

Nevada public records policy under review

By Sean Whaley, Nevada News Bureau

CARSON CITY – A panel of lawmakers agreed today to review its new policy on responding to public records requests after concerns were raised by the ACLU of Nevada.

Rebecca Gasca, legislative and policy director for the organization, told the Legislative Commission on Oct. 26 that the new policy says those seeking public records from the Legislative Counsel Bureau need to explain why they want the information when making requests.

The policy, adopted in August, improperly shifts the burden to the person requesting the public records to show that the need for the information is stronger than any public policy interest in keeping the information confidential, she said.

Gasca had already sent a letter to the commission from ACLU General Counsel Allen Lichtenstein explaining the concerns with the policy in detail.

Assemblyman Ira Hansen, R-Sparks, a member of the commission, asked that the new policy be reviewed at its next meeting.

“We did kind of, as I recall, went through it kind of quickly,” he said. “And there is some verbiage in it that I think we probably ought to review to see if it is a little too vague and a little too open ended.”

Gasca said the new policy would incorrectly apply a Nevada Supreme Court ruling in *Donrey of Nevada v. Bradshaw* and impose a “balancing test” to determine if the public interest in disclosing the information outweighs the public interest served by not releasing the information.

The balancing test referenced in the court case applied to requests for criminal information, not general public records requests, she said.

“The policy of LCB that you passed at the last commission meeting actually broadly expands upon that and specifically states that requestors need to put in why they are requesting something so the LCB can balance those interests,” Gasca said.

While there was a comment from LCB Director Lorne Malkiewich that the requirement will not be used as a basis for denying requests, this statement of intent was not included in the new policy, she said.

Concerns about the policy have also previously been expressed by Barry Smith, executive director of the Nevada Press Association.

In response to the ACLU letter, Malkiewich said the new policy, “was not proposed in an effort to restrict public access, but rather to reflect the state of the law and allow us to continue our practice of prompt, complete response to requests for public records.”

“In summary, the policy that I proposed and the Legislative Commission adopted does not conflict with state law; it reflects what the Nevada Supreme Court has recognized to be the state of the law,” he said. “We will not reject a request for failure to include such a statement, but a clear explanation of a particular public interest may tip the balance in favor of disclosure of a document that might not otherwise be disclosed.”