PROPOSAL FOR MANDATORY TRANSPARENCY CONCERNING SERIOUS ALLEGATIONS AGAINST PUBLIC OFFICIALS AND STATE EMPLOYEES

Policy Proposal and Proposed Legislative Language

I. Purpose

Nevada's public-records law is intended to permit citizens to examine the conduct of their government and the actions taken by public officials and governmental entities. That principle becomes particularly important when allegations of serious misconduct concern persons who exercise governmental authority or perform public duties. The public has a legitimate interest not only in the conduct of those individuals, but also in how government responds when allegations concerning that conduct are sufficiently serious to result in official action.

At the same time, an allegation is not a finding of wrongdoing. Government employees and public officials should not automatically have every accusation made against them placed into the public record merely because an accusation exists. A meaningful transparency requirement must distinguish between an unsubstantiated allegation that produces no governmental action and a matter that becomes significant enough to result in resignation, termination, formal discipline, or involvement by law enforcement.

Government officials should be beyond reproach. Those in high level positions can be subject to everything from blackmail to having everything they have touched in their tenure being judicially reviewed and potentially overturned which could result in revenue losses in the multi-millions for the state and the tax payer.

Nevada should therefore establish an explicit statutory disclosure requirement when allegations against elected officials, appointed officials, and exempt state employees result in specified governmental consequences. When an allegation results in resignation, termination or removal, formal disciplinary action, or law-enforcement involvement, records sufficient to allow the public to understand the allegation, the governmental response, and the ultimate disposition of the matter should be available for public inspection, subject to appropriate protections for victims, witnesses, confidential information, and active criminal investigations.

The purpose of this proposal is not to establish the truth of an allegation through the public-records process. Nor is it intended to interfere with criminal investigations, employment proceedings, due-process protections, or existing statutory protections for victims and other

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confidential information. It addresses a different question: when allegations concerning persons exercising public authority become sufficiently consequential that the government itself takes significant action, what information should the public be entitled to know about the government's response?

The proposed rule would establish a clear threshold. Below that threshold, existing confidentiality rules would continue to apply. Once the allegation results in one of the statutory triggering events, however, the government could no longer treat the entire matter as categorically unavailable to the public merely because it originated as a personnel, disciplinary, or investigative matter.

II. The Problem

Government misconduct allegations frequently begin within systems that are largely inaccessible to the public. Complaints may be submitted to supervisors, human-resources offices, inspectors general, professional standards units, regulatory bodies, appointing authorities, law-enforcement agencies, or other governmental entities. Depending upon the person involved and the nature of the allegation, the resulting records may be characterized as personnel records, investigative records, disciplinary records, law-enforcement records, or some combination of those categories.

There are legitimate reasons for confidentiality during portions of that process. An allegation may ultimately prove unfounded. Witnesses may require protection. Victims may have statutory privacy rights. An active criminal investigation may be compromised by premature disclosure. Employees and officials may also possess procedural rights that should not be circumvented simply because an allegation has been made.

The public-interest analysis changes, however, when the allegation produces significant governmental consequences. If an employee is terminated because of misconduct, the State has exercised governmental authority. If an appointed official is removed, the government has acted. If an elected or appointed official resigns in connection with a pending investigation, the departure may materially affect the operation of government. If the matter is referred to law enforcement or becomes the subject of a law-enforcement investigation, governmental resources and authority are being exercised in response to the allegation.



At that point, the matter is no longer solely about the existence of an accusation. It is also about the government's response to that accusation.

A system that permits the public to know that an official resigned or an employee was terminated, while preventing the public from determining what governmental process produced that result, creates an accountability gap. The same problem arises when the public learns that law enforcement became involved but cannot determine whether the matter was referred, investigated, declined, closed, or otherwise resolved.

The government should not be required to disclose every accusation made against every employee. It should, however, be required to account for significant governmental action taken in response to serious allegations involving persons entrusted with public authority.

III. The Proposed Transparency Requirement

This proposal would establish a mandatory transparency requirement when an allegation concerning an elected state official, appointed state official, or exempt state employee results in a defined triggering event. Those triggering events would include resignation associated with the allegation or resulting investigation, termination or removal, formal disciplinary action, referral to law enforcement, or the commencement of a law-enforcement investigation concerning the alleged conduct.

The triggering-event requirement is important because it establishes an objective threshold between an accusation and a matter of governmental accountability. The mere filing of a complaint would not necessarily require public disclosure. Instead, the disclosure obligation would arise when subsequent governmental action demonstrates that the matter has progressed beyond the existence of an allegation and has resulted in an official consequence or governmental response.

Once that threshold is reached, the public should be able to determine the general nature of the allegation, when it was received, which governmental entity handled the matter, whether an investigation occurred, whether law enforcement became involved, what employment or disciplinary action resulted, and how the matter was ultimately resolved. Where formal findings exist, those findings should also be available, subject to otherwise applicable confidentiality requirements.

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The proposal would not convert allegations into facts. Records released pursuant to the statute should distinguish between the original allegation, any investigative findings, disciplinary determinations, and the final disposition. If an allegation was determined to be unfounded or unsubstantiated, that determination is itself important public information and should accompany disclosure of the allegation.

Transparency should provide the public with an accurate account of governmental action rather than a collection of accusations stripped of their outcomes.

IV. Resignation Should Not Eliminate Transparency

Resignation requires particular attention because it can occur before an investigation or disciplinary proceeding reaches a formal conclusion. When a public official or employee resigns during a pending matter, the government may no longer have the same practical reason or authority to complete an employment investigation. If transparency depends entirely upon a final disciplinary finding, resignation can therefore prevent the public from ever learning what governmental process preceded the departure.

A resignation should not automatically be treated as evidence that an allegation was substantiated. People resign for many reasons, and the law should not create an inference of guilt that the underlying governmental record does not support. At the same time, resignation should not erase the existence of a governmental investigation or permit records concerning the matter to disappear from public scrutiny when the resignation is connected to the pending allegation or proceeding.

The appropriate approach is factual disclosure. If a covered person resigned while an investigation was pending and governmental records establish that the resignation was associated with the matter, the public should be entitled to know that an allegation existed, that the government was investigating or otherwise addressing it, and that the person resigned before the process was completed. If no final finding was reached, the records should say exactly that.

This approach protects both interests. The public receives an accurate account of what its government was doing, while the person who resigned is not falsely described as having committed misconduct that was never established.

V. Termination, Removal, and Formal Discipline

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Termination, removal, dismissal, suspension, demotion, or other formal disciplinary action represents an affirmative exercise of governmental authority. When the State takes such action in response to alleged misconduct, the basis for that governmental action becomes materially different from an allegation that never resulted in official consequences.

The public has a legitimate interest in understanding why governmental authority was exercised, particularly when the individual involved held elected or appointed office or occupied a position funded by and responsible to the public. That interest does not require publication of every document contained in an employee's personnel file. It does require sufficient disclosure to permit the public to understand the conduct at issue, the process undertaken by the governmental entity, the findings that were made, and the action that resulted.

Where the government concludes that an allegation was substantiated and imposes formal discipline, the records documenting that conclusion and the resulting governmental action should ordinarily be available. Where the government determines that some allegations were substantiated and others were not, the public record should reflect those distinctions. Transparency is served by accuracy, not merely by disclosure.

The same principle applies when an appointed official is removed or an elected official is subjected to an official governmental process resulting from the allegation. Government should not be able to disclose the consequence while withholding every meaningful fact necessary to understand why the consequence occurred.

VI. Law-Enforcement Involvement

Law-enforcement involvement presents additional concerns because transparency must coexist with the integrity of criminal investigations and the rights of victims, witnesses, suspects, and accused persons. A requirement that every investigative record become immediately public upon referral to law enforcement could interfere with legitimate investigations and, in some circumstances, place individuals at risk.

That concern does not justify complete secrecy regarding the government's handling of the matter. There is a substantial difference between requiring disclosure of sensitive investigative evidence during an active criminal investigation and requiring the government to acknowledge that a matter concerning a public official or employee was referred to or investigated by law enforcement.



The proposal would therefore treat law-enforcement involvement as a triggering event while preserving otherwise applicable exemptions for information that cannot lawfully be disclosed during an active investigation. To the extent permitted by law, the public should be able to determine that law enforcement became involved, which agency received or investigated the matter, and the general nature of the alleged conduct.

When the legal justification for withholding investigative material ends, records that are otherwise public should become available unless another specific exemption applies. An exemption based upon an active investigation should protect the investigation while it is active; it should not become a permanent mechanism for concealing governmental action after the reason for confidentiality has ceased to exist.

VII. Protection of Victims, Witnesses, and Legally Confidential Information

The public's interest in governmental accountability does not require sacrificing the privacy and safety of victims or witnesses. This is particularly important in matters involving sexual assault, domestic violence, stalking, harassment, or other conduct in which disclosure of identifying information may expose a victim to additional harm.

The proposed transparency requirement should therefore operate alongside existing confidentiality protections. Information identifying a victim whose identity is protected by law should remain protected. The same principle should apply to medical information, confidential personal identifying information, privileged communications, protected law-enforcement information, and other information that state or federal law expressly makes confidential.

The existence of protected information within a document, however, should not automatically make the entire document unavailable. When confidential information can reasonably be redacted while leaving meaningful public information intact, the governmental entity should redact the protected information and disclose the remainder.

This distinction is essential. Protecting a victim's identity and concealing the government's response to an allegation are not the same thing. Nevada law should permit the former without unnecessarily producing the latter.

VIII. Final Disposition

Transparency should extend beyond the initial disclosure that a triggering event occurred. The public should also be able to determine how the matter ultimately ended.

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If an investigation results in a finding that the allegation was substantiated, the public record should reflect that result. If the allegation was determined to be unfounded or unsubstantiated, that result should likewise be available. If the matter was closed without a determination because the employee resigned, the evidence was insufficient, jurisdiction was lacking, prosecution was declined, or the governmental entity was otherwise unable to reach a final determination, the record should accurately state that disposition rather than implying a conclusion that was never reached.

Final-disposition information protects both governmental accountability and fairness to the person accused. Public disclosure of an allegation without disclosure of its eventual resolution can create a misleading public record. A meaningful transparency system should therefore disclose not merely the beginning of the process, but also its conclusion when a conclusion exists.

IX. Preservation of Records Subject to the Transparency Requirement

A transparency requirement is meaningful only if the records necessary to satisfy it continue to exist. Records concerning serious allegations may be subject to ordinary records-retention schedules even while an investigation, disciplinary process, criminal matter, public-records request, or judicial proceeding remains unresolved.

Accordingly, once a matter becomes subject to the transparency requirement, records concerning the allegation and the governmental response should be preserved for as long as necessary to complete the applicable governmental and legal processes. An ordinary retention schedule should not authorize destruction of records while an investigation, disciplinary proceeding, criminal matter, public-records dispute, or related administrative or judicial proceeding remains pending.

This preservation requirement would complement, rather than replace, the broader preservation obligation proposed for records subject to public-records requests. If more than one preservation obligation applies to the same record, the longer applicable period should control.

The government should not be permitted to satisfy a transparency requirement in theory while allowing the records necessary to exercise that right to disappear in practice.

X. The Public Interest in Governmental Accountability



The central issue addressed by this proposal is not whether every allegation against a government official or employee should become public. It is whether significant governmental action taken in response to serious allegations should remain hidden from the people on whose behalf that authority is exercised.

Elected officials derive their authority directly from the public. Appointed officials exercise authority delegated through governmental institutions. State employees exercise governmental responsibilities and are compensated with public funds. The degree and nature of public interest may differ among those categories, but the underlying accountability principle remains the same: when serious allegations concerning the exercise of public duties result in significant governmental action, the public has a legitimate interest in understanding what its government did.

Transparency in these circumstances also permits evaluation of the governmental institution itself. The relevant public question is not always limited to whether an individual engaged in misconduct. It may also be whether the government responded appropriately, whether an investigation was conducted, whether similar allegations were treated consistently, whether disciplinary procedures were followed, and whether matters involving public officials were handled differently from matters involving ordinary employees.

Those questions cannot be meaningfully examined when the government may acknowledge the consequence while concealing the process that produced i

XI. Proposed Legislative Language

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

1. Triggering events.

Except as otherwise provided by specific statute, records concerning an allegation of misconduct against an elected officer, appointed officer or exempt employee of this State become public records subject to inspection and copying pursuant to this chapter when the allegation or resulting investigation results in:

(a) Placement of the officer or employee on administrative leave;

(b) Resignation, retirement or other separation from office or employment while the allegation or investigation is pending;



(c) Termination, dismissal, removal, demotion or other formal disciplinary action;

(d) Referral of the allegation or alleged conduct to a law enforcement agency or the commencement of a law enforcement investigation concerning the alleged conduct; or

(e) The resignation, retirement, termination, removal, transfer or other departure of multiple officers, administrators or supervisors within the same agency, division or organizational unit during or following an investigation concerning the alleged misconduct.

2. Records subject to disclosure.

Upon the occurrence of an event described in subsection 1, the governmental entity shall make available for inspection and copying records sufficient to identify the nature of the allegation, the governmental entity responsible for investigating or reviewing the allegation, the governmental action taken in response to the allegation, any formal findings made concerning the allegation and the final disposition of the matter.

If multiple officers, administrators or supervisors departed during or following the investigation, records sufficient to identify the positions affected, the nature and effective date of each departure and any documented relationship between the departures and the investigation must also be made available.

3. Allegations distinguished from findings.

The disclosure of records pursuant to this section does not create a presumption that an allegation is true or that administrative leave, resignation, retirement, separation, disciplinary action, law enforcement involvement or the departure of multiple officers or employees establishes misconduct.

If no final determination concerning an allegation was made, the records disclosed pursuant to this section must accurately reflect that fact.

4. Protection of confidential information.

Nothing in this section requires disclosure of information identifying a victim whose identity is protected by law, information that would unlawfully interfere with an active criminal investigation or prosecution, privileged information or other information specifically made confidential by state or federal law.

If confidential information can reasonably be redacted or separated from information that is not confidential, the governmental entity shall disclose the remainder of the record.

5. Departure from office or employment does not terminate disclosure obligation.

The resignation, retirement, transfer, reassignment or other departure of an officer or employee does not terminate the disclosure requirements of this section or render confidential a record that is otherwise subject to disclosure.

A governmental entity shall not avoid the requirements of this section by discontinuing an investigation because a person left public employment or office, by characterizing a departure as voluntary, by transferring or reassigning a person, or by entering into a separation, settlement, confidentiality or other agreement.

6. Preservation of records.

Records subject to this section must be preserved notwithstanding an otherwise applicable records-retention schedule until the investigation and any related administrative, criminal or judicial proceeding have been finally resolved and all available administrative and judicial appeals have been exhausted.

If a request for the records is made pursuant to this chapter, the records must also be preserved until the request and all administrative and judicial proceedings and appeals arising from the request have been finally resolved.

7. Definition of misconduct.

As used in this section, “misconduct” means alleged conduct that may constitute a criminal offense, abuse or misuse of public office or governmental authority, corruption, fraud, discrimination, harassment, retaliation, sexual misconduct, violation of an ethical or professional duty imposed by law, or other conduct that may reasonably result in administrative leave, discipline, termination or removal from public office or employment.

XII. Practical Effect of the Proposed Legislation

The proposed legislation would establish a defined point at which an allegation involving a state official or employee becomes a matter of mandatory public accountability. An allegation that produces no significant governmental action would not automatically become public under this provision. The transparency requirement would instead arise when the matter results in



resignation associated with the pending matter, termination or removal, formal discipline, referral to law enforcement, or a law-enforcement investigation.

Once that threshold is crossed, the governmental entity would be required to provide enough information for the public to understand both the allegation and the government's response. The public would be able to determine what was alleged, what entity handled the matter, what action was taken, whether formal findings were made, and how the matter was ultimately resolved.

The legislation would also prevent resignation from functioning as an automatic end to public accountability. If an official or employee resigns while a qualifying matter is pending and the governmental record establishes a connection between the resignation and the matter, the government could not simply close the file and treat the underlying process as though it never occurred. At the same time, the statute would prohibit the government from presenting the resignation as proof of misconduct when no such finding was made.

Law-enforcement involvement would similarly create a transparency obligation without requiring premature disclosure of sensitive investigative information. Legitimate protections for active investigations, victims, witnesses, and confidential information would remain intact. The existence of those protections, however, would not provide a basis for concealing nonexempt information concerning the government's actions.

The result would be a system in which confidentiality protects legitimate interests without becoming a mechanism for concealing significant governmental conduct.

XIII. Public Confidence

Public confidence depends not only upon the conduct of individual officials and employees, but also upon confidence that government responds appropriately when allegations of serious misconduct arise. A government that disciplines, terminates, removes, or refers one of its own officials to law enforcement is exercising governmental authority just as surely as when it adopts a regulation, awards a contract, or spends public money.

The public cannot meaningfully evaluate that exercise of authority if the fact of governmental action is visible but the basis for it is concealed. Nor can the public determine whether government applies its standards consistently when records concerning significant disciplinary and investigative matters are categorically inaccessible.



A carefully defined transparency requirement does not presume wrongdoing. It does not ask the public-records process to determine guilt or innocence. It simply recognizes that once an allegation produces significant governmental action, the governmental response itself becomes a legitimate subject of public scrutiny.

That scrutiny protects more than the public. Accurate disclosure also protects individuals who have been accused. A system that discloses allegations without their dispositions can leave an incomplete and potentially misleading record. Requiring disclosure of final findings and dispositions, including findings that allegations were unsubstantiated or unfounded, creates a more accurate public record than either complete secrecy or indiscriminate publication of accusations.

XIV. The Principle in Plain Language

The principle behind this proposal is straightforward. Not every accusation against a government employee needs to become a public record merely because someone made it. There must be room for allegations to be examined fairly, for victims and witnesses to be protected, and for investigations to proceed without unnecessary interference.

But when the allegation becomes serious enough that the government fires someone, removes someone, formally disciplines someone, refers the matter to law enforcement, or law enforcement begins investigating it, the public interest changes. When an official resigns in connection with a pending matter, resignation should not cause the governmental history of that matter to disappear.

At that point, the public should be able to determine what was alleged, what the government did about it, and how the matter ended. If the allegation was substantiated, the record should say so. If it was not substantiated, the record should say that. If the person resigned before the government reached a conclusion, the record should say that instead of inviting the government or the public to invent a conclusion that was never made.

Victims can remain protected. Active investigations can remain protected when the law requires it. Confidential information can be redacted. None of those protections requires the government to conceal its own actions.

The distinction is between exposing accusations and requiring governmental accountability. This proposal is intended to accomplish the latter.

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XV. Conclusion

Nevada's public-records system should provide meaningful transparency when serious allegations against persons exercising public authority result in significant governmental action. The public should not be required to accept the fact that an official resigned, an employee was terminated, a person was formally disciplined, or law enforcement became involved while being denied the information necessary to understand what governmental process produced that result.

The proposed legislation addresses that problem by establishing objective triggering events rather than requiring disclosure of every allegation. It preserves legitimate confidentiality before and during the process while recognizing that resignation, termination, removal, formal discipline, and law-enforcement involvement create a heightened public interest in the government's response.

The proposal also protects the integrity of the public record by requiring allegations to remain distinguishable from findings and by requiring final dispositions to be disclosed when they exist. An allegation should not become true merely because it becomes public, and an allegation that was determined to be unfounded should not remain publicly available without the government's disposition accompanying it.

The principle is simple:

The government does not have to make every accusation public. But when an allegation results in significant governmental action, the government should have to account publicly for the action it took.

Transparency should permit the public to evaluate government without turning the public-records system into a mechanism for declaring people guilty by accusation. Those objectives are not contradictory. A carefully drafted statute can accomplish both.

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