for licensure, any charges filed by the board [board of dispensing opticians], financial records of the board, formal hearings on any charges heard by the board or a panel selected by the board, records of the hearings and any order or decision of the board or panel must be open to the public.

2. The following may be kept **confidential**:

(a) Any statement, evidence, credential or other proof submitted in support of or to verify the contents of an application.

(b) All investigations and records of investigations.

(c) Any report concerning the fitness of any person to receive or hold a license to practice ophthalmic dispensing.

(d) Any communication between:

(1) The board and any of its committees or panels; and

(2) The board or its staff, investigators, experts, committees, panels, hearing officers, advisory members or consultants and counsel for the board.

(e) Any other information or records in the possession of the board.

3. This section does not prohibit the board from communicating or cooperating with any other licensing board or agency or any agency which is investigating a licensee, including a law enforcement agency.

(Added to NRS by 1987, 602)

Sec. 173. 638.089 Confidentiality of information; limitations; notice of disclosure of contents.

1. Except as provided in this section, all information received by the board [state board of veterinary medical examiners] concerning an applicant for a license or a licensee, including the results of an investigation, is **confidential**.

2. If the board takes disciplinary action against an applicant or licensee, the complaint and the action taken are no longer required to be **confidential**.

3. If the board conducts any proceeding other than a disciplinary action regarding an applicant or licensee, its statement of findings and any order issued relating thereto are no longer required to be **confidential**.

4. Information concerning an applicant or a licensee may be disclosed, pursuant to procedures established by regulation of the board, to a court or an agency of the Federal Government, any state or any political subdivision of this state. Notice of the disclosure and the contents of the information must be given to the applicant or licensee within 3 business days before the disclosure.

(Added to NRS by 1985, 1246)

639.238 Prescriptions not public records; pharmacists not to divulge contents; exceptions.

1. Prescriptions filled and on file in a pharmacy **are not a public record.** A pharmacist **shall not divulge** the contents of any prescription or provide a copy of any prescription, except to:

(a) The patient for whom the original prescription was issued;

(b) The practitioner who originally issued the prescription;

(c) A practitioner who is then treating the patient;

(d) A member, inspector or investigator of the board or an inspector of the Food and Drug Administration or an agent of the investigation division of the department of motor vehicles and public safety;

(e) An agency of state government charged with the responsibility of providing medical care for the patient;

(f) An insurance carrier, on receipt of written authorization signed by the patient or his legal guardian, authorizing the release of such information; or

(g) Any person authorized by an order of a district court.

2. Any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS, issued to a person authorized by this section to receive such a copy, must contain all of the information appearing on the original prescription and be clearly marked on its face, "Copy, Not Refillable--For Reference Purposes Only"; and such a copy must bear the name or initials of the registered pharmacist who prepared the copy.

3. If a copy of a prescription for any controlled substance or a dangerous drug as defined in chapter 454 of NRS is furnished to the customer, the original prescription must be voided and notations made thereon showing the date and the name of the person to whom the copy was furnished.

4. If, at the express request of a customer, a copy of a prescription for any controlled substance or dangerous drug is furnished to another pharmacist, the original prescription must be voided and notations made thereon showing the date and the name of the pharmacist to whom the copy was furnished. The pharmacist receiving the copy shall call the prescribing practitioner for a new prescription.

(Added to NRS by 1967, 1662; A 1971, 2043; 1973, 781; 1977, 1281; 1979, 1693; 1981, 2015; 1985, 1998; 1987, 1568)

Sec. 174. 639.2485 Confidentiality of records and information obtained during investigation; limitations on disclosure.

1. Any records or information obtained during the course of an investigation by the board and any record of the investigation are **confidential** until the investigation is completed. Upon completion of the investigation the information and records are public records, only if:

(a) Disciplinary action is imposed by the board as a result of the investigation; or

(b) The person regarding whom the investigation was made submits a written request to the board asking that the information and records be made public records.

2. The board may disclose to a practitioner and a law enforcement agency information concerning a person who procures or attempts to procure any dangerous drug or controlled substance in violation of NRS 453.391 or 454.311.

(Added to NRS by 1989, 1568; A 1991, 1952)

PHYSICAL THERAPISTS

Sec. 175. 640.075 Confidentiality of information obtained during investigation and record of investigation.

1. Any records or information obtained during the course of an investigation by the board [state board of physical therapy examiners] and any record of the investigation are **confidential** until the investigation is completed. Upon completion of the investigation the information and records are public records, only if:

(a) Disciplinary action is imposed by the board as a result of the investigation; or

(b) The person regarding whom the investigation was made submits a written request to the board asking that the information and records be made public records.

2. This section does not prevent or prohibit the board from communicating or cooperating with another licensing board or any agency that is investigating a licensee, including a law enforcement agency.

(Added to NRS by 1989, 1574)

OCCUPATIONAL THERAPISTS

Sec. 176. 640A.220 Investigations: Confidentiality of records and information. Any records or information obtained during the course of an investigation by the board are **confidential** until the investigation is completed. Upon completion of the investigation, the records and information are public records if:

1. Disciplinary action is imposed by the board as a result of the investigation; or

2. The person under investigation submits a written request to the board asking that the information and records be made public records.

(Added to NRS by 1991, 991)

PSYCHOLOGISTS

Sec. 177. 641.090 Duties of secretary-treasurer; custody and inspection of records of board; confidentiality.

1. The secretary-treasurer shall make and keep on behalf of the board [board of psychological examiners]:

(a) A record of all its meetings and proceedings.

(b) A record of all violations and prosecutions under the provisions of this chapter.

(c) A record of all examinations of applicants.

(d) A register of all licenses.

(e) A register of all holders of licenses.

(f) An inventory of the property of the board and of the state in the board's possession.

2. These records must be kept in the office of the board and are subject to **public inspection** during normal working hours upon reasonable notice.

3. The board may keep the personnel records of applicants **confidential.**

(Added to NRS by 1963, 188; A 1979, 1352; 1989, 1540)

Sec. 178. 641.255 Confidentiality of complaint. All complaints filed with the board are **confidential**, except to the extent necessary for the conduct of an investigation, until the board determines whether to proceed with any action authorized under this chapter. If the board dismisses the complaint, it remains **confidential.** If the board proceeds with any action, **confidentiality** is no longer required.

(Added to NRS by 1985, 1909)

Sec. 179. 641.272 Mental or physical examination required by board; consent to examination; confidentiality of reports; immediate suspension for failure to submit to examination.

1. If the board determines that a complaint is not frivolous, it may require the person named in the complaint to submit to a mental examination conducted by a panel of three psychologists designated by the board or a physical examination conducted by a physician designated by the board.

2. Every psychologist licensed under this chapter who accepts the privilege of practicing psychology in this state shall be deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board. The testimony or reports of the examining psychologists or physician are privileged communications, except as to proceedings conducted pursuant to this chapter.

3. Except in extraordinary circumstances, as determined by the board, the failure of a psychologist to submit to an examination as provided in this section constitutes grounds for the immediate suspension of his license.

(Added to NRS by 1985, 1907; A 1989, 1544)

MARRIAGE AND FAMILY THERAPISTS

Sec. 180. 641A.191 Confidentiality of information obtained during investigation and record of investigation.

1. Any records or information obtained during the course of an investigation by the board [board of examiners for marriage and family therapists] and any record of the investigation are **confidential** until the investigation is completed. Except as otherwise provided in NRS 641A.315, upon completion of the investigation the information and records are public records, only if:

(a) Disciplinary action is imposed by the board as a result of the investigation; or

(b) The person regarding whom the investigation was made submits a written request to the board asking that the information and records be made public records.

2. This section does not prohibit the board from communicating or cooperating with any other licensing board or agency or any agency which is investigating a licensee, including a law enforcement agency.

(Added to NRS by 1989, 1569)

COSMETOLOGY

Sec. 181. 644.130 Record of licenses; disclosure of information.

1. The board shall keep a record containing the name, known place of business and the date and number of the license of every manicurist, electrologist, aesthetician and cosmetologist, together with the names and addresses of all cosmetological establishments and schools of cosmetology licensed pursuant to this chapter. The record must also contain the facts which the applicants claimed in their applications to justify their licensure.

2. The board may disclose the information contained in the record kept pursuant to subsection 1 to:

(a) Any other licensing board or agency that is investigating a licensee.

(b) A member of the general public, **except information** concerning the address and telephone number of a licensee.

[Part 4:218:1931; A 1933, 237; 1931 NCL § 1862.03]--(NRS A 1981, 1351; 1985, 1629; 1991, 2056)

REAL ESTATE BROKERS AND SALESMEN

Sec. 182. 645.180 Real estate division: Seal; records; certified copies of records as evidence.

1. The division [real estate division of the Department of Commerce] shall adopt a seal by which it shall authenticate its proceedings.

2. Records kept in the office of the division under authority of this chapter are open to **public inspection** under regulations adopted by the real estate division, except that the division may refuse to make public, unless ordered to do so by a court:

(a) Real estate brokers' and real estate salesmen's examinations;

(b) Files compiled by the division while investigating possible violations of this chapter or chapter 119 of NRS; and

(c) The criminal and financial records of licensees, applicants for licenses and owner-developers.

3. Copies of all records and papers in the office of the division, certified and authenticated by the seal of the division, must be received in evidence in all courts equally and with like effect as the originals.

[Part 6:150:1947; A 1949, 433; 1955, 131]--(NRS A 1963, 665; 1975, 1541; 1979, 1537)

ESCROW AGENCIES AND AGENTS

Sec. 183. 645A.050 Duties of commissioner.

1. Subject to the administrative control of the director of the department of commerce, the commissioner [commissioner of financial institutions] shall exercise general supervision and control over escrow agents and agencies doing business in the State of Nevada.

2. In addition to the other duties imposed upon him by law, the commissioner shall:

(a) Adopt such regulations as may be necessary for making this chapter effective.

(b) Conduct or cause to be conducted each year an examination of each escrow agency licensed pursuant to this chapter.

(c) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter.

(d) Conduct such examinations, investigations and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of the laws of this state relating to escrow.

(e) Classify as **confidential** the financial statements of an escrow agency and those records and information obtained by the division which:

(1) Are obtained from a governmental agency upon the express condition that they remain **confidential**.

(2) Consist of information compiled by the division in the investigation of possible violations of this chapter.

This paragraph does not limit examination by the legislative auditor or any other person pursuant to a court order.

3. An escrow agency may engage a certified public accountant to perform such an examination in lieu of the division. In such a case, the examination must be equivalent to the type of examination made by the division and the expense must be borne by the escrow agency being examined.

4. The commissioner shall determine whether an examination performed by an accountant pursuant to subsection 3 is equivalent to an examination conducted by the division. The commissioner may examine any area of the operation of an escrow agency if the commissioner determines that the examination of that area is not equivalent to an examination conducted by division.

(Added to NRS by 1973, 1308; A 1973, 1669; 1985, 1812; 1991, 1850)

Sec. 184. 645A.080 Information open to public inspection; exception. Except as otherwise provided by law, all papers, documents, reports and other written instruments filed with the commissioner pursuant to this chapter are open to **public inspection**, except that the commissioner may withhold from **public inspection** for such time as he considers necessary any information which in his judgment the public welfare or the welfare of any escrow agent or agency requires to be so withheld.

(Added to NRS by 1973, 1312; A 1985, 1813; 1991, 1852)

MORTGAGE COMPANIES

Sec. 185. 645B.060 Duties of commissioner.

1. Subject to the administrative control of the director of the department of commerce, the commissioner [commissioner of financial institutions] shall exercise general supervision and control over mortgage companies doing business in this state.

2. In addition to the other duties imposed upon him by law, the commissioner shall:

(a) Adopt reasonable regulations as may be necessary for making effective this chapter, except as to loan brokerage fees.

(b) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter.

(c) Conduct such examinations, periodic or special audits, investigations and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of the laws of this state regarding mortgage companies.

(d) Classify as **confidential** certain records and information obtained by the division when those matters are obtained from a governmental agency upon the express condition that they remain **confidential**. This paragraph does not limit examination by the legislative auditor.

(e) Conduct such examinations and investigations as are necessary to ensure that mortgage companies meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination a mortgage company shall pay a fee based on the rate established pursuant to NRS 658.101.

(Added to NRS by 1973, 1538; A 1973, 1669; 1981, 1789; 1983, 1380, 1703; 1987, 1878, 2224)

Sec. 186. 645B.090 Information open to public inspection; exception. Except as otherwise provided by law, all papers, documents, reports and other written instruments filed with the commissioner under this chapter are open to **public inspection**, except that the commissioner may withhold from **public inspection** for such time as he considers necessary any information which in his judgment the public welfare or the welfare of any mortgage company requires to be so withheld.

(Added to NRS by 1973, 1543; A 1983, 1704; 1987, 1880)

APPRAISERS OF REAL ESTATE

Sec. 187. 645C.220 Maintenance of records; availability of records for inspection.

1. The division [real estate division of the Department of Commerce] shall maintain a record of:

(a) Persons whose applications for a certificate, license or registration card have been denied;

(b) Investigations conducted by it which result in the initiation of formal disciplinary proceedings;

(c) Formal disciplinary proceedings; and

(d) Rulings or decisions upon complaints filed with it.

2. Except as otherwise provided in this section, records kept in the office of the division pursuant to this chapter are open to the public for inspection pursuant to regulations adopted by the commission. The division may keep **confidential**, unless otherwise ordered by a court:

(a) Examinations for a certificate or license;

(b) Information obtained by the division while investigating alleged violations of this chapter; and

(c) The criminal and financial records of an appraiser or intern, or an applicant for a certificate, license or registration card.

(Added to NRS by 1989, 825; A 1991, 888)

PRIVATE INVESTIGATORS, PRIVATE PATROLMEN, POLYGRAPHIC EXAMINERS, REPOSSESSORS AND DOG HANDLERS

Sec. 188. 648.033 Public records of board; confidential information; release.

1. The board [private investigator's licensing board] shall maintain a public record of:

(a) The business it transacts at its regular and special meetings; and

(b) The applications received by it together with the record of the disposition of each application.

2. Information obtained by the board from other than public sources concerning the:

(a) Financial condition; or

(b) Criminal record,

of an applicant or a licensee is **confidential** and may be revealed only to the extent necessary for the proper administration of the provisions of this chapter.

3. The board may release information described in subsection 2 to an agency of the Federal Government, of a state or of a political subdivision of this state.

4. The board shall adopt by regulation a procedure for notifying the applicant or licensee of the release of **confidential** information pursuant to subsections 2 and 3. The board shall release information described in subsection 2 concerning an applicant or licensee to the applicant or licensee upon request.

(Added to NRS by 1985, 1330)

Sec. 189. 648.197 Chronological log; polygraph charts; records; release of results of polygraphic examination.

1. Each examiner or intern shall maintain a chronological log of all polygraphic examinations which he administers. The log must include the date of each examination, the name of the person examined, and an identifying case or file number.

2. All polygraphic charts must be identified with the name of the person examined, the date of the examination, an identifying case or file number and the signature or initials of the examiner or intern.

3. The records of a polygraphic examination, including the written consent of the person examined, the questions asked, notes and charts obtained during the examination, must be maintained in a manner which protects their **confidentiality** by the examiner or intern or his employer, for a period of not less than 3 years.

4. Except when ordered to do so by a court of competent jurisdiction, or as otherwise provided by law, a person who possesses the results of a polygraphic examination or information obtained during a polygraphic examination shall not release the results or the information obtained without the written consent of the person examined.

(Added to NRS by 1985, 1332)

Sec. 190. 648.199 Availability of charts and records of examination to other polygraphic examiners. An examiner or intern may make charts and other records of an examination available to another polygraphic examiner or intern or group of polygraphic examiners or interns, including the board and its representatives, for the purpose of consultation or review under conditions which ensure the **confidentiality** of the examination and its results.

(Added to NRS by 1985, 1332)

COLLECTION AGENCIES

Sec. 191. 649.065 Records of commissioner: Contents; inspection.

1. The commissioner [commissioner of financial institutions] shall keep in his office, in a suitable record provided for the purpose, all applications for certificates, licenses and all bonds required to be filed under this chapter. The record must state the date of issuance or denial of the license or certificate and the date and nature of any action taken against any of them.

2. All licenses and certificates issued must be sufficiently identified in the record.

3. All renewals must be recorded in the same manner as originals, except that, in addition, the number of the preceding license or certificate issued must be recorded.

4. Except for **confidential** information contained therein, the record must be open for inspection as a public record in the office of the commissioner.

[12:237:1931; 1931 NCL § 1420.11]--(NRS A 1959, 828; 1969, 841; 1983, 1711; 1985, 314, 376; 1987, 1888)

EXAMINATIONS AND REPORTS (Banking)

Sec. 192. 665.075 Report furnished bank for confidential use of directors; disclosure of contents prohibited; exception.

1. The report of examination made by an examiner of the division of financial institutions is designed for use in the supervision of the bank. The bank's copy of the report is the property of the commissioner and is furnished to the bank solely for its **confidential** use.

2. The bank's directors, in keeping with their responsibilities both to depositors and to stockholders, shall thoroughly review the report. Under no circumstances may the bank, or any of its directors, officers or employees disclose or make public in any manner the report or any portion thereof. The report must not be made available to other banking institutions in connection with proposed transactions such as mergers and consolidations. The report must not be made available to a clearing house association, but a bank may voluntarily disclose information concerning its affairs to a clearing house association where a disclosure is through reports prepared by the bank or by others at the request of the bank.

(Added to NRS by 1971, 995; A 1983, 1745; 1987, 1921)

Sec. 193. 665.130 Receipt and certification of reports; disclosure of reports and other information; public records.

1. The commissioner shall receive and place on file in his office all reports required by law and shall certify all reports required to be published. The reports filed with or prepared by the division of financial institutions and other information obtained from a depository institution are not public records and **may not be disclosed** except as provided in this section and NRS 665.133.

2. The following records and information are open to the public:

(a) Information contained in an application filed pursuant to NRS 666.225 to 666.375, inclusive, unless the applicant requests confidentiality and the commissioner grants the request; and

(b) Any other information which by specific statute is made generally available to the public.

(Added to NRS by 1985, 2148; A 1987, 1922)

PROHIBITED PRACTICES AND PENALTIES (Banking)

Sec. 194. 668.085 Unauthorized disclosure of confidential information; penalty. If any person fails to keep secret the facts and information obtained in the course of, or as a result of, an examination of a bank, except when the duty of such examiner or employee requires him to report upon or take official action regarding the affairs of such bank, he is guilty of a misdemeanor.

(Added to NRS by 1971, 1007)

ISSUERS OF INSTRUMENTS FOR
TRANSMISSION OR PAYMENT OF MONEY

Sec. 195. 671.170 Investigations and hearings; confidential communications.

1. The commissioner [commissioner of financial institutions] may conduct any necessary investigations and hearings to determine whether any licensee or other person has violated any of the provisions of this chapter or whether any licensee has conducted himself in a manner which requires the suspension, revocation or denial of renewal of his license.

2. In conducting any investigation or hearing pursuant to this chapter, the commissioner, or any person designated by him, may require the attendance and testimony of any person and compel the production of all relevant books, records, accounts and other documents. The cost of any examination or investigation, not to exceed $10 an hour, must be borne by the licensee.

3. The commissioner may require any licensee to submit such reports concerning his business as the commissioner deems necessary for the enforcement of this chapter.

4. All reports of investigations and examinations and other reports rendered pursuant to this section, and all correspondence and memoranda relating to or arising therefrom, including any authenticated copies thereof in the possession of any licensee or the commissioner, are **confidential** communications, are not subject to any subpena, and must not be made public unless the commissioner determines that justice and the public advantage will be served by their publication. This subsection does not preclude any party to an administrative or judicial proceeding from introducing into evidence any information or document otherwise available or admissible.

(Added to NRS by 1977, 1087; A 1983, 1769; 1987, 1954)

Sec. 196. 673.430 Annual reports: Filing; form and contents; fees; penalty.

1. Each association doing business in this state shall file annually with the commissioner [commission of financial institutions] on or before March 1, a sworn statement in two sections.

2. One section of the annual report must contain, in such form and detail as the commissioner may prescribe, the following:

(a) The amount of authorized capital by classes and the par value of each class of stock.

(b) A statement of its assets, liabilities and capital accounts as of the immediately preceding December 31.

(c) Any other facts which the commissioner requires.

This section must be furnished in duplicate, one certified copy to be returned for publication at least two times in a newspaper having a general circulation in each county in which the association maintains an office. Publication must be completed on or before May 1, and proof of publication must be filed in the office of the commissioner.

3. One section of the annual report must contain such other information as the commissioner may require to be furnished. This section need not be published and must be treated as **confidential** by the commissioner.

4. The commissioner may impose and collect a penalty of $5 for each day the annual report is overdue, up to a maximum of $500. Every association shall pay to the commissioner for supervision and examination a fee based on the rate established pursuant to NRS 658.101.

5. All sums so received by the commissioner must be delivered to the state treasurer and paid into the state general fund.

[Part 21:51:1931; 1931 NCL § 970.20]--(NRS A 1957, 757; 1961, 773; 1963, 470; 1965, 1139; 1967, 979; 1969, 978; 1973, 728; 1977, 499; 1979, 1296; 1983, 1792; 1987, 1975, 2226; 1989, 921)

THRIFT COMPANIES

Sec. 197. 677.243 Records of employees; confidentiality.

1. Each licensee must maintain a record that includes for each employee:

(a) His full name;

(b) The address of each place at which he has resided during the previous 10 years;

(c) The name and address of each employer during the previous 10 years;

(d) A recent photograph of the employee measuring 3 by 5 inches; and

(e) Any alias used by the employee.

2. The information contained in this record must be provided to the commissioner [commissioner of financial institutions] upon his request but is otherwise **confidential**.

(Added to NRS by 1985, 2193; A 1987, 2000)

COMMISSIONER OF INSURANCE

Sec. 198. 679B.152 Review of fees for medical or dental care determined to be usual and customary; plans limiting selection of dentist.

1. Every insurer or organization for dental care which pays claims on the basis of fees for medical or dental care which are "usual and customary" shall submit to the commissioner a complete description of the method it uses to determine those fees. This information must be kept **confidential** by the commissioner. The fees determined by the insurer or organization to be the usual and customary fees for that care are subject to the approval of the commissioner as being the usual and customary fees in that locality.

2. Any contract for group, blanket or individual health insurance and any contract issued by a nonprofit hospital, medical or dental service corporation or organization for dental care, which provides a plan for dental care to its insureds or members which limits their choice of a dentist, under the plan to those in a preselected group, must offer its insureds or members the option of selecting a plan of benefits which does not restrict the choice of a dentist. The selection of that option does not entitle the insured or member to any increase in contributions by his employer or other organization toward the premium or cost of the optional plan over that contributed under the restricted plan.

(Added to NRS by 1983, 2028; A 1985, 1148)

Sec. 199. 679B.159 Report of violation to commissioner; confidentiality of report.

1. Every insurer, agent, solicitor, broker, administrator or other person who has knowledge of a violation of any provision of this code shall promptly report the facts and circumstances pertaining to the violation to the commissioner.

2. If a person who submits information pursuant to subsection 1 so requests, the commissioner shall keep the person's name and the information **confidential**.

(Added to NRS by 1985, 1063)

Sec. 200. 679B.190 Records: Inspection; confidentiality; destruction.

1. The commissioner shall carefully preserve in the department and in permanent form all papers and records relating to the business and transactions of the department and shall hand them over to his successor in office.

2. Except as otherwise provided by subsections 3 and 5 and other provisions of this code, the papers and records must be open to public inspection.

3. Any records or information related to the investigation of a fraudulent claim by the commissioner are **confidential** unless:

(a) The commissioner releases the records or information for public inspection after determining that the release of the records or information will not harm his investigation or the person who is being investigated; or

(b) A court orders the release of the records or information after determining that the production of the records or information will not damage any investigation being conducted by the commissioner.

4. The commissioner may destroy unneeded or obsolete records and filings in the department in accordance with provisions and procedures applicable in general to administrative agencies of this state.

5. The commissioner may classify as **confidential** certain records and information obtained from a governmental agency or other sources upon the express condition that they remain confidential, or be deemed confidential by the commissioner. No filing required to be made with the commissioner under this code shall be deemed confidential unless expressly provided by law.

(Added to NRS by 1971, 1565; A 1983, 1386; 1991, 1617)

Sec. 201. 679B.280 Report of examination: Distribution; hearing.

1. The commissioner shall deliver a copy of the examination report to the person examined, together with a notice affording the person 10 days or such additional reasonable period as the commissioner for good cause may allow within which to review the report and recommend changes therein.

2. If so requested by the person examined, within the period allowed under subsection 1, or if deemed advisable by the commissioner without such request, the commissioner shall hold a hearing relative to the report and shall not file the report in the department for public inspection until after such hearing and his order thereon.

3. If no such hearing has been requested or held, the examination report, with such modifications, if any, thereof as the commissioner deems proper, must be accepted by the commissioner and filed in the department for public inspection upon expiration of the review period provided for in subsection 1. The report must in any event be so accepted and filed within 6 months after final hearing thereon, except that the commissioner **may withhold from public inspection** any examination report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

4. The commissioner shall forward to the person examined a copy of the examination report as filed for public inspection, together with any recommendations or statements relating thereto which he deems proper.

5. If the report concerns the examination of a domestic insurer, a copy of the report, or a summary thereof approved by the commissioner, when filed for public inspection, or if withheld from public inspection under subsection 3, together with the recommendations or statements of the commissioner or his examiner, must be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which must be held within 30 days next following receipt of the report in final form by the insurer. A copy of the report must also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, to each member of the insurer's board of directors or board of governors, if a reciprocal insurer, and the certificate of the secretary or attorney-in-fact that a copy of the examination report has been so furnished shall be deemed to constitute knowledge of the contents of the report by each such member.

(Added to NRS by 1971, 1569; A 1991, 1618).

ADMINISTRATORS, AGENTS, BROKERS AND SOLICITORS (Insurance)

Sec. 202. 683A.290 Termination of appointment of agent; termination of employment of solicitor.

1. Subject to an agent's contract rights, if any, an insurer may terminate the agent's appointment, resident or nonresident, at any time. The insurer shall promptly give written notice of termination and the effective date thereof to the commissioner, on forms furnished by the commissioner, and to the agent if reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has also given such a notice to the agent if reasonably possible.

2. Accompanying the notice of termination given the commissioner, the insurer shall, upon written request of the commissioner, file with him a statement of the cause, if any, for each termination. Any information or document so disclosed or furnished to the commissioner shall be deemed a **qualifiedly privileged communication** and is not admissible as evidence in any action or proceeding unless so permitted by the insurer in writing.

3. An agent or broker terminating the employment and license of a solicitor shall give like notice of termination and proof to the commissioner, like information as to the reasons for termination, with like status as a privileged communication unless the privilege is waived in writing by the agent or broker.

4. No agreement between an insurer and agent, or between an employing agent or broker and a licensed solicitor, affects the commissioner's termination of the appointment or license if so requested by the insurer or by the agent or broker, as the case may be.

(Added to NRS by 1971, 1648; A 1971, 1938; 1981, 1805)

TRADE PRACTICES AND FRAUDS: FINANCING OF PREMIUMS (Insurance)

Sec. 203. 686A.289 Fraudulent claims: Insurer entitled to receive information concerning claim; confidentiality of information.

1. Any insurer giving information to the commissioner [commissioner of insurance] or any investigative or law enforcement agency concerning an alleged fraudulent claim is entitled to receive, upon completion of the investigation or prosecution of the claim, whichever occurs later, any relevant information concerning the claim.

2. The commissioner or any investigative or law enforcement agency receiving information from another person, agency or insurer shall:

(a) Keep the information **confidential** and not release the information except pursuant to subsection 1;

(b) Provide information concerning its investigation of the claim to the insurer reporting the claim upon the completion of its investigation or a criminal prosecution, whichever occurs later; and

(c) Provide any documents necessary or allow its employees or agents to testify in any action by or against the insurer if the insurer or its insured furnished the information for the investigation or a criminal prosecution.

(Added to NRS by 1983, 1388)

Sec. 204. 686B.170 Examination of service organizations.

1. Whenever he deems it necessary in order to inform himself about any matter related to the enforcement of the insurance laws, the commissioner [commissioner of insurance] may examine the affairs and condition of any rate service organization under subsection 1 of NRS 686B.130. So far as reasonably necessary for an examination under this subsection, the commissioner may examine the accounts, records, documents or evidences of transactions, so far as they relate to the examinee, of any officer, manager, general agent, employee, person who has executive authority over or is in charge of any segment of the examinee's affairs, person controlling or having a contract under which he has the right to control the examinee whether exclusively or with others, person who is under the control of the examinee, or any person who is under the control of a person who controls or has a right to control the examinee whether exclusively or with others. On demand every examinee under this subsection shall make available to the commissioner for examination any of its own accounts, records, documents or evidences of transactions and any of those of the persons listed in this subsection.

2. The commissioner shall examine every licensed rate service organization at intervals to be established by rule.

3. In lieu of all or part of an examination under subsections 1 and 2, or in addition to it, the commissioner may order an independent audit by certified public accountants or actuarial evaluation by actuaries approved by him of any person subject to the examination requirement. Any accountant or actuary selected shall be subject to rules respecting conflicts of interest promulgated by the commissioner. Any audit or evaluation under this subsection shall be subject to subsections 6 to 15, inclusive, so far as appropriate.

4. In lieu of all or part of an examination under this section, the commissioner may accept the report of an audit already made by certified public accountants or actuarial evaluation by actuaries approved by him, or the report of an examination made by the insurance department of another state.

5. An examination may but need not cover comprehensively all aspects of the examinee's affairs and condition. The commissioner shall determine the exact nature and scope of each examination, and in doing so shall take into account all relevant factors, including but not limited to the length of time the examinee has been operating, the length of time he has been licensed in this state, the nature of the services provided, the nature of the accounting records available and the nature of examinations performed elsewhere.

6. For each examination under this section, the commissioner shall issue an order stating the scope of the examination and designating the examiner in charge. Upon demand a copy of the order shall be exhibited to the examinee.

7. Any examiner authorized by the commissioner shall, so far as necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents or property of the examinee and to those of persons under subsection 1 so far as they relate to the affairs of the examinee.

8. The officer, employees and agents of the examinee and of persons under subsection 1 shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination. A person shall not obstruct or interfere with the examination in any way other than by legal process.

9. If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the examinee.

10. The examiner in charge of an examination shall make a proposed report of the examination which shall include such information and analysis as is ordered in subsection 6, together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or his representatives at the option of the examiner in charge. The proposed report shall remain **confidential** until filed under subsection 11.

11. The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report. If a hearing is demanded, the commissioner shall give notice and hold a hearing under NRS 679B.310 to 679B.370, inclusive, except that on demand by the examinee the hearing shall be private. Within 60 days after the hearing or if no hearing is demanded then within 60 days after the last day on which the examinee might have demanded a hearing, the commissioner shall adopt the report with any necessary modifications and file it for **public inspection**, or he shall order a new examination.

12. The commissioner shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the commissioner need only so notify the examinee.

13. The examinee shall forthwith furnish copies of the adopted report to each member of its board of directors or other governing board.

14. The commissioner may furnish, without cost or at a price to be determined by him, a copy of the adopted report to the insurance commissioner of each state in the United States and of each foreign jurisdiction in which the examinee is licensed and to any other interested person in this state or elsewhere.

15. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the commissioner shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

16. The reasonable costs of an examination under this section shall be paid by the examinee except as provided in subsection 19. The costs shall include the salary and expenses of each examiner and any other expenses which may be directly apportioned to the examination.

17. The amount payable under subsection 16 shall become due 10 days after the examinee has been served a detailed account of the costs.

18. The commissioner may require any examinee, before or from time to time during an examination to deposit with the state treasurer such deposits as the commissioner deems necessary to pay the costs of the examination. Any deposit and any payment made under subsections 16 and 17 shall be deposited in the insurance examination fund.

19. On the examinee's request or on his own motion, the commissioner may pay all or part of the costs of an examination, whenever he finds that, because of the frequency of examinations or other factors, imposition of the costs would place an unreasonable burden on the examinee. The commissioner shall include in his annual report information about any instance in which he applied this subsection.

20. Deposits and payments under subsections 16 to 19, inclusive, shall not be deemed to be a tax or license fee within the meaning of any statute. If any other state charges a per diem fee for examination of examinees domiciled in this state, any examinee domiciled in that other state shall be required to pay the same fee when examined by the commissioner of insurance of this state.

(Added to NRS by 1971, 1704; A 1977, 811)

NEVADA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

Sec. 205. 686C.310 Detection and prevention of impairment or insolvency of insurers. To aid in the detection and prevention of the impairment or insolvency of insurers:

1. The board shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be impaired or insolvent. The commissioner shall report to the board when he has reasonable cause to believe from any examination, whether or not completed, that any member insurer may be impaired or insolvent.

2. The board may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be impaired or insolvent. The commissioner shall begin the examination within 30 days after receiving the request. The examination may be conducted by the National Association of Insurance Commissioners or by such persons as the commissioner designates. The cost of the examination must be paid by the association and the report treated as are other reports of examinations. The report must not be released to the board before its release to the public, but this does not excuse the commissioner from his obligation to comply with subsection 1. The commissioner shall notify the board when the examination is completed. The request for an examination must be kept on file by the commissioner but it is **not open to public inspection** before the release of the report of the examination to the public and may be released at that time only if the examination discloses that the examined insurer is impaired or insolvent.

3. The board may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any person seeking admission to transact insurance in this state. These reports and recommendations are not open to public inspection.

4. The commissioner may seek the advice and recommendations of the board concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and of persons seeking admission to transact insurance in this state.

5. The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of the insolvency of insurers.

(Added to NRS by 1973, 310; A 1991, 880)

INSURANCE GUARANTY ASSOCIATION

Sec. 206. 687A.110 Detection and prevention of insolvency: Powers and duties of board of directors. To aid in the detection and prevention of insurer insolvencies:

1. The board of directors [board of directors of insurance guaranty association] shall, upon majority vote, notify the commissioner [commissioner of insurance] of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

2. The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners' examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. Except as permitted by paragraph (c) of subsection 1 of NRS 687A.115, the commissioner shall not release an examination report to the board of directors prior to its release to the public. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to **public inspection** prior to the release of the examination report to the public.

3. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations are not public documents.

4. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

5. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

(Added to NRS by 1971, 1948; A 1977, 437)

Sec. 207. 687A.115 Detection and prevention of insolvency: Powers of commissioner. To aid in the detection and prevention of insurer insolvencies:

1. The commissioner may:

(a) Notify the insurance commissioners of the other states and territories of the United States and of the District of Columbia when he revokes or suspends a license, or when he makes any formal order that a company restrict its writing of insurance, obtain additional contributions to surplus, withdraw from the state or reinsure any part of its business or any other account for the security of policyholders or creditors.

(b) Report to the board of directors any action set forth in paragraph (a) and the receipt of a report from another insurance commissioner indicating that the action has been taken elsewhere. The report shall contain all significant details of the action taken or the report received.

(c) Report to the board of directors when he has reasonable cause to believe from any examination of any member insurer, whether completed or in process, that the member insurer may be insolvent or in a financial condition hazardous to the interests of policyholders or the public.

(d) Furnish to the board of directors the early warning tests developed by the National Association of Insurance Commissioners. The board may use the information furnished to carry out its duties. The report and the information contained therein is not a public record and shall be kept **confidential** by the board of directors until it is made public by the commissioner or other lawful authority.

2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities relating to the financial condition of member insurers and of insurers seeking admission to transact business in this state.

(Added to NRS by 1977, 433)

TITLE INSURANCE

Sec. 208. 692A.117 Confidential records.

1. The commissioner shall classify as **confidential** the financial statements of a title agent, escrow officer and title insurer and those records and information obtained by the department which:

(a) Are obtained from a governmental agency upon the express condition that they remain confidential.

(b) Consist of information compiled by the department in the investigation of possible violations of this chapter. This paragraph does not limit examination by the legislative auditor or any other person pursuant to a court order.

2. The contents of the file for an escrow are confidential and, subject to the rights to discover the contents by subpena or other lawful process, must not be disclosed without the express written consent of one party of the escrow other than the holder of the escrow.

(Added to NRS by 1985, 1825; A 1991, 1633)

HOLDING COMPANIES

Sec. 209. 692C.420 Confidentiality of disclosed information; exception. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to NRS 692C.410, and all information reported pursuant to NRS 692C.260 to 692C.350, inclusive, shall be given confidential treatment and shall not be subject to subpena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

(Added to NRS by 1973, 1048)

DELINQUENT INSURERS

696B.550 Summary proceedings: Conduct of administrative and judicial hearings.

1. The commissioner [of insurance] shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing must be public.

2. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.

3. In all summary proceedings and judicial reviews thereof, all records of the insurer, other documents and all department files and court records and papers, so far as they pertain to or are part of the record of the summary proceedings, are **confidential** except as necessary to obtain compliance therewith, unless the court after hearing arguments by the parties in chambers, orders otherwise, or unless the insurer requests that the matter be made public. Until the court otherwise orders, all papers filed with the clerk of the court must be held by him in a confidential file.

4. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give the person an opportunity to appear, on such terms as may be reasonable and just.

(Added to NRS by 1971, 1904; A 1991, 1635)

Sec. 210. 697.250 Termination of appointment.

1. An insurer may terminate an appointment at any time. The insurer shall promptly give written notice of termination and the effective date thereof to the commissioner [of insurance], on forms furnished by the commissioner, and to the bail agent if reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has also given such a notice to the agent if reasonably possible.

2. Accompanying each notice of termination given to the commissioner, the insurer shall file with him a statement of the cause, if any, for the termination. Any information or documents so disclosed to the commissioner shall be deemed an **absolutely privileged communication**, and the information or documents are not admissible as evidence in any action or proceedings unless their use as evidence is permitted by the insurer in writing.

3. A bail bondsman terminating the appointment and license as such of a bail solicitor shall give like notice of termination, with like status as a privileged communication unless the privilege is waived in writing by the bail agent.

4. No agreement between an insurer and a bail agent or between an employing bail bondsman and a licensed bail solicitor affects the commissioner's termination of the appointment or license if the termination is requested by the insurer or the employing bail agent, as the case may be.

(Added to NRS by 1971, 1912; A 1981, 1812)

REGULATION OF PUBLIC UTILITIES GENERALLY

Sec. 211. 704.190 Report and investigation of accident; regulations; confidentiality of reports.

1. Every public utility operating in this state shall, whenever an accident occurs in the conduct of its operation causing death, give prompt notice thereof to the commission, [Public Service Commission of Nevada] in such manner and within such time as the commission may prescribe. If in its judgment the public interest requires it, the commission may cause an investigation to be made forthwith of any accident, at such place and in such manner as the commission shall deem best.

2. Every such public utility shall report to the commission, at the time, in the manner and on such forms as the commission shall by its printed rules and regulations prescribe, all accidents happening in this state and occurring in, on or about the premises, plant, instrumentality or facility used by any such utility in the conduct of its business.

3. The commission shall promulgate and adopt all reasonable rules and regulations necessary for the administration and enforcement of this section. Such rules and regulations shall in any event require that all accidents required to be reported herein shall be reported to the commission at least once every calendar month by such officer or officers of the utility as the commission shall direct.

4. The commission shall adopt and utilize all accident report forms, which forms shall be so designed as to provide a concise and accurate report of the accident and which report shall in any event show the true cause of the accident. The accident report forms adopted for the reporting of railroad accidents shall be the same in design as near as may be as the railroad accident report forms provided and used by the Interstate Commerce Commission.

5. If any accident reported to the commission shall be reported by the utility as being caused by or through the negligence of an employee and thereafter such employee is absolved from such negligence by the utility and found not to be responsible for the accident, such fact shall be reported by the utility to the commission.

6. All accident reports herein required shall be filed in the office of the commission and there preserved. Notwithstanding any other provisions of law, neither any accident report made as required by this chapter, nor any report of the commission made pursuant to any accident investigation made by it, shall be open to **public inspection** or disclosed to any person, except upon order of the commission, nor shall either or any of the reports, or any portion thereof, be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in the accident report or report of any such investigation.

[34:109:1919; A 1937, 404; 1931 NCL § 6134]--(NRS A 1967, 1384)

Sec. 212. 706.251 Report of accident: Requirements; preservation; confidentiality.

1. Every person operating a vehicle used by any motor carrier under the jurisdiction of the commission [Public Service Commission of Nevada] shall forthwith report each accident occurring on the public highway, wherein the vehicle may have injured the person or property of some person other than the person or property carried by the vehicle, to the sheriff or other peace officer of the county where the accident occurred. If the accident immediately or proximately causes death, the person in charge of the vehicle, or any officer investigating the accident, shall furnish to the commission such detailed report thereof as required by the commission.

2. All accident reports required in this section must be filed in the office of the commission and there preserved. An accident report made as required by this chapter, or any report of the commission made pursuant to any accident investigation made by it, is not open to **public inspection** and must not be disclosed to any person, except upon order of the commission. The reports must not be admitted as evidence or used for any purpose in any action for damages growing out of any matter mentioned in the accident report or report of any such investigation.

(Added to NRS by 1971, 694; A 1979, 1750; 1987, 736)

OIL PIPELINES

Sec. 213. 708.080 Publication of tariffs; reports; investigation of books; limitation on disclosure of reports by commission; hearings and enforcement of orders.

1. Such common carriers of crude oil or petroleum shall make and publish their tariffs under such rules and regulations as may be prescribed by the commission.

2. The commission shall require such common carriers to make reports, and may investigate their books and records kept in connection with such business, but **no publicity** shall be given by the commission to the reports as to the stock of crude oil or petroleum on hand of any particular pipeline. In its discretion, the commission may make public the aggregate amounts held by all the pipelines making such reports, and of their aggregate storage capacity.

3. The commission shall have the power and authority:

(a) To hear and determine complaints.

(b) To require attendance of witnesses and pay their expenses.

(c) To institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

[6:227:1921; NCL § 4950]--NRS A 1971, 225)