



STATE OF NEVADA
PUBLIC EMPLOYEES' BENEFITS PROGRAM

AGENCY POLICY

Title: **PUBLIC RECORDS REQUEST**

Date Originated: 12/1/2011

Latest Revision: 7/1/2017

I. PURPOSE

To establish the policy by which the Public Employees' Benefits Program (PEBP) responds to public records requests and to ensure that confidential and restricted records are maintained and made accessible in accordance with state statutes.

II. SCOPE

Except as herein provided, all of the public records shall be open for public inspection and copying however, the Public Employees' Benefit Program (PEBP) Executive Officer may make reasonable rules governing the time, place and manner of inspection and copying. Further, copies or electronic duplicates of PEBP records may be substituted in lieu of the original records and reasonable costs may be collected. Public records, the disclosure of which would invade a persons' right to privacy, breach a legally recognized duty of confidence or which constitute attorney-client communications between PEBP staff and the Attorney General's office may not be available for public inspection. A determination of non-disclosure must be made in consultation with the Attorney General's office.

III. AUTHORITY

NRS 239 Public Records

NRS 239B Disclosure of Personal Information to Governmental Agencies

NRS 603A Security of Personal Information

NRS 603A.040 Personal Information defined

NAC 239.570 Records of State Agencies; Definitions

NAC 239.860-239.869 Availability and Inspection of Public Records

State Administrative Manual Chapter 0400 – Records

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

IV. POLICY

- 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 PEBP offices during inspection by members of the public and must be monitored by an employee while any review is being conducted.
- C. No cost will be assessed for inspection of existing records. However, copies of public records may be obtained for a standard copying fee that is 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 who have provided said addresses or numbers for the purpose of or in the course of communicating with PEBP 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 shall not refuse to provide a copy of the record in a readily available medium because he 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 PEBP.
- H. Requests for reproduction of public records should be in writing and may be faxed, e-mailed, hand delivered, mailed or submitted in person. The Public Records Request can be found on PEBP's website. This form should be utilized to obtain requestor's name, address, contact information and specific documents requested. However, if the requestor is unwilling to provide the request in writing, staff may complete a Public Records Request form on behalf of the requestor.
- I. If there is an issue concerning inspection or reproduction of a requested document, the Attorney General's Office should be consulted. The Deputy Attorney General assigned to PEBP will assist with the issues of whether:
 - 1. The item requested is actually a public record, available for review and reproduction; or
 - 2. The item requested is a public record which some special legal considerations dictate should not be made available for inspection and reproduction.
 - 3. Items falling under 2 above involve conducting a legal balancing test. If a 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 PEBP 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 PEBP **MUST NOT** be disclosed without prior written authorization from that government agency.
- L. The Public Records Request form will be kept on file for one year from the date of the request and is itself a public record.
- M. The Fee Schedule for Requests for Public Records must be posted in public view in the PEBP office.

V. DEFINITIONS

Balancing Test: Determination of whether the interest in public disclosure is outweighed by public or private interests in maintaining the confidentiality of a particular public record.

Confidential Records: Records declared by law to be confidential and not public records. Includes, but is not limited to, Personal Health Information (PHI) consisting of a natural 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 elements are not encrypted:

- Social Security Number;
- Driver's License of identification card number;
- Account number, credit card number or debit card number in combination with any security code, access code of password that would permit access to a person's financial account
- Dates
- Telephone Numbers
- Fax Numbers
- E-mail Address
- URL Address
- IP Address
- Medical Record Numbers
- Health Plan Beneficiary Number
- Device identifiers and their serial numbers
- Vehicle identifiers and serial number
- Biometric identifiers
- Full face photos and other comparable images
- Any other unique identifying number, code or characteristic

The term does not include the last four digits of a social security number of publicly available information that is lawfully made available to the general public.

Copyright: The exclusive right of the author or creator of a literary or artistic property to copy, print, sell, license, distribute or transform to another medium. The fact that a record in the

possession of PEBP has been copyrighted does not necessarily forbid its reproduction in response to a public request.

Custodian of Record: The person authorized to have the care, custody and control of a record. At PEBP the Quality Control Officer is charged with the care, custody and control of records maintained by the agency.

Duplicate: Any accurate and unabridged copy of a record or series of records which is not an original.

Electronic Record: A representation of a record in electronic format containing information, knowledge, facts, concepts or instructions which is being prepared or has been prepared and is intended to be processed, is being processed or has been processed in a system or network.

Extraordinary Request: A public record request which involves information that is not in a readily available medium or may require research, analysis or extensive staff time to compile or retrieve, and is reasonably estimated to take more than two (2) hours of staff time.

HIPAA: Health Insurance Portability and Accountability Act.

Legal Custody: All rights and responsibilities relating to the maintenance of an access to a record or series of records vested in the Custodian of Record.

Media: Includes recognized members of news gathering agencies, reports, or other correspondents.

Non-record: Published books and pamphlets, books and pamphlets printed by a printer, worksheets used to collect or compile data after it has been included in a record, answer pads for a telephone or other informal notes, unused forms, brochures, newsletters, magazines, newspapers, scrapbooks and properly left or deposited with PEBP which would otherwise be defined as a record except that the ownership of that property does not reside with PEBP.

PHI: Protected Health Information. Any information about health status, provision of health care, or payment of health care that is created or collected by a covered entity, and can be linked to a specific individual.

Public Record: Any record in any form, not declared by law to be confidential, which has been produced or received by PEBP and is maintained for the purposes of performing a function of the agency. The term does not include books, pamphlets, worksheets, and informal notes. No record that has been declared by law to be confidential constitutes a public record.

Records Officer: The Quality Control Officer of PEBP.

Requestor: The person making a request to review or copy public records maintained by PEBP.

Routine Request: A public request for PEBP public records of regular and minimal difficulty to provide.

VI. FORMS

- Public Records Request Form
- Records Request Log
- Initial Receipt Response
- Fee Schedule for Requests for Public Records
- Release of Information Authorization Form

VII. PROCEDURES

A. All requests for public records will be received in Quality Control and be initially logged by the Quality Control Support Specialist (QCSS) on the Public Records Request Tracking Log.

1. The QCSS shall respond to the request within five business days with a form letter and Initial Receipt Response.
2. The QCSS will forward the request to the custodian of records.
3. Requests for any documents containing PHI or HIPAA related information must be accompanied with a completed, signed, and dated Release of Information Authorization form.

B. Upon receipt of records request, the custodian of record has five business days to do one of the following, as applicable:

1. Allow the requestor to inspect the record or provide copies as requested;
2. If PEBP does not have legal custody of the record, or if the record has been destroyed, PEBP will provide written notice along with the name and address of the governmental entity that has legal custody of the record, if known.
3. If PEBP is unable to provide the record by the end of the fifth business day, PEBP will provide written notice and a date and time after which the record will be available for the requestor to inspect or copy.
4. If the request must be denied because the record is confidential, PEBP will provide written notice and a citation to the specific statute or other legal authority that make the record confidential.
5. If the custodian of record is a vendor of PEBP (i.e. Health Scope Benefits), the records request will be forwarded to the appropriate entity for follow up. The vendor will provide the requester with the documents requested. The vendor will provide PEBP with a copy of

the letter sent to the requester with the attachments if they do not contain PHI or are protected by HIPAA. If the attachments contain PHI, the vendor will send a copy of the letter that confirms what was sent but not include any of the PHI or documents protected by HIPAA.

C. The requestor is to be advised, in advance, of the volume or list of records encompassed by the request and the potential cost to provide the records, if applicable. Copies of records will be furnished upon payment of associated fees.

1. The requestor is to be advised that reproduced materials will be held for 14 days and subsequently destroyed if not claimed. If not retrieved and the material is under \$25.00, a charge for the second reproduction in addition to the original charge for the first reproduction will be imposed. Pre-payment will be forfeited for larger orders for materials never retrieved.
2. If the cost of the reproduction exceeds \$25.00, the requestor will be advised that advanced payment in full will be required to process the request.

D. Extraordinary Requests

1. When the custodian of record reviews a public record request, and the request is reasonably estimated to take more than two (2) hours of staff time, it is deemed extraordinary. This estimate shall not include the time spent for locating, retrieving, or refiling a requested public record.
2. If estimated staff time exceeds four (4) hours, outside vendors/contractors may be utilized. The requestor is responsible for those costs which are due and payable before research will commence or records produced.
3. Fees may be imposed in accordance with NAC 239.864.
4. The requestor is to be advised if the cost of the request exceeds \$25.00 and payment in full of the minimum estimated amount will be required to process the request.
5. The amount deposited by the requestor shall include the estimated manpower costs to retrieve or reproduce the record(s) and the estimated material charges to retrieve or reproduce the record(s).
6. The criteria above are guidelines which may be expanded depending upon the circumstances of the request.

E. Denial of Records Request

1. If there is a denial of a records request, the requestor will be provided a description of the withheld record(s), the legal citation and text of the statute or other provision(s) regarding basis for denying access.

2. Confidential records are exempt from public records access. If there is redacted, deleted, concealed, or separate confidential information, a written denial notice for redaction including a description of the redacted information will be provided, including the legal citation and text of the statute or other provision(s) regarding the basis for denying access.

F. Appealing a Denial of Records Request

1. If a requestor is denied access, in whole or in part, to a public record that is less than thirty (30) days old, the requestor may apply to the district court in which the record is located to request that the court issue an order allowing access to the record.
2. If an agency fails to properly honor its public records disclosure obligations, it may result in a court ordering the agency to produce the records and pay the requestor's attorney fees and damages.
3. The burden of proving that a record is confidential, and not subject to inspection or copying, rests with PEBP.

PUBLIC RECORDS REQUEST



11/3/17

Executive Officer, PEBP

Date

Policy and procedure statements contain the Public Employees' Benefits Program's official interpretation of existing statutes and/or regulations as referenced above.

This procedure supersedes all prior written procedures on this specific subject.