

contains confidential information that can be redacted, the governmental entity with legal custody or control of the record cannot rely on the confidentiality of that information to prevent disclosure of the public record.”). Thus, PERS has failed to demonstrate that the requested information is confidential by statute.

We next assess PERS’ alternative argument that, in the absence of a provision declaring the requested information confidential, its interest in nondisclosure clearly outweighs the public’s interest in access.

*The district court did not err in concluding that the risks posed by disclosure of the requested information do not clearly outweigh the benefits of the public’s interest in access*

PERS argues that the risks posed by disclosure of the requested information outweigh the benefits. In particular, PERS contends that disclosure of the government retirees’ names creates a heightened risk of identity theft and cybercrime against the retirees and that these risks outweigh the marginal benefit to the public. PERS also argues that the district court did not take into consideration the government retirees’ privacy interests. Conversely, NPRI contends that PERS’ assertion that disclosure would subject its government retirees to a higher risk of fraud or cybercrime is hypothetical and speculative, and thus, the district court did not err in balancing the interests involved in favor of disclosure. We agree with NPRI’s contention.

In *Reno Newspapers*, “PERS argue[d] that disclosure of the requested information would subject retired employees to a higher risk of identity theft and elder abuse.” 129 Nev. at 839, 313 P.3d at 225. However, “[t]he record indicate[d] that the only evidence presented [below] to support PERS’s argument was a PowerPoint presentation with statistics showing that Nevada is the third leading state in the number of fraud

complaints . . . and the sixth leading state in the number of identity theft complaints.” *Id.* There, we concluded PERS failed to show that disclosure “would actually cause harm to retired employees or even increase the risk of harm,” but rather, “the record indicate[d] that their concerns were merely hypothetical and speculative and did not clearly outweigh the public interest in disclosure.” *Id.*; see also *Reno Newspapers, Inc. v. Haley*, 126 Nev. 211, 218, 234 P.3d 922, 927 (2010) (“A mere assertion of possible endangerment does not ‘clearly outweigh’ the public interest in access to these records.” (internal quotation marks omitted)). Furthermore, “[t]o the extent some public employees may expect their salaries to remain a private matter, that expectation is not a reasonable one.” *San Diego Cty. Emps. Ret. Ass’n v. Superior Court*, 127 Cal. Rptr. 3d 479, 489 (Ct. App. 2011) (quoting *Int’l Fed’n of Profl & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court*, 165 P.3d 488, 494 (Cal. 2007)). Indeed, “public employees lack a reasonable expectation of privacy in an expense the public largely bears after their retirement.” *Id.*

Here, an expert report PERS provided from a technology and security advisor concluded that the inclusion of the government retirees’ names in the raw data feed would create a greater risk for identity theft, fraud, or other cybercrime if the information was publicly released. However, given the limited nature of NPRI’s requests, “their concerns [are] merely hypothetical and speculative . . . [and] [d]o not clearly outweigh the public’s presumed right to access [the requested information].” *Reno Newspapers*, 129 Nev. at 839, 313 P.3d at 225. In addition, the government retirees lack a reasonable expectation of privacy in the requested information.

This does not mean that the risk of identity theft, fraud, or other cybercrime can never outweigh the benefits of the public's interest in access. If disclosure of a government retiree's information includes more sensitive personal information, such as birth date, sex, marital status, beneficiary information, and beneficiary birth dates, the balancing test may weigh in favor of nondisclosure. The requested information here, however, is limited in scope and helps promote government transparency and accountability by allowing the public access to information that could reveal, for example, if an individual is abusing retirement benefits. Given the strong presumption in favor of disclosure, PERS fails to demonstrate that the risks posed by disclosure outweigh the important benefit of public access. Thus, the district court did not err in concluding that the alleged risks posed by disclosure do not outweigh the benefits of the public's interest in access.

Having decided that the information is not confidential, we next determine whether requiring PERS to extract the information from the CARSON database is the creation of a new record.

*The requested information did not require the creation of a new record*

PERS further argues that *Reno Newspapers*, which recognized there is no duty "to create new documents or customized reports by searching for and compiling information from individuals' files or other records," *id.* at 838, 840, 313 P.3d at 224-25, precludes disclosure of the information sought because NPRI's request requires the creation of a new document.

Although PERS correctly notes that a public agency has no duty to create a new record in response to a public records request, it improperly concludes that disclosure in the present case requires the creation of a new record simply because it would involve searching its database for information. Several courts have distinguished between public records