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### Summary of Pub. Emps.' Ret. Sys. of Nev. v. Reno Newspapers, Inc., 129 Nev. Adv. Op. 88

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*Nevada Law Journal*

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## STATUTORY INTERPRETATION: SCOPE OF CONFIDENTIALITY

### Summary

The Court determined the following issue: whether the confidentiality set forth in NRS 286.110(3) applies to individual files of retired employees maintained by the Public Employees' Retirement System of Nevada ("PERS").

### Disposition

Individual files of retired employees are confidential under NRS 286.110(3) and therefore exempt from requests. Other reports that PERS generates based on information found within individual files are not confidential under NRS 286.110(3), but may be protected by other means.

### Factual and Procedural History

In 2011, Reno Newspapers, Inc., doing business as the Reno Gazette-Journal (RGJ), submitted a public records request to PERS as part of an investigation concerning government expenditures and the public cost of retired government employee pensions. Specifically, RGJ requested the names of all individuals collecting pensions, the names of their government employers, their salaries, their hire and retirement dates, and the amounts of their pension payments. PERS denied the request and asserted that the information was confidential under NRS 286.110(3) (providing that files of individual retired employees are not public records) and NRS 286.117 (requiring a personal waiver from the member to review and copy the records).

RGJ filed a petition for a writ of mandamus in district court to compel PERS to provide the requested information. RGJ argued that the information was not confidential because it was generated from public records. PERS countered by asserting that it strictly maintained the requested information as confidential and that the privacy interests involved outweighed the public's interest in disclosure. The district court granted the petition, finding that neither NRS 286.110(3) nor NRS 286.117 protected the information as confidential and that privacy concerns did not clearly outweigh the public's right to disclosure.

### Discussion

On appeal, PERS argues that NRS 286.110(3) explicitly declares information contained in individual files confidential. In the alternative, PERS argues that the privacy interests in nondisclosure outweigh the public's interest in the information.

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<sup>1</sup> By Ryan Becklean.

*The Legislature has declared the files of individual members confidential*

Nevada law dictates that all public book and public records of government entities remain open to the public unless specifically declared confidential by statute.<sup>2</sup> Here, the legislature has declared a limitation on public records:

“The official correspondence and records, *other than the files of individual members or retired employees*, and, except as otherwise provided in NRS 241.035, the minutes, audio recordings, transcripts and books of the System are public records and are available for public inspection.”<sup>3</sup>

PERS argues that all information contained in an individual’s file is protected by this limitation.

The Court concluded that NRS 285.110(3) must be narrowly construed, and PERS’ position exceeds the plain meaning of the statute’s restrictions. In concluding that only individuals’ files are confidential, the Court specified that NRS 286.110(3)’s scope of confidentiality “does not extend to all information by virtue of it being contained in an individual’s files.” The Court explained that things such as administrative reports containing information “in a medium separate from an individuals’ files...[are] not confidential merely because the same information is also contained in an individuals’ files. Rather, it is the individuals’ files themselves that are confidential....” However, the Court cautioned that such information may be protected under other statutes, rules, or caselaw.

*Balancing of interests*

The Court reasoned that “[a] mere assertion of possible endangerment does not clearly outweigh the public interest in access to . . . records.”<sup>4</sup> The Court asserted that PERS’ argument that disclosure would harm the retired employees was unsupported by evidence and merely speculative, ultimately holding that “the government’s interest in nondisclosure in this instance do[es] not clearly outweigh the public’s presumed right to access...[and] the district court did not err in balancing the interests in favor of disclosure.”

However, the Court vacated the district court’s order to the extent it required PERS to create new documents or customize reports, reasoning that the law only permits an “inspection” of or a “copy” of the records.<sup>5</sup>

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<sup>2</sup> NEV. REV. STAT. § 239.010(1) (2013).

<sup>3</sup> NEV. REV. STAT. § 286.110(3) (2013).

<sup>4</sup> *Reno Newspapers v. Haley*, 126 Nev. at \_\_\_, 234 P.3d 922, 926 (2010) (internal quotations omitted).

<sup>5</sup> Nev. Rev. Stat. § 239.010(1) (2013); Nev. Rev. Stat. § 239.055(1) (2013).

## **Conclusion**

NRS 286.110(3) protects as confidential, the contents of an individual's file. However, the scope of confidentiality is limited to the individuals' actual file. Accordingly, the district court did not abuse its discretion in ordering PERS to provide information maintained in a medium separate from individuals' files. However, the Court vacated the district court's order to the extent that the district court ordered PERS to create new documents or customized reports by searching for and compiling information from individuals' files or other records.