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**STATE OF NEVADA**

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**BRIEFING MEMORANDUM**

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**TO:** SPCSA Board  
**FROM:** Patrick Gavin  
**SUBJECT:** Agenda Item 3—Consent Agenda—Public Information Request Fee Policy and Schedule  
**DATE:** September 23, 2016

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Background:

NRS Chapter 239, the [Nevada Public Records Act](#), provides for the inspection of public records and the provision of copies of such records to members of the public who request them. [NNRS 239.052 et seq.](#) also provides that governmental entities may charge fees for costs associated with responding to public record requests. The Agency's proposed public records access policy, procedure, and fee schedule are attached. These materials have been reviewed by counsel and are modeled on those adopted by the Nevada Department of Education.

It is anticipated that the vast majority of public record requests can be accommodated without charging any fees. However, the Agency occasionally receives requests for voluminous documentation or for materials which require careful review to ensure that there is no inadvertent disclosure of information which is confidential by state or federal law or regulation, e.g. personally identifiable information on charter school students.

Recommendation:

Complying with some public information requests can result in in considerable labor and materials costs to the Agency. Consequently, Staff recommends approval of this public information request policy, procedure, and fee schedule document.

## **State Public Charter School Authority Fee Schedule for Public Records Requests**

1. No fees will be assessed until total costs reach \$10. If the cost of producing the records is estimated to be more than \$10, the records will not be produced until payment is received, unless a decision to waive fees has been made by the Executive Director.
2. **Staff time.** Pursuant to NRS 239.055, a fee may be charged for extraordinary staff time for processing, researching, copying, or legal/technical review. "Extraordinary staff time" is defined as any time over 30 minutes required to process records requests. Fee will be based on the salary grade of the staff person who provides or prepares the requested information.
  - a. \$20 per hour per staff member (Grades 10-19)
  - b. \$30 per hour per staff member (Grades 20-29)
  - c. \$40 per hour per staff member (Grades 30-39)
  - d. \$50 per hour per staff member (Grades 40+)
3. **Copying/Storage Fees**
  - a. Black & white, 8 ½ x 11" \$0.03 per page
  - b. Black & white, 8 ½ x 14" \$0.06 per page
  - c. Color up to 8 ½ x 14" \$0.10 per page
  - d. Records sent via email Free (limited to 5 GB in total)<sup>1</sup>
  - e. Electronic scanning to CD \$5 per disc
  - f. USB flash drive \$1.00 per gigabyte of storage capacity
  - g. Certified true copies: \$5 per page
4. **Postage.** All shipping will be USPS Parcel Post unless otherwise requested. Costs will be reimbursed by the requester.
5. **Payment.** Payment may only be made by checks or money orders made out to "State Public Charter School Authority."

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<sup>1</sup> State email policy restricts file size and total size of email queue. To ensure efficient operation of state technology systems, materials that are more than 5 MB in total will be provided via USB flash drive.

## PUBLIC RECORDS REQUEST PROCEDURE

- I. SPCSA's Records Official
  - A. Each executive agency must have a designated Records Official
  - B. Whenever a new or additional Records Official is designated, the Records Official Designation form must be completed and submitted to the Nevada State Library and Archives.
  - C. The Records Official may assign an assistant to help the Records Official log and respond to public records requests. All records requests received by the Agency should be forwarded *immediately* to the Records Official. The Records Official should then work with the Executive Director and/or the timeline for the NDE's response as well as the content of the response. In handling the records request, the Records Official shall follow the procedure outlined herein.
  
- II. Responding to a Public Records Request
  - A. All requests for public records received by any employee at the Agency should be immediately forwarded to the public Records Official who will ensure that the request is logged in the Public Records Request log.
    - i. The Records Official or designee shall acknowledge receipt of the request in writing. If the request is received by e-mail, this acknowledgement may be sent by e-mail.
    - ii. The Records Official or designee will forward the request to the person who may best be able to respond and/or where the records are maintained.
  - B. The Records Official ensures that, within five(5) business days from receipt of the request, one of the following occurs:
    - i. The requester inspects the record or receives copies of the record, as requested;
    - ii. If the Agency does not have a 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 Agency records retention schedule, written notice of that fact is provided to the requester;

- iv. If the Agency 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, this information may be included with the acknowledgment sent by the Records Official or designee; or
    - v. If the request must be denied because the record is confidential, written notice of that fact and a citation to the specific statute or other legal authority that makes the record confidential is provided to the requester.
  - C. The requestor 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 (Please see Fee Schedule)
    - i. When a custodian 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. Fees may be imposed in accordance with NRS 239.055.
    - iii. The requestor is to be advised if the cost of the request exceeds \$10.00 and that payment in full of the minimum estimated amount will be required to process the request.
    - iv. 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).
    - v. The criteria above are guidelines which may be expanded depending upon the circumstances of the request
- III. 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 Department 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 outline in the Agency's Fee Schedule for Requests for Public Records.
- D. If a record contains information deemed confidential, a request to inspect or copy the record so the remainder of the record can be inspected or copied.
- E. Public records must be provided in any medium in which they are readily available. The custodian of the record 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.
- F. Request for reproduction of public records should be in writing and may be faxed, emailed, hand-delivered, mailed or submitted in person. The Public Records Request Form can be found on the Agency'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.
- G. If there is an issue regarding inspection or reproduction of a requested document, the Attorney General's Office should be consulted. The Deputy Attorney General assigned to the Agency will assist with the issues of whether:
  - i. The item requested is actually a public record, available for review and reproduction; or
  - ii. The item requested is a public record which some special legal considerations dictate should not be made available for inspection and reproduction. This item requires 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.
- H. 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.

- I. Confidential records of charter schools and federal, state, and local governments shared with the Agency **MUST NOT** be disclosed without prior written authorization from that charter school or government agency.
- J. The Fee Schedule for Request for Publics Records must be posted in public view in each office of the Agency.