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DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

PUBLIC RECORD REQUEST POLICY AND PROCEDURE

1. Purpose/Mission/Scope

To establish a process for responding to public records requests that are made to the Department of Business and Industry, Division of Industrial Relations (DIR), and its Workers' Compensation Section (WCS), Occupational Safety and Health Administration (OSHA), Mechanical Compliance Section (MCS), Safety Consultation and Training Section (SCATS) and Mine Safety and Training Section (MSATS). If you have questions about how to respond to a public records request, please contact the DIR's Legal Section.

2. Records Official/Custodian/DAG Selection

Each State agency, including the DIR, must have a records official. The records official for DIR is the Division's Senior Division Counsel. Each Section of the Division shall also have a Section's records official, listed below. DIR management or Division's Senior Counsel may also designate a Legal Researcher to help each Section's records official log and respond to public records requests.

Section's records officials are:

Workers' Compensation Section
North: Dock Williams
South: Angelique Norte

Occupational Safety and Health Administration
North: Jodi Williams; Brittany Greeman, Alternate
South: Evelyn Rankin

Mechanical Compliance Section
North: Sherry Cusato
South: Kelly Toscano

Safety Consultation and Training
North: Andy Giddings
South: Todd Schultz

Mine Safety and Training Section
All offices: Lisa Olson

(Rev. Dec. 2014)

All record requests received by the DIR should be forwarded *immediately* to the Section's records official and his or her designee. The Section's records official should then work with the Section Chief for the subject area in order to determine the timeline for the DIR's response to as well as the content of the response. In handling the records request, the Section's records official shall follow the procedure outlined below in paragraph 4.

3. What is a Public Record?

There is no Nevada statute that defines a public record. Generally, all books and records of a governmental entity are presumed to be public records and include information and other documents created or accumulated in the course of conducting public business that document the activities and business of public employees.

A public record is a "record," not simply information. If a record does not already exist, there is generally no duty to create a record in response to a public records request. *Letter to Ms. Lockard*, Op. Nev. Att'y. Gen. No. 2000-12 (April 28, 2000). *See also Public Employees' Retirement System of Nevada v. Reno Newspapers, Inc.*, 313 P.3d 221, 129 Nev. Adv. Op. 88 (Nov. 14, 2013).

A record is not available to the public if it is declared by law to be confidential. See NRS 239.010(1). A record may also be confidential if it is privileged or if a common-law balancing of the interests test shows that the public interest in disclosure is outweighed by other interests such as privacy, the ability of the agency to perform its function, or other substantial concerns. However, there is a strong presumption in favor of disclosure, so exemption, exception or balancing tests must be narrowly construed. See NRS 239.001(3). A copy of the statutes and regulations which make certain Division records or information confidential and not subject to disclosure is attached hereto as Appendix "A."

4. Procedures

a. A copy of all requests for public records to the DIR should be immediately forwarded to the public records official and his or her designee who will ensure that the request is logged in the Division's Public Records Request Log. A copy of the Log is attached hereto as Appendix "B."

   i. The Section's records official or his or her designee shall acknowledge receipt of the request in writing. If the request is received by e-mail, this acknowledgement also may be sent by e-mail.
   ii. The Section's records official or his or her designee will forward the request to the Section in the DIR which may best be able to respond and/or where the records are maintained.

b. The Section's records official ensures that, within five (5) business days from receipt of the request, one of the following occur:

   i. The requester inspects the record or receives copies of the record, as requested;
   ii. If the DIR does not have legal custody of the record, written notice of that fact and the name and address of the governmental entity that has legal custody of the record, if known, is provided to the requester;
   iii. If the record has been destroyed pursuant to the DIR's records retention schedule, written notice of that fact is provided to the requester;
   iv. If the Section is unable to provide the record by the end of the fifth business day after the request is received, written notice of that fact and a date and time after which the record will be available for the person to inspect or copy is provided to the requester. If this is known at the time the acknowledgment is sent to the requester, see above paragraph a(i), this information may be included with the acknowledgment sent by the records official or his or her designee; or
   v. If the request may be denied because the record is confidential, written notice of that fact and a citation to the specific status or other legal authority that makes the record confidential is provided to the requester.

c. The requester is to be advised, in advance, of the volume or list of records encompassing the request and the potential cost to provide the records if applicable. Copies of records shall be furnished upon payment of associated fees.

   i. The requester is to be advised that reproduced materials will be held for fourteen (14) days and subsequently destroyed if not claimed.
   ii. If the cost of reproduction exceeds $25, the requester is to be advised that advance payment in full will be required to process the request(s).

d. Extraordinary Requests

   i. When the Section's records official reviews a public record request, it may be determined that the request will require significant use of personnel or resources to produce and be designated as an Extraordinary Public Record Request.
   ii. Such a request may apply to individual or multiple offices.
   iii. Fees may be imposed in accordance with NRS 239.055.
   iv. The requester is to be advised if the cost of the request exceeds $25 and that payment in full of the minimum estimated amount will be required to process the request.
   v. The amount deposited by the requester shall include the estimated man power costs to retrieve the record(s) for inspection or the estimated charges to retrieve and reproduce the record(s).

vi. Data requests for electronic databases, electronic records or services that are value-added products and beyond the normal scope of the Section's workload will be provided as the appropriate resources are available to fulfill the request.

vii. The criterial above are guidelines which may be expanded depending upon the circumstances of the request.

5. Fees

No fees will be charged until the total costs reach $10. No cost will be assessed for inspection of existing records unless staff time to retrieve or otherwise process the records exceeds one hour.

If estimated staff time exceeds one hour, the requestor is responsible for the staff time incurred, which is due and payable before inspection of the records will begin. Fees for staff time are chargeable when records are reviewed or inspected at a Division office, but not when copies are requested or produced. Estimates of costs will be provided in advance if the costs are projected to exceed $25.

Staff time (for retrieving, reviewing, redacting or otherwise processing records requests for inspection) shall be billed as follows:**

a. $12/hr. per staff member (Grades 10-19)
b. $18/hr. per staff member (Grades 20-29)
c. $27/hr. per staff member (Grades 30-39)
d. $30/hr. per legal researcher (unclassified)
e. $40/hr. per division counsel (unclassified)
f. $50/hr. per staff member (Grades 40+)
g. $51/hr. per senior division counsel (unclassified)

Copying fees:

a. Black and white copies, up to 8.5" x 14":	$.50/per page
b. Color, up to 8.5" x 14":	$.50/per page
c. Compact Disc/DVD	$5/per disc
d. Certified true copies:	$5/per page

Court reporter transcripts:

If the public records request includes a court reporter's transcript, the Section's records official shall prepare and send a response to the requester advising of the name and address of the court reporting agency, the caption of the reported matter, the date of the transcript and that the transcript can be obtained directly from the court reporting agency. *See* NRS 239.053.

Postage:

The requester is responsible for estimated postage.

Payment:

Payment may only be made by check or money order made out to the "Division of Industrial Relations."

***Fee Cap*: Staff time will not be charged for providing copies of documents, which will be charged at $.50 per page.

6. General Policies for Processing Public Records Requests

   a. All public records, unless declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be copied.
   b. Original public records must not be removed from the Section's Offices during inspection by member of the public and must be monitored by an employee while any review is being conducted.
   c. Fees for inspection and copies of public records are outlined in the Fee Schedule for Requests for Public Records.
   d. If a record contains information deemed confidential, a request to inspect or copy the record cannot be denied if the confidential information can be redacted, deleted, concealed, or separated from the record, so the remainder of the record can be inspected or copied.
   e. Electronic databases that contain the electronic mail addresses and/or telephone numbers of individuals that have provided the addresses or numbers for the purpose of or in the course of communicating with the Department of Business and Industry, Division of Industrial Relations are confidential and may not be disclosed in its entirety as a single unit unless in response to an order issued by a court. However, individual telephone numbers or electronic mail addresses of a person are not confidential and may be disclosed individually.
   f. Public records must be provided in any medium in which they are readily available. The custodian of record shall not refuse to provide a copy of the record in a readily available medium because he/she has already prepared or would prefer to provide the copy in a different medium.
   g. Public Records Requests must be responded to no later than the end of the fifth business day after the date on which the request is received by the Division. The response may include an estimate of the time it will require to provide access or a copy.
   h. Public record requests may be written or verbal. However, requests involving an extraordinary use of personnel time, must be submitted in writing.
   i. If a person responding in the Section of DIR where the records are maintained or which is responsible for the subject matter of the request has questions concerning inspection or reproductions of a requested document, he or she should consult the Section's

records official and/or his or her designee. Likewise, if the Section's records official and/or his or her designee have questions concerning inspection or reproduction of a requested document, he or she should consult the DIR Senior Division Counsel and/or his or her designee. These individuals will assist with the issues of whether:

i. The item requested is actually a public record, available for review and reproduction;
ii. The item requested is a public record which some special legal considerations might dictate should not be made available for inspection and reproduction; and
iii. If a legal balancing test is to be performed, the requestor should be informed and then notified as soon as a decision has been made. Balancing tests should be performed without delay.

j. Copyrighted materials may be duplicated-without risk of infringement-when reproduction is for the specific purpose of: "criticism, comment, news reporting, teaching, scholarship, or research" (17 U.S.C.A. Sec. 107). When the custodian is aware that some other use is intended, consultation with the Deputy Attorney General assigned to the agency may be necessary to insure there is no infringement by reproduction of copyrighted material.
k. Confidential records of federal, state, and local governments shared with DIR MUST NOT be disclosed without prior written authorization from that government agency. Further, mere possession of records or information may not mean that the DIR has legal custody or control over those records. *See* NAC 239.041.
l. Without prior written authorization from the governmental agency, the detail or description of work or tasks performed contained in DIR billing records must be redacted. The number of hours spent on a matter, however, is generally not confidential information.
m. Telephone numbers and/or e-mail addresses maintained in a database by the DIR for the purpose of and/or in the course of a person's communications with the DIR are confidential and are not deemed a public book or record. *See* NRS 239B.040.
n. The Public Records Request Form and accompanying documents and correspondence will be kept according to the appropriate state records retention schedule and may be a public record.
o. A copy of the Fee Schedule for Requests for Public Records, attached hereto as Exhibit "C", must be posted in public view in each office of the Division of Industrial Relations.

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