

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB FILE NO. R175-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/28/2018**

Section 1. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, clarifies that information either held by the Division or an agency is not public record and will not be released unless specifically allowed in NAC 284.726.

The addition of recording has been added to subparagraph (d) of subsection 1 so recordings will remain confidential if one is used during the process of interviewing an applicant.

Additionally, this amendment adds employee grievances, official responses to grievances, and related documents, which would include items attached to grievances, except in certain circumstances, to the list of information deemed confidential. Also included is health, which would include information related to an employee's fitness for duty exam, and workers' compensation related documents, to the list of items in an employee's record of employment that are considered confidential.

The amendment to subsection 2 creates a more accurate reflection of the types of addresses an employee can choose to designate in his or her record of employment.

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.355, 284.407)

1. The following types of information, which are maintained by the Division of Human Resource Management or ~~{the personnel office of}~~ an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished ~~{to the Division of Human Resource Management}~~ on the condition that the source remain confidential;

(b) Any document which is used ~~{by the Division of Human Resource Management or an agency}~~ in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document *or recording* which is used ~~{by the Division of Human Resource Management or an agency}~~ in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the ~~file or~~ record of employment of a current or former employee which relates to the employee's:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against the employee;

(3) Usage or balance of his or her annual leave and sick leave;

(4) Grievances, including official responses to grievances, and related documents, unless the grievance is heard by the Employee-Management Committee;

(5) Health, medical condition or disability of an employee or a member of his or her immediate family;

(6) Workers' compensation claims and related documents;

~~(4)~~ (7) Race, ethnic identity or affiliation, sex, genetic information, disability or date of birth;

~~(5)~~ (8) Home telephone number; or

~~(6)~~ (9) Social security number.

2. If the employee has requested that his or her ~~personal mailing~~ home address be listed as confidential, the employee's ~~file~~ record of employment must be so designated and list his or her ~~business~~ mailing address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation ~~conducted by the Division of Human Resource Management~~ relating to sexual harassment or discrimination, or both, and any findings of such an investigation ~~that are provided to an appointing authority~~ are confidential.

6. Any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct are confidential.

7. Any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct are confidential.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 7-21-89; 7-6-92; 11-12-93; R058-01, 9-6-2001; A by Personnel Comm'n by R068-03, 10-30-2003; R182-03, 1-27-2004; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009; R055-10, 6-30-2010; R137-12 & R045-13, 10-23-2013)

Sec. 2. NAC 284.726 is hereby amended to read as follows:

<p>Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, broadens access to confidential records among State agencies. As the State of Nevada is one employer under State and federal employment laws, this will allow ease in sharing information, including but not limited to, information related to health and disability</p>
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information, leave balances, and performance. Agencies will still be able to limit access to this information using security protocols built into the human resource management data systems. Because a variety of information that may or may not be considered as the employee “file,” the terminology of the information is being changed to “record of employment.” This information could include employee grievances and related documentation, health information and/or workers’ compensation information, as is being proposed in an amendment to NAC 284.718. A new subsection has been added to limit access to notes, records, recordings or findings of an investigation.

The amendment to the newly numbered subsection 7 clarifies that the employee’s home address is provided to the Internal Revenue Service, and the State of Nevada agencies to where the home address is provided have also been updated.

Also, the Equal Employment Opportunity Commission has been included in the list of agencies to which confidential records may be provided, with the authorization of the Administrator or an appointing authority, or his or her designated representative.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.4066, 284.4068, 284.407)

1. Except as otherwise provided in this subsection and subsection 2, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority’s decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in NRS 284.4068, access to information concerning the results of an applicant’s screening test which indicate the presence of a controlled substance is limited to ~~the~~ **an** appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. ~~Except as otherwise provided in subsections 4 and 5, access~~ **Access** to an employee’s ~~file~~ **record** of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee.

(b) The employee’s representative when a signed authorization from the employee is presented or is in his or her **record of** employment ~~file~~.

(c) ~~The~~ **An** appointing authority or **his or her** designated representative ~~of the agency by which the employee is employed~~.

(d) ~~The Administrator or a designated representative.~~

~~(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.~~

~~(f)~~ Persons who are authorized pursuant to any state or federal law or an order of a court.

~~(g)~~ **(e)** The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

~~(h)~~ **(f)** Persons who are involved in processing records for the transaction of business within and between state agencies.

~~(i)~~ **(g)** Persons who are involved in processing records for the transaction of business that is authorized by the employee.

~~{4. Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection 10, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.~~

~~—5. Except as otherwise provided in subsection 10, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.~~

~~{6.}~~ **4.** Except as otherwise provided in subsection ~~{10}~~ **9**, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The Administrator or a designated representative of the Administrator.
- (c) The appointing authority or a designated representative of the agency with which the employee is employed.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (e) The Governor or a designated representative of the Governor.

~~{7.}~~ **5.** Except as otherwise provided in subsection ~~{10}~~ **9**, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The appointing authority or a designated representative of the agency by which the employee is employed.
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (d) The Governor or a designated representative of the Governor.

6. Except as otherwise provided in subsection 9, access to any notes, records, recordings or findings of an investigation is limited to:

- (a) The accused employee as provided in subsection 2 of NRS 284.390.**
- (b) The appointing authority or a designated representative of the agency by which the employee is employed.**
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.**
- (d) The Governor or a designated representative of the Governor.**

~~{8.}~~ **7.** Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~{9.}~~ **8.** Upon request, the Division of Human Resource Management will provide the ~~{personal mailing}~~ **home** address of any employee on file with the Division of Human Resource Management to the ~~{State Controller's Office}~~ **Department of Health and Human Services, Division of Welfare and Supportive Services, the Department of Employment, Training and Rehabilitation,** and the Internal Revenue Service.

~~{10.}~~ **9.** The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on

Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission , *the United States Equal Employment Opportunity Commission*, or a court.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009, R059-10, 10-15-2010; R137-12 & R045-13, 10-23-2013; R044-15; 12-21-2015)