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Nevada Supreme Court rules in PERS public records dispute

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The Nevada Supreme Court, in a split decision released Thursday, ruled in a public records case involving retiree benefit information held by the state Public Employees' Retirement System. The court held in its 4-3 decision that the System must produce information about retired public employees even if it has to produce a separate, redacted report to do so. This decision marks a significant change in previous Nevada law, which did not require a governmental entity to produce a customized report.

PERS is committed to Nevada's Public Records Act and will move forward under the new guidance from the court despite the fact that further clarity may be needed to determine what information can be released to the public.

The court decision says that if disclosure of retiree data would include more sensitive personal information such as birth date, sex or marital status, a "balancing test may weigh in favor of non-disclosure." As evidence of this commitment to public disclosure, PERS already releases upon request the names and benefit amounts of retirees as required under the original 2013 Supreme Court decision addressing the public records issue.

PERS is also committed to protecting the privacy of its active members and retirees due to identity theft concerns. As the decision says, PERS must review public information requests on a case-by-case basis and will continue to do so. The decision will not result in any immediate change to the release of PERS member information while several issues are clarified at the District Court level as directed by the Supreme Court. PERS will keep its members updated on the implementation of the decision.

Writing for the majority in the new ruling, Chief Justice Michael Douglas said Nevada's Public Records Act requires a public agency to retrieve information and produce reports for public inspection if the agency maintains the information in an electronic database. But the court noted there are potential difficulties for PERS to produce the requested information from its current database. As a result, the request for the records by the Nevada Policy Research Institute was put on hold pending further hearings in Carson City District Court.

Three of the seven Justices filed a dissenting opinion, arguing that the majority overruled a 2013 Nevada Supreme Court case stating that a government agency does not need to create a new document in response to a public records request. Justice Lidia Stiglich, who wrote the dissent, said the new opinion overrules the previous finding on the production of new reports. "Creating a computer program is not merely 'drawing information from a database,'" Stiglich wrote. "Rather, such action requires the agency to 'conduct a search' and go beyond its duty under the Public Records Act." NPRI wants the data to post on its Transparent Nevada website. Stiglich also said a decision to expand public agency duties under the Public Records Act should be up to the Nevada Legislature, not the courts.

Lawmakers could again take up the issue in the upcoming 2019 legislative session.