Too many exceptions to Nevada’s public-records law

By Barry Smith

Nevada’s public records law grants seemingly straightforward access to all books and records of state and local governments “unless otherwise declared by law to be confidential.”

There’s the rub.

That same paragraph contains some 431 exceptions where the law does, in fact, make confidential various kinds of information.

Here are a few examples:

— Minutes of a closed meeting by the Nevada Commission on Homeland Security to discuss responses to terrorism.

— Identity of a narcotics addict by the state, a rehab clinic or a hospital.

— Information turned over to the Gaming Control Board on why a casino employee was fired.

It’s a long list, and it covers a broad range of topics. You would think over the years the Nevada Legislature had identified every bit of information that our governments collect for themselves but need to keep secret from us.

During Sunshine Week (March 11-17), it’s a good time to examine why we insist on openness as the default setting for public records and for government itself.

My count of 431 exceptions is considerably short of the actual number, because it doesn’t include those found in regulations, known as the Nevada Administrative Code.

Exceptions creep into regulations, even when they aren’t in the statutes. One example is in the recently adopted regulations for recreational marijuana — without anybody asking for it, without the Legislature discussing it and contrary to how things work in most of the state.

The list of exceptions also doesn’t take into account pushback from some government officials who have their own interpretations of the law.

And then there’s the biggest exception of all — the Nevada Legislature, which has exempted itself from both the state’s open-meeting and public-records laws. It has set a tone that transparency is secondary to politics, an attitude I see reflected in too many local governments.

The only recourse under Nevada law is to go to court to gain access to records, an avenue that Nevada newspapers and members of the public must follow with alarming frequency. And in case after case, government agencies have shown they are willing to use taxpayer money to fight the release of public records.

How are we to evaluate whether government agencies are doing their jobs fairly and competently if they report only to themselves?

Is there opportunity for favoritism in granting recreational-marijuana licenses, made possible by the exception in new regulations?

Could someone take advantage of their unused vacation time to get extra money from the state, an issue the Las Vegas Review-Journal is struggling to get records to review?

Would police be able to cover up a shooting if the public couldn’t see autopsy reports, a situation that’s come up in more than one state and became an issue here?

Can public officials use their private e-mail accounts to make secret deals, the question in a case now pending before the Nevada Supreme Court?

A phrase made popular by President Ronald Reagan comes to mind: “Trust, but verify.” It’s the approach we should take to Nevada’s government.

I like to have faith in Nevada’s governmental agencies that they will do the right thing, admit mistakes and foster open discussions about the issues important to us. But I’m also skeptical because, when they know information can be withheld from the public, there is no incentive to be forthcoming.

We need to be able to verify, and that comes through access to public records.

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