



## City of Henderson Public Records Policy

### I. Policy

In order to foster democratic principles by providing all members of the public with access to inspect and copy public books and record permitted by law, it is the policy of the City of Henderson, Nevada to operate an effective and efficient records management program that: 1) Encourages transparency and public participation in government; 2) Complies with all applicable state and federal laws; 3) Includes processes and procedures that protect confidential records from disclosure; and 4) Promotes innovation and collaboration.

In accordance with the policy, the City is committed in responding to requests to inspect or receive copies of public records maintained by the City in an orderly, consistent, and lawful manner.

Disclosure of public records, which would invade a person's right to privacy, hinder law enforcement, endanger public safety, breach a legally recognized duty of confidence, or which constitute attorney-client communications between City staff and the Office of the City Attorney, may not be available for public inspection.

A determination of whether to disclose potentially confidential information shall be made in consultation with the Office of the City Clerk prior to any determination of disclosure and response made by any City Department.

### II. Purpose

The City of Henderson recognizes that Nevada Public Records Law (NRS 239.001-239.340) gives members of the public, including the media the right to inspect and copy certain public records maintained by the City. The purpose of this Public Records Policy is **(a)** to establish an orderly and consistent procedure for receiving and responding to public records requests from the public and media; **(b)** to establish the basis for a fee schedule designed to reimburse the City for the actual costs incurred in responding to public records requests; and **(c)** to inform citizens and members of the media of the procedures and guidelines that apply to public records requests.

### III. Records Request Procedure

It is recommended that public records requests be made via [Contact Henderson from the City of Henderson webpage \(www.cityofhenderson.com\)](http://www.cityofhenderson.com), as this helps to reduce the confusion about the information being requested, and effectively communicates your request to help ensure a timely response. Public records requests can also be made over the telephone or through written correspondence. Public records requests by a member of the media will be handled by the City of Henderson Department of Communications (702) 267- 2020. Additionally, public records request may be made by contacting the City Clerk's Office at (702) 267-1410.

Requests should identify as specifically as possible the subject matter, approximate dates, types of records requested, and desired method of delivery of responsive records. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of the City who has legal custody or control of a public record shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

Upon receipt of a public records request, Staff shall determine resources required to provide all requested records and prepare an estimate of fees if applicable. Staff shall contact the requestor through the Contact Henderson system prior to five (5) business days. If applicable, the estimate of fees must be provided to the requestor at this time. Depending on the scope and magnitude of the records request, a fifty (50) percent deposit of fees prior to the start of research may be required. If a deposit is required or an estimate of fees is provided, staff shall wait for requestor approval of the fee estimate prior to continuing the work. The remainder of fees must be paid before records are delivered. If staff are unable to provide the records within five business days, staff shall provide the requestor, in writing, with notice of one of the following:

- 1) If the department does not have legal custody or control of the requested record, staff shall communicate to the requestor the name and address of the governmental entity that has legal custody or control of the record, if known.
- 2) If the record has been destroyed, staff shall communicate so to the requestor and cite approved records retention schedule.
- 3) If the department is unable to make the record available by the end of the fifth business day after receiving the request, staff shall specify to the requestor an estimated date and time the record will be available.
- 4) If the record or any portion thereof is confidential, and access is denied, staff shall communicate this to the requestor and cite the specific statute or other legal authority that declares the record and/or any portion of the record to be confidential.
- 5) The requested record has been located and is being made available to the requestor.
- 6) If the department is not yet able to provide a definitive reply, responsive records, or an estimated date and time when any records would be available because additional information or clarification is needed from the requestor regarding the request.

Public records requests apply only to existing records. Some public records requests are requests for information that would require the creation of a new public record. Public bodies are not obligated under Nevada's Public Records Act to create any new public records where none exists in order to respond to requests for information (NAC 239.867).

Nonrecord materials are not considered official public records and are not subject to disclosure under the Nevada Public Records law. Nonrecord materials are published materials printed by a governmental printer, worksheets, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a local governmental entity (NAC 239.051).

#### IV. Public Records Exempt from Disclosure

Public records that are deemed confidential by law are exempt from disclosure. The most common public records that are deemed confidential are as follows:

- A. **Personal Identifying Information – NRS 239B.030 (7)(a).** Each governmental agency shall ensure that any personal information contained in a document that has been recorded, filed or otherwise submitted to the governmental agency, which the governmental agency continues to hold, is maintained in a confidential manner if the personal information is required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant. Personal information is defined as a person's first name or first initial and last name in combination with any one or more of the following data elements, when the name and data are not encrypted: (1) Social security number; (2) Driver's license number, driver authorization card number or identification card number; (3) Account number, credit card number or debit card number, in combination with any required security code, access code or password; (4) Medical identification number or a health insurance identification number; or (5) User name, unique identifier or electronic mail address in combination with a password, access code or security question that would permit access to an online account (NRS 603A.040).
- B. **Bids and Proposals under Negotiation or Evaluation – NRS 332.061(2).** Bids which contain a provision that requires negotiation or evaluation may not be disclosed until the bid is recommended for award of a contract. Upon award of the contract, all the bids, successful or not, with the exception of proprietary/confidential information, are public record and copies shall be made available upon request.
- C. **Bids and Proposals Containing Proprietary Information – NRS 332.061(1).** Proprietary information does not constitute public information and is confidential.
- D. **Recreation Program Registration – NRS 239.0105.** Records of recreational facility/activity registration where the name, address, and telephone number of the applicant are collected are confidential.
- E. **Emergency Action Plans and Infrastructure Records – NRS 239C.210(2).** Records detailing the City's Emergency Response Plans and critical infrastructure are restricted and may be confidential under state law.
- F. **Personnel Records –** To the extent permitted by law, specific types of information contained within employee personnel records are confidential. General categories of information include, but are not limited to, resumes, job applications, licenses and certificates, job descriptions, promotions, demotions, disciplinary records, wage information, policy acknowledgments, contracts for employment and other similar documents.
- G. **Databases Containing Electronic Mail Addresses or Telephone Numbers – NRS 239B.040.** Electronic mail addresses and/or telephone numbers collected for the purpose of or while communicating with the City may be maintained in a database. This database is confidential in its entirety, is not public record, and it must not be disclosed in its entirety as a single unit; however,

the individual electronic mail address or telephone number of a person is not confidential and may be disclosed individually.

- H. **Protected Medical Records – HIPAA 45 CFR Part 160 and Part 164.** Medical records collected during medical transports may only be disclosed to the patient or as authorized by the patient. Medical records related to the City of Henderson Self-Funded Health Insurance Plan are also confidential. The City also recognizes that the health and medical records of City employees are confidential per the Americans with Disability Act and will only disclose these records as permitted by law.
- I. **Attorney/Client Privileged Records – NRS 49.095.** A lawyer shall not reveal information relating to representation of a client (RPC 1.6). Please Note: In order to prevent inadvertent or unauthorized disclosure or access to privileged information, City staff will not disclose any records marked as privileged without first contacting and getting express approval from the City Attorney's office.
- J. **Restricted Documents – NRS 239C.090, 239C.210, NRS 239C.220.** Blueprints or plans of schools, places of worship, airports other than an international airport, gaming establishments, governmental buildings or any other building or facility which is likely to be targeted for a terrorist attack, including plans detailing the location and design of City information technology, water and sewer infrastructure are considered "Restricted Documents." These plans can only be inspected after supplying: (a) name; (b) a copy of a driver's license or other photographic identification that is issued by a governmental entity; (c) the name of employer, if any; (d) citizenship; and (e) a statement of the purpose for the inspection.
- K. **Records Detailing Ongoing Investigations.** Records involving open and ongoing criminal investigations where suspects have not been identified or that have not been submitted to the appropriate prosecuting agency are considered confidential until the investigation has been completed.
- L. **Local Ethics Committee Opinions – NRS 281A.350(4).** Each request for an opinion submitted to a specialized or local ethics committee, each hearing held to obtain information on which to base an opinion, all deliberations relating to an opinion, each opinion rendered by a committee and any motion relating to the opinion are confidential unless:
  - a. The public officer or employee acts in contravention of the opinion; or
  - b. The requester discloses the content of the opinion.
- M. **Economic Development Initial Contact and Research Records--NRS 268.910.** An organization for economic development formed by one or more cities shall, at the request of a client, keep confidential any record or other document in its possession concerning the initial contact with and research and planning for that client. If such a request is made, the executive head of the organization shall attach to the file containing the record or document a certificate signed by the executive head stating that a request for confidentiality was made by the client and showing the date of the request.
- N. **Copyright Protected Material.** If the City maintains public records containing copyright protected material, the City will permit the person making the request to inspect the copyrighted material and may allow limited copying of such material if allowed under Federal copyright law. The City

may require written consent from the copyright holder or an opinion from the person's legal counsel before allowing copying of such materials.

- O. **Other Confidential Records.** In addition to records deemed confidential by statute, the City recognizes that certain records may be confidential. The City is responsible for determining what is responsive and what it may legally withhold when responding to a public records request. While there may be certain information that can be withheld or redacted because there is a statutory basis (such as those records listed above), if the City identifies a non-trivial privacy interest that clearly outweighs a public interest (as may sometimes be the case with personnel related information or investigation files), then those records may be withheld. Department directors should consult with City Manager's Office and the City Clerk to ensure consistency and compliance with applicable Nevada law.

V. Fees

NRS 239.052 authorizes the City to charge a fee for the actual cost of providing a copy of a public record. The City-wide fee schedule for public records and document services are approved and updated by the Records Committee. The City-wide fee schedule for public records and document services shall be posted on the City website and in all other locations required by NRS Chapter 239.

The current fee schedule is located on the City's website at <https://www.cityofhenderson.com/government/departments/city-clerk/public-records/records-fee-schedule>. Any Department Director may approve the waiver of fees.

Staff will prepare an estimate of the charges that will be incurred to respond to a public records request. Prepayment of the estimated charges or a fifty (50) percent deposit may be required. Unless otherwise prohibited by law, the City may, at the City's discretion, furnish copies of requested records without charge or at a reduced fee if the City determines that the waiver or reduction of fees is in the public interest.