Case No. 73287

IN THE
SUPREME COURT OF NEVADA

LAS VEGAS REVIEW-JOURNAL,
Appellant,

vs.

CITY OF HENDERSON,
Respondent.

Appeal from the Eighth Judicial District Court, Clark County, Nevada
Honorable Judge Mark Bailus, Case No. A-16-747289-W

RESPONDENT'S ANSWERING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS REVIEW-JOURNAL, Appellant, vs. CITY OF HENDERSON, Respondent.	Supreme Court No. 73287 District Court No. A-16-747289-W **RESPONDENT CITY OF HENDERSON'S NRAP 26.1 DISCLOSURE**

NRAP 26.1 DISCLOSURE

Pursuant to Nevada Rule of Appellate Procedure 26.1, Respondent City of Henderson submits this Disclosure Statement:

The undersigned counsel of record certifies that the following are persons and entities as described in Nevada Rule of Appellate Procedure 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Because the City of Henderson is a political subdivision of the State of Nevada (a governmental party), no NRAP 26.1 Disclosure Statement is required.

2. The City of Henderson has been represented by the following law firm in both this action and the district court action: Bailey❖Kennedy.

DATED this 23rd day of April, 2018.

BAILEY❖KENNEDY

By: */s/ Dennis L. Kennedy*
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-And-

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III. ROUTING STATEMENT

The City agrees that the interpretation of the Nevada Public Records Act is a question of statewide importance. The District Court, however, did not interpret the Nevada Public Records Act because it determined that Las Vegas Review-Journal's claims for declaratory relief were moot. Nevertheless, the City does not object to this case being retained by the Supreme Court.

IV. STATEMENT OF ISSUES PRESENTED ON APPEAL

A. Whether a party may include claims for declaratory and injunctive relief to invalidate or enjoin enforcement of a municipal law in a public records action brought pursuant to the specialized and expedited procedures contained in NRS 239.011.

B. Whether claims for declaratory and injunctive relief to invalidate or enjoin enforcement of a municipal law permitting the assessment of certain fees in connection with responding to public records requests are justiciable when the requesting party reviewed and received copies of the requested records free of charge.

C. Whether a governmental entity may charge fees under NRS 239.055 for the extraordinary use of personnel to locate, review and redact records when responding to a voluminous public records request comprising over 5,500 emails and nearly 70,000 pages of documents.

D. Whether the confidentiality designations identified on the City's Withholding Log were timely and in compliance with Nevada Law.

V. STATEMENT OF THE CASE

5,566 emails. 9,621 electronic files. 69,979 pages of documents. (II JA221.) This is what the search terms in the Las Vegas Review-Journal's ("LVRJ") broadly-worded October 2016 public records request (the "Request") to

the City of Henderson ("City") yielded (*Id.*) In light of the sheer number of emails and documents matching LVRJ's search terms, the nature of the documents LVRJ requested (LVRJ specifically requested email communications quintessentially protected by the attorney-client privilege), and the City's responsibility to redact and safeguard confidential information, *i.e.* non-public records, the City responded that the request would require extraordinary use of City personnel to complete. (II JA227-230.) In accordance with NRS 239.055, the City estimated that the cost to complete the Request would be $5,787.89 – a significant cost savings compared to the $0.50 per page (or $34,989.50) the City could have charged to produce nearly 70,000 pages of documents – and explained that the cost was based on the amount of staff time it would take to locate, review and redact responsive records for confidential information. (II JA230.)

Prior to commencing the review of the documents, the City attempted to meet and confer with LVRJ's counsel to discuss the possibility of narrowing the search terms or other potential solutions with the goal of reducing the number of responsive documents, and thus decreasing or eliminating the extraordinary use fee. (II JA222-224.) LVRJ rebuffed these efforts. (*Id.*) Instead, despite the fact that the City never denied LVRJ's public records request, LVRJ filed a Public Records Act Application and Petition for Writ of Mandamus (the "Petition") against the City. (I JA001-022; II JA222.) The Petition falsely claimed that the City refused to provide LVRJ the requested records and that the City was

improperly charging fees to complete the request. (*Id.*)

Notwithstanding the filing of the Petition, the City continued to reach out to LVRJ to work on a resolution. (II JA223.) The parties agreed that LVRJ would be permitted to inspect the documents responsive to its request free of charge on a computer at City Hall. (*Id.*) LVRJ's inspection occurred over the period of several days. (*Id.*) At no time during or after the inspection, did LVRJ ask the City for a single copy of any of the documents it inspected. (*Id.*)

Hopeful that the inspection would resolve the Petition, the City provided LVRJ with a withholding log containing a list of 91 documents for which it was asserting confidentiality or privilege (the "Withholding Log"). (I JA068-073.) On February 8, 2017, LVRJ filed an Amended Petition attacking the adequacy of the Withholding Log. (I JA029-167.)

The Amended Petition not only asked the District Court to compel the City to produce the documents identified on the Withholding Log, but also requested injunctive relief prohibiting the City from following the provisions of Henderson Municipal Code 2.47.085 and the City's Public Records Policy (the "Code" and "Policy", respectively). (*Id.*) The Amended Petition also sought declaratory relief: (1) invalidating the Code and Policy for conflicting with the NPRA; (2) limiting the City to charging fees for extraordinary use of personnel to $0.50 per page; and (3) prohibiting the City from requesting fees for attorney review of responsive records. (*Id.*)

On March 30, 2017, the District Court held a hearing on LVRJ's Amended Petition. (III JA448-450.) At the hearing, LVRJ conceded that it never requested copies of any of the documents its reporter inspected at City Hall. (III JA424-425.) In response to numerous requests by the District Court, LVRJ's counsel—for the first time—informed the Court and the City that LVRJ wanted copies of the documents it had previously inspected. (III JA425-426.) Upon inquiry by the District Court, the City confirmed that it was willing to provide copies of the documents. (III JA427.)

At the hearing, LVRJ also argued that the District Court should invalidate the Code and Policy regarding the assessment of extraordinary use fees for being "at odds with the NPRA." (III JA427.) However, because the City had already allowed LVRJ to inspect the requested documents free of charge, and was willing to provide electronic copies of the inspected documents on a USB drive, also free of charge, the District Court determined that LVRJ's arguments regarding the propriety of charging fees was moot and did not decide them. (III JA449.)

The sole issue decided by the District Court was the adequacy of the Withholding Log. (III JA449.) The District Court ruled that the Withholding Log was "timely, sufficient and in compliance with the requirements of the NPRA." (III JA449.) The District Court's Order concludes: "Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition is hereby DENIED."

(III JA450.) This appeal ensued.

VI. STATEMENT OF THE FACTS

A. LVRJ's Public Records Request.

On October 4, 2016, the City received a public records request from LVRJ (the "Request") asking for the following documents during the date range of January 1, 2016 to October 4, 2016:

> (1) All emails to or from City of Henderson Communications Department personnel, Council members, or the Mayor that contain the words "Trosper Communications," "Elizabeth Trosper," or "crisis communications;" (2) All emails pertaining to or discussing work performed by Elizabeth Trosper or Trosper Communications on behalf of the City of Henderson; (3) All documents pertaining to or discussing contracts, agreements, or possible contracts, with Elizabeth Trosper or Trosper Communications; and (4) All documents pertaining to or discussing the terms under which Elizabeth Trosper or Trosper Communications provided, provide, or will provide services to the City of Henderson.

(II JA227-228.) The Request acknowledged the City's ability to charge fees for providing the records, and specifically requested that if the City intended "to charge any fees for obtaining copies of these records, please contact us immediately (no later than 5 days from today) if the cost will exceed $50." (*Id.*)

B. The City's Initial Response.

On October 11, 2016, the City timely provided its initial written response as required by NRS 239.0107 (the "Initial Response"). (II JA230.) The Initial Response informed LVRJ that approximately 5,566 emails matched the search

terms set forth in the Request. (*Id.*) These 5,566 emails contained approximately 9,621 electronic files and consisted of approximately 69,979 pages. (II JA221.)

In light of the enormous number of potentially responsive documents and emails, the fact that LVRJ was requesting privileged communications, and the City's responsibility to safeguard confidential information, the City explained that the Request would require extraordinary research and use of City personnel to complete. (II JA230.) The City estimated that it would take approximately 74 hours of staff time to review the emails and associated electronic files to determine whether it was necessary to withhold or redact any confidential documents or information. (*Id.*) Pursuant to NRS 239.055 – and LVRJ's own request for notice if the City intended to charge over $50 in fees – the City provided LVRJ with an estimate of $5,787.89 to complete the Request and explained how the City arrived at its estimate. (*Id.*) In accordance with City policy,[1] the City requested a 50% deposit of the fees and informed LVRJ that it would take three weeks to complete the review once the deposit was received. (*Id.*)

The next day, October 12, 2016, LVRJ's attorney called the City to discuss

[1] The City's policy is consistent with NAC 239.864(1) and (2), which provide, in pertinent part, that if a records official of an agency of the Executive Department charges a fee to provide a copy of a public record, the official:

(a) May require the person who requests a copy of a public record to pay a deposit of not more than the estimate of the actual cost of providing the copy; and

(b) Shall require the person who requests a copy of a public record to pay the fee for providing the copy, including, without limitation, postage for mailing the copy, if applicable, before the person receives the copy.

the City's Initial Response. (II JA222.) LVRJ's attorney disputed the City's ability to charge fees for the extraordinary use of personnel to complete the Request. (*Id.*) During the call, the parties discussed potentially narrowing the search terms to decrease the number of email hits and whether the City would be willing to lower its fee estimate. (*Id.*) Counsel for both parties resolved to go back to their respective clients to work on a solution. (*Id.*) LVRJ's attorney represented that she would call back on October 17, 2016, to discuss the matter further. (*Id.*)

LVRJ's attorney never called the City on October 17, 2016. (*Id.*) After waiting a week with no contact from LVRJ's attorney, counsel for the City called LVRJ's attorney's office on October 25, 2016, in an attempt to work out a resolution. (*Id.*) Counsel for the City learned that LVRJ's attorney was out of town until November 4, 2016, and asked for a return call once LVRJ's attorney returned to the office. (*Id.*)

C. LVRJ Prematurely Files a Public Records Act Application.

LVRJ's attorney never returned the City's phone call. (*Id.*) Nor did she otherwise attempt to contact the City to work on a resolution. (*Id.*) Instead, after more than six weeks of silence passed – and without any prior warning – LVRJ filed a Public Records Act Application and Petition for Writ of Mandamus (the "Petition") against the City claiming that the City had refused to provide LVRJ the requested records. (*Id.*; I JA001-022.) This is false. (II JA222.) The City was prepared and fully expected to review and provide copies of all responsive public

records as soon as LVRJ confirmed it wanted to proceed with the Request. (II JA230.)

On December 5, 2016, the City wrote LVRJ a letter expressing surprise at the lawsuit given LVRJ's silence with respect to the Request for over six weeks, and the fact that the City had previously always worked with LVRJ to modify the scope of records requests by using agreed upon search terms or other methods to reduce the time and cost of producing large numbers of electronic documents. (II JA232-235.) According to City records, for the years 2015 and 2016, LVRJ made 46 separate public records requests to the City and only paid a $241.11 in fees for these records. (*Id.*) This amounts to approximately $5.24 per request.

The December 5th letter noted that City employees had spent 72 hours processing LVRJ's Request and provided the actual cost of personnel time to complete the Request ($5,303.32). (*Id.*) As a compromise, however, the City offered to reduce the fee to $3,226.32. (*Id.*) The City arrived at this number by multiplying the total number of hours spent by City staff to fulfill the request (72) by the lowest hourly rate of the employees who worked on the Request ($44.81). (*Id.*) Had the City charged LVRJ $0.50 per page for the extraordinary use of its personnel, as authorized by NRS 239.055, the fees would have been $34,989.50 ($0.50 x 69,979 pages). (*Id.*)

/ / /

/ / /

D. The City Allows LVRJ to Inspect the Documents Free of Charge and Provides LVRJ With Its Withholding Log.

Subsequently, the parties' attorneys conferred about making the documents available for inspection and the City's production of a confidentiality/privilege log. (II JA223.) The City agreed to allow LVRJ to inspect the documents on a computer at City Hall. (*Id.*) LVRJ's inspection took place over the span of several days. (*Id.*) Notably, LVRJ did not ask the City for a single copy of any of the documents it reviewed either during the inspection or after completing the inspection. (*Id.*)

On January 9, 2017, the City provided LVRJ with a withholding log describing 91 documents – many of which it was still producing in redacted form – for which it was asserting confidentiality. (I JA061-066.) LVRJ asked the City to revise the withholding log because it did not list the actual names of attorneys and paralegals or other staff members sending or receiving correspondence. (II JA224.) While it is unclear how identifying the name of the attorney who sent or received an email helps to evaluate a claim of privilege, the City voluntarily accommodated LVRJ's request and prepared a revised version of the withholding log ("Withholding Log"). (I JA068-073; II JA224.)

The City asked LVRJ to notify the City if it had any questions or concerns regarding the Withholding Log so that the parties could discuss them and attempt to resolve them without having to involve the Court. (II JA224.) Notwithstanding

the City's request to meet and confer about any concerns LVRJ might have regarding the Withholding Log, LVRJ never contacted the City. (II JA224.)

E. LVRJ Files an Amended Petition.

Instead, on February 28, 2017, LVRJ filed an Amended Public Records Act Application and Petition for Writ of Mandamus ("Amended Petition") attacking the adequacy of the Withholding Log. (I JA029-167.)

The Amended Petition requested the following: (1) that the Court decide the Amended Petition on an expedited basis; (2) that the Court issue a writ of mandamus requiring the City to immediately make available all records LVRJ had previously requested but had been withheld and/or redacted; (3) injunctive relief prohibiting the City from applying the provisions of Henderson Municipal Code § 2.47.085 ("Code") and the City's Public Records Policy (the "Policy"); (4) declaratory relief invalidating HMC § 2.47.085 and the Policy for conflicting with the NPRA; and (5) declaratory relief limiting the City to charging fees for extraordinary use of personnel to fifty cents per page and prohibiting the City from requesting fees for attorney review of responsive records. (*Id.*)

On March 8, 2017, the City filed a Response to LVRJ's Amended Petition. (II JA190-295.) LVRJ filed a Reply on March 23, 2017. (III JA296-418.)

F. The District Court Denies the Amended Petition.

On March 30, 2017, the District Court held a hearing on LVRJ's Amended Petition. (III JA420-444.) At the hearing, LVRJ conceded that it never asked the

City for copies of any of the documents its reporter inspected at City Hall:

> THE COURT: But when your reporter went to the City and reviewed them I guess online; is that right? Some computer or something?
>
> MS. SHELL: They had made a computer available specifically for just the review.
>
> THE COURT: And did your reporter ask for copies of any of the documents your reporter saw?
>
> MS. SHELL: She did not because we still had this issue – or Ms. McLetchie may have an answer to that.
>
> THE COURT: I think that they'll give those to you or I thought that they would have.
>
> MR. KENNEDY: Just for the record, that's correct. No copies were requested or made.
>
> THE COURT: Okay.

(III JA424-425.) The District Court asked LVRJ's counsel several times if LVRJ still wanted copies of the documents it had already inspected. (III JA425-426.) In response to the Court's inquiries, and despite never asking the City for any copies of the already-inspected documents, LVRJ informed the Court that it now wanted copies. (III JA425-426.) The Court then asked the City: "Are you – are you willing to give them a USB drive with all the documents?" (III JA427.) The City responded affirmatively. (III JA427.)

Notwithstanding the City's willingness to provide copies of the documents on a USB drive, free of charge, LVRJ pressed the District Court to invalidate the City's Code and Policy for being "at odds with the NPRA." (III JA427.) The

District Court denied LVRJ's request for injunctive and declaratory relief. (III JA450.) Because the City had already allowed LVRJ to inspect the requested documents free of charge, and was willing to provide electronic copies of the inspected documents on a USB drive, also free of charge, the District Court determined that LVRJ's arguments regarding the propriety of charging fees was moot and did not decide them. (III JA449.)

The sole matter decided by the District Court was the adequacy of the Withholding Log. (III JA449.) The District Court ruled that the Withholding Log was "timely, sufficient and in compliance with the requirements of the NPRA," and therefore denied LVRJ's Amended Petition with respect to the withheld documents. (III JA449.) The District Court's Order concludes: "Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition is hereby DENIED." (III JA450.)

VII. SUMMARY OF THE ARGUMENT

LVRJ's Amended Petition asked the District Court for three types of relief: (1) declaratory relief invalidating the City's Code and Policy for purportedly conflicting with the NPRA; (2) injunctive relief prohibiting the City from applying its Code and Policy when responding to public records requests; and (3) a writ of mandamus requiring the City to immediately make available all records the City redacted or withheld, as identified on its Withholding Log. The District Court

denied LVRJ's Amended Petition in its entirety. This Court should affirm that decision for three reasons.

First, LVRJ's claims for declaratory and injunctive relief are moot and improper in an action filed under the NPRA. The District Court correctly found that LVRJ's claims for declaratory and injunctive relief are moot because LVRJ both inspected and received copies of the requested documents free of charge. Thus, there was (and still is) no live controversy regarding the payment of fees for the requested records. Nor does the capable-of-repetition-yet-evading-review exception apply. The facts and circumstances of this case are not capable of repetition as the City amended its Code and Policy in 2017. The facts and circumstances of this case likewise will not evade review as the NPRA and the Declaratory Judgments Act provide the means to fully adjudicate public records disputes and the interpretation of the NPRA.

Even if the Court were to find that LVRJ's declaratory and injunctive relief claims are justiciable, the Court should still affirm the District Court's denial of those claims because declaratory and injunctive relief are unavailable in an action brought under NRS 239.011. Under NRS 239.011, a petitioner's exclusive remedy is to apply for an order permitting the inspection of requested records or compelling the production of copies of requested records. That is it. Because NRS 239.011 expressly provides for a certain remedy, the Court should "decline to engraft any additional remedies therein." *Stockmeier v. Nev. Dep't of Corrs.*

Psychological Review Panel, 124 Nev. 313, 317, 183 P.3d 133, 136 (2008).

Second, to the extent this Court entertains LVRJ's declaratory and injunctive relief claims, the Court should nonetheless affirm the District Court's denial of those claims because the manner in which the City assessed fees to complete LVRJ's public records request in its Initial Response were in accordance with the fee-charging provisions in the NPRA. Specifically, the City's assessment of the fee for the extraordinary use of its personnel under NRS 239.055 complied with the plain language of the statute and is consistent with the spirit and intent of the NPRA.

Third, the District Court properly denied LVRJ's petition for a writ of mandamus seeking to compel the production of the records the City withheld or redacted for confidentiality reasons because the City produced a Withholding Log in a timely manner and the Withholding Log complied with the NPRA and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011).

VIII. STANDARD OF REVIEW

"Ordinarily, a district court denial of a writ petition is reviewed for an abuse of discretion." *Reno Newspapers v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010). "However, when the writ petition includes questions of statutory construction, this court will review the district court's decision de novo." *Id.*

In this case, the District Court determined that the questions of law raised in LVRJ's Amended Petition were moot and did not consider or decide them. (III

JA449.) The only issue the District Court decided was the adequacy of the Withholding Log. (III JA449.) Thus, the denial of LVRJ's Amended Petition should be reviewed for an abuse of discretion.

"An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Siems*, 130 Nev. Adv. Op. 54, 330 P.3d 1, 5 (2014).

IX. ARGUMENT

This Court should affirm the District Court's Order denying LVRJ's Amended Petition for three reasons. First, the Amended Petition's claims for declaratory and injunctive relief, which attempt to invalidate and enjoin the City from following its Code and Policy, are moot and improper in an action brought under NRS 239.011. Second, even if LVRJ's claims for declaratory and injunctive relief were justiciable (they are not), the Code and Policy in effect at the time LVRJ filed suit in 2016 were consistent with the fee-charging sections of the NPRA. The fees the City originally assessed to fulfill the Request were entirely proper. Finally, the City's Withholding Log satisfies the requirements of NRS 239.0107 and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011), and demonstrates that the City properly redacted and/or withheld the documents identified therein.

/ / /

A. The Amended Petition's Claims for Declaratory and Injunctive Relief Are Moot and Exceed the Scope of NRS 239.011.

This Court should uphold the District Court's denial of LVRJ's claims for declaratory and injunctive relief for at least two reasons: (1) the claims are moot; and (2) even if they are not moot, the claims are not authorized under NRS 239.011.

1. LVRJ's Claims for Declaratory and Injunctive Relief Are Moot.

The District Court determined that LVRJ's claims for declaratory and injunctive relief seeking to invalidate and enjoin enforcement of the City's Code and Policy concerning the assessment of fees were moot because LVRJ both inspected and received copies of the requested documents free of charge. Because a controversy no longer existed, the District Court never made a determination as to whether the claims were authorized under NRS 239.011.

"[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it." *Nat'l Collegiate Athletic Ass'n v. Univ. of Nev., Reno*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). "[A] controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). (internal

citations omitted). This court "generally will not exercise [its] discretion to consider a moot case" and "has frequently refused to determine questions presented in purely moot cases." *Paley v. Second Judicial Dist. Ct.*, 129 Nev. 701, 704, 310 P.3d 590, 592 (2013); *Nat'l Collegiate Athletic Ass'n*, 97 Nev. at 58, 624 P.2d at 11.

The District Court properly found that whether the City could charge the fees set forth in its Initial Response was a moot issue because the City had already allowed LVRJ to inspect the records and was willing to provide electronic copies free of charge. (III JA449.) Accordingly, there was (and still is) no live controversy regarding the payment of fees for the requested records. Rather, LVRJ is asking the Court to give opinions on hypothetical questions and to declare principles of law that cannot affect the matters at issue in the Amended Petition.

LVRJ concedes this point. LVRJ does not argue that a live controversy exists with respect to a payment of fees in exchange for the requested records. Instead, LVRJ's Opening Brief focuses entirely on the exception to the mootness doctrine, the capable-of-repetition-yet-evading-review exception. (Opening Brief at 27-28.) As explained below, this exception is inapplicable.

A moot case may be justiciable "where an issue is capable of repetition, yet will evade review because of the nature of its timing." *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 161, 87 P.3d 521, 524 (2004). The capable-of-repetition-yet-evading-review exception applies "only in exceptional situations" where "[t]he

challenged action must be too short in its duration to be fully litigated prior to its natural expiration, and a reasonable expectation must exist that the same complaining party will suffer the harm again." *Id.* For the exception to apply, the moot issue must also involve "a matter of widespread importance[.]" *Personhood Nev.*, 126 Nev. at 602, 245 P.3d at 574. The usefulness of the exception is evidenced in situations where "in the absence of such a rule, an important question of law could never be decided because of the nature of its timing." *State v. Washoe Cnty. Pub. Def.*, 105 Nev. 299, 301, 775 P.2d 217, 218 (1989).

The circumstances at issue in this appeal are not capable of repetition, nor will they evade review. While the City maintains that the Code and Policy in effect in 2016 were consistent with the NPRA, in October 2017 the City amended HMC 2.47.085 and the Policy. Under the amended version of HMC 2.47.085, the fee for extraordinary use of personnel or technological resources authorized under NRS 239.055 may only be assessed if the public records request will require more than ten hours of city personnel time to complete. *See* HMC 2.47.085. Moreover, the current version of HMC 2.47.085 clarifies that the total fee for extraordinary use of personnel may not exceed $0.50 per page. *Id*. These changes ensure that the circumstances at issue in this appeal are not capable of repetition.

Nevertheless, even if the manner in which the City charged "extraordinary use" fees in 2016 was capable of repetition under the City's revised Policy and Code, the issue will neither evade review because of the nature of its timing, nor is

it a matter of widespread importance. There is nothing unique about the timing of a public records request or response thereto that will result in an important question "evading review." To the contrary, the NPRA already provides a mechanism for public records disputes to be fully adjudicated on an expedited basis. *See* NRS 239.011. Furthermore, the Declaratory Judgments Act provides an alternative avenue to challenge the construction or validity of a statute or ordinance pertaining to public records.[2] *See* NRS 30.010 *et. seq*. Simply put, there are already adequate procedures in place that allow public records disputes and challenges to local ordinances to be fully litigated and reviewed by Nevada courts.

LVRJ relies on *Baltimore Sun Co. v. Goetz* as support for the proposition that this case falls under the mootness exception. 886 F.2d 60 (4th Cir. 1989). *Baltimore Sun*, however, is readily distinguishable. In *Baltimore Sun*, a magistrate judge sealed an affidavit supporting three search warrants and denied the plaintiff's motion to unseal the affidavit. *Id.* at 62. Thereafter, the plaintiff filed a petition for writ of mandamus to compel the unsealing of the affidavit, which the district court denied. *Id.* at 62-63. While the denial of the writ of mandamus was on appeal, indictments arising out of the criminal investigation were returned, which prompted the government to file a motion to unseal the warrant affidavit and the

[2] As explained below, however, a party may not bootstrap a declaratory or injunctive relief claim challenging the validity of an ordinance to an action brought under NRS 239.011, and thus avail itself of the expedited procedures and attorney's fees provisions unique to NPRA actions that would not otherwise be available.

district court granted the motion. *Id.*at 63.

On appeal, the government argued that the case was moot because the affidavit had already been unsealed. *Id.* The Fourth Circuit found that even though the affidavit had already been unsealed, the case should not be dismissed as moot because it fell within the capable-of-repetition-yet-evading-review exception. *Id.* Crucial to the Fourth Circuit's decision was the fact that the time period between sealing a search warrant affidavit and indictment (in that case, eight months) "was usually too short in duration to be litigated fully." *Id.* Thus, the inherently short duration of orders sealing warrant affidavits was central to the Fourth Circuit's decision to apply the capable-of-repetition-yet-evading-review exception. *Id.*

Unlike in *Baltimore Sun*, public records requests and responses under the NPRA do not evade review because of the nature of their timing. LVRJ's Opening Brief simply glosses over this point stating: "As with sealing orders (*id.*), the time period applicable to requests is also short in duration. Thus, the mootness exception applies." (Opening Brief at 28.) LVRJ fails to explain what time period applicable to public records requests is short in duration, and how this short time period results in public records issues evading review. Nor does LVRJ explain how public records disputes evade review when the legislature has created a statutory right and procedure to resolve such disputes. *See* NRS 239.011. In sum,

LVRJ has not satisfied the "evading review" element of the exception.

Finally, while the NPRA is itself of great importance, the issue LVRJ raises is not of such great importance that this Court should exercise its discretion to decide a moot issue. LVRJ argues that "[i]f this Court does not address the legality of the Code and Policy, Henderson can continue to assess illegal fees, require requesters to file suit, and then provide records at the hearings on the matter to avoid resolution of the important questions at the heart of this appeal." (Opening Brief at 30.) LVRJ's contention is both entirely speculative and unsupported by any evidence in the record.

There is nothing in the record indicating the City has, is currently, or plans in the future to assess illegal fees to force requesters to file suit, and then reverse course in front of the District Court to avoid resolution of the propriety of its fees. If anything, the record shows the opposite. As explained above, the City attempted, as it had in the past, to work with LVRJ to avoid litigation altogether. Moreover, the City's history of responding to public records requests does not support LVRJ's speculative allegations. By way of illustration, in 2016, the City Clerk's Office received and fulfilled over 2,300 public records requests. (II JA294.) The Clerk's Office fulfilled a significant majority of these requests free of charge. (*Id.*) The Clerk's Office only assessed the fee for extraordinary use of personnel *one time* during all of 2016. (*Id.*) Significantly, the instant suit is the only public records action against the City since at least 2010. (II JA295.) Other

than its own complaints concerning this particular Request, LVRJ has pointed to nothing in the record showing that the manner in which the City fulfills public records requests is a matter of great public importance for purposes of justiciability.

As a result, this Court should decline to entertain LVRJ's request for declaratory or injunctive relief.

2. LVRJ's Amended Petition Exceeds the Scope of NRS 239.011 and Seeks Remedies Beyond the Exclusive Remedies in the NPRA.

Even if the Court were to find that the capable-of-repetition-yet-evading-review exception applies, the Court should nonetheless affirm the District Court's denial of LVRJ's declaratory and injunctive relief claims because these remedies are unavailable in an action brought under NRS 239.011.

It is well established that "[w]here a statute gives a new right and prescribes a particular remedy, such remedy must be strictly pursued, and is exclusive of any other." *State v. Yellow Jacket Silver Min. Co.*, 14 Nev. 220, 225 (1879). "If a statute expressly provides a remedy, courts should be cautious in reading other remedies into the statute." *Builders Ass'n of N. Nevada v. Reno*, 105 Nev. 368, 370, 776 P.2d 1234, 1235 (1989).

NRS 239.011, the provision governing public records actions, provides that if a public records request is denied, the remedy is to "apply to the district court in the county in which the book or record is located for an order: (a) Permitting the

requester to inspect or copy the book or record; or (b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester, as applicable." NRS 239.011. In addition, NRS 239.011 mandates that public records proceedings "take priority over other civil matters" and authorizes the recovery of reasonable attorney's fees and costs to a prevailing party. *Id.* Thus, under NRS 239.011, the exclusive remedy is to apply for an order permitting the inspection of requested records or compelling the production of copies of requested records. That is it. If a requestor prevails in obtaining such an order, then it may move for reasonable attorney's fees and costs.

In *Richardson Const., Inc. v. Clark County School District*, this Court upheld a district court decision finding that NRS 338.1381, a public works bidding statute, provided the exclusive remedy (an administrative hearing and judicial review) to contractors whose prequalification applications had been denied. 123 Nev. 61, 64-65, 156 P.3d 21, 22-23 (2007). The Court found that nothing in the statute granted persons a cause of action through which to pursue money damages for violations of the public works bidding statutes. *Id.* at 65. The Court concluded that because NRS 338.1381 provided an express means of remedying any wrongful prequalification denial, but did not provide for a private cause of action, that it would "not read any additional remedies into the statute." *Id.*

Similarly, in *Stockmeier v. Nevada Dept. of Corrections Psychological Review Panel*, this Court held that the statute governing Open Meeting Law

claims, NRS 241.037, provided for Open Meeting Law violations to be remedied exclusively through declaratory and injunctive relief, and therefore rejected the plaintiff's claim for monetary damages. 124 Nev. 313, 316-18, 183 P.3d 133, 135-37 (2008). This Court found that while NRS 241.037 clearly and unambiguously authorized declaratory and injunctive relief, "the Legislature provided no relief in the form of damages." *Id.* at 317. The Court explained that "[b]ecause the statute's express provision of such remedies reflects the Legislature's intent to provide only those specified remedies, we decline to engraft any additional remedies therein." *Id.*

The *Stockmeier* Court also rejected the plaintiff's attempt to bring claims for monetary damages under a different statutory scheme, NRS 41.130, finding that the specific provisions in NRS 241.037 took precedence over the general provisions in NRS 41.130. *Id.* at 318. The Court reiterated that the "clear legislative intent with respect to Open Meeting Law violations is that remedies thereunder are exclusively limited to declaratory and injunctive relief." *Id.*

Here, as in *Richardson Constr.* and *Stockmeier*, NRS 239.011 sets forth an explicit remedy. Under NRS 239.011, a person may apply to a district court for an order permitting the inspection or compelling the production of the denied records. Absent from NRS 239.011, or any other provision in the NPRA, is any mention of declaratory or injunctive relief as a remedy in a public records action. The Legislature certainly knew how to provide for such relief because it did so in NRS

241.037 to remedy Open Meeting Law violations.

Had the legislature intended to allow district courts to issue declaratory or injunctive relief in NPRA actions it would have said so in the NPRA, but it did not. Because the Legislature did not include such remedies, under *Richardson Constr.* and *Stockmeier*, this Court should "not read any additional remedies into the statute." *Richardson Const.*, 123 Nev. at 65, 156 P.3d at 24. As a result, LVRJ's requests for declaratory and injunctive relief with respect to the validity of the City's Code and Policy fall outside the exclusive remedies and procedure provided under NRS 239.011, and therefore are improper.

B. The City's Assessment of Fees for the Extraordinary Use of Personnel to Fulfill the Request Was Proper Under the NPRA.

To the extent the Court determines that the propriety of the City's assessment of the fee for extraordinary use of personnel pursuant to its Code and Policy is justiciable, and that such remedies are available under the NPRA, the Court should find that such assessment was proper and consistent with the NPRA.

LVRJ challenges the City's ability to charge – and manner in which it calculated – a fee for extraordinary use of personnel to complete the Request under NRS 239.055. LVRJ also argues that the City cannot charge this fee to conduct what it inaccurately refers to as a "privilege review." Neither of LVRJ's arguments has merit nor are they supported by law.

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1. The NPRA Authorizes the Collection of a Variety of Fees to Respond to Public Records Requests.

When interpreting a statute, this Court first looks to its plain language and gives the statute's terms their plain meaning, "considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011).

LVRJ argues that "the only fees a government entity is permitted to charge a requester are set forth in Nev. Rev. Stat. § 239.052 and Nev. Rev. Stat. § 239.055(1) in a section of the NPRA entitled 'Reproduction of Records.'"[3] (Opening Brief at 19.) LVRJ contends that "the only fees contemplated under the NPRA are fees for reproduction of records—not a privilege review." (*Id.*) The plain language of the NPRA demonstrates that LVRJ is incorrect.

The NPRA authorizes a governmental entity to charge a variety of fees in responding to a public records request. Under NRS 239.052, a government entity may charge a fee for providing a copy of a public record, which cannot exceed the

[3] LVRJ cites to *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998), for the proposition that "the title of a statute and the heading of a section" are "tools available for the resolution of a doubt" about the meaning of a statute. (Opening Brief at 19.) But these tools "are of use only when they shed light on some ambiguous word or phrase." *Bhd. of R.R. Trainmen v. Baltimore & O.R. Co.*, 331 U.S. 519 (1947). "[T]he title of a statute and the heading of a section cannot limit the plain meaning of the text." *Id.* As set forth below, the plain language of the NPRA authorizes governmental entities to charge various fees that are separate and apart from the fees available for making copies of public records.

actual cost to the governmental entity to provide the copy. NRS 239.030 – a provision that is outside of the "Reproduction of Records" section – permits the assessment of fees to certify public records as correct copies. The certification fee is in addition to a copy fee. NRS 239.030.

Pursuant to NRS 239.053, governmental entities may charge court reporter fees for copies of transcripts of administrative proceedings transcribed by a certified court reporter. NRS 239.054 authorizes governmental entities to charge fees for providing information from a geographic information system. Notably, this includes the gathering and entry of data into the system, maintenance and updating of data in the system, quality control, and consultation with personnel of the governmental entity. NRS 239.054. This provision alone defeats LVRJ's contention that "the only fees contemplated under the NPRA are fees for reproduction of records," as it specifically authorizes charging fees for a variety of activities that are entirely separate from reproducing records. (Opening Brief at 19).

2. <u>The City's Assessment of the Extraordinary Use Fee Under NRS 239.055 Is Consistent With the Statute's Plain Language.</u>

In addition to the fees discussed above, NRS 239.055 authorizes a fee – separate and apart from the fee for making copies of records – when the extraordinary use of personnel or technological resources is necessary to fulfill a public records request. NRS 239.055(1) states:

> Except as otherwise provided in NRS 239.054 regarding information provided from a geographic information system, if a request for a copy of a public record would ***require a governmental entity to make extraordinary use of its personnel or technological resources***, the governmental entity may, ***in addition to any other fee authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such extraordinary use***. Such a request must be made in writing, and upon receiving such a request, the governmental entity shall inform the requester, in writing, of the amount of the fee before preparing the requested information. ***The fee charged by the governmental entity must be reasonable and must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources.*** The governmental entity shall not charge such a fee if the governmental entity is not required to make extraordinary use of its personnel or technological resources to fulfill additional requests for the same information.

(Emphasis added). The plain language of NRS 239.055 establishes that the City's assessment of the "extraordinary use fee" in its Initial Response was proper.

First, the extraordinary use fee may be charged "in addition to any other fee" authorized under the NPRA. NRS 239.055. Because NRS 239.052 already specifically authorizes governmental entities to charge a fee for providing a copy of a public record – and then separately states that the extraordinary use fee may be charged "in addition to" such copy fee – the plain language of the statute demonstrates that the Legislature intended for the extraordinary use fee to be charged for activities that are different from simply reproducing records. Otherwise, NRS 239.055 would be superfluous as NRS 239.052 already permits fees for making copies of records. Thus, a governmental entity may charge a fee

for making copies of public records under NRS 239.052 *and* a separate fee when the extraordinary use of its personnel is necessary to fulfill a request. LVRJ's contention that the extraordinary use fee may only be charged in connection with the reproduction of records is contrary to the plain language of the statute.

Second, while the NPRA does not define extraordinary use of personnel, language within NRS 239.055 evidences that the Legislature intended for the fee to encompass personnel related tasks that are necessary to fulfill a request. For example, NRS 239.055 uses phrases such as "preparing the requested information" and "fulfill additional requests" when discussing the extraordinary use fee. The Legislature's use of such phrases shows that the extraordinary use fee may be charged for more than just copying records.

The preparation or fulfillment of a voluminous public records request, such as the one in this case where there were in excess of 69,000 pages of responsive documents, often entails finding the records, reviewing them for responsiveness, confidentiality and privilege, and where necessary, redacting them. Thus, the City's Policy authorizing the assessment of the extraordinary use fee for necessary personnel-related tasks that take more than 30 minutes[4] to complete, is entirely consistent with the NPRA. Had the Legislature intended for governmental entities

[4] In October 2017 the City revised its Code to provide ten hours of staff time to fulfill a public records request free of charge. *See* HMC 2.47.085. After 10 hours, the City may charge the extraordinary use fee for any remaining time it takes to fulfill the request, not to exceed $0.50 per page.

to charge the extraordinary use fee only for *copying* public records, it would have used the word "copy." It did not; rather, it used words like "prepare" and "fulfill." Thus, the plain language shows that the extraordinary use fee covers more than just copying.

Third, the fee may only be charged when the "extraordinary" use of personnel is required to fulfill a request. This language suggests that the Legislature was concerned about the costs associated with government personnel expending extraordinary amounts of *time* preparing voluminous public records requests. Ordinary requests for prototypical public records such as contracts, minutes, and policies do not require the extraordinary use of personnel to fulfill, as such records are relatively easy to locate and require little to no review or redaction. In contrast, LVRJ's Request for nearly 10,000 emails and associated attachments totaling more than 69,000 pages would, by any reasonable measure, require the extraordinary use of personnel to fulfill.

Finally, NRS 239.055 contains three mandates with respect to the amount that may be charged for the extraordinary use of personnel. The first mandate provides a cap of $0.50 per page for the extraordinary use of personnel. NRS 239.055. The second mandate provides that the "fee charged by the governmental entity must be reasonable[.]" *Id.* The third mandate is the one LVRJ ignores in its Opening Brief – that the fee charged by the governmental entity "must be based on the cost that the governmental entity actually incurs for the extraordinary use of its

personnel or technological resources," *i.e.*, the hourly rate of the employees involved in preparing the information. *Id.* The City's Initial Response to LVRJ's Request complied with all three mandates.

The estimate of extraordinary use fees in the Initial Response – which the City was statutorily required to provide LVRJ before preparing the requested information[5] – was calculated by taking the average hourly rate of the two employees tasked with preparing the requested information and multiplying that rate by the number of hours the City estimated it would take to complete the Request. (I JA016.) The estimate was both reasonable (considering the extremely voluminous nature of the request and the types of records requested (emails that would likely contain privileged and/or confidential information)), and well below the $0.50 per page cap. In short, the City's Initial Response, issued in accordance with its Code and Policy, was proper and entirely consistent with NRS 239.055.

3. The NPRA Does Not Allow a Requestor to Dictate Which Personnel Should or Should Not Process a Public Records Request.

LVRJ argues that the NPRA does not allow for fees to be charged for a governmental entity's "privilege review" and takes issue with the fact that the City used Assistant City Attorneys to review documents for the production. (Opening Brief at 23.) LVRJ's attempt to rewrite the NPRA to exclude certain types of

[5] *See* NRS 239.055. LVRJ criticizes the City for including the amount of the extraordinary use fee in its Initial Response, as though the City's purpose for doing so was to deter LVRJ from requesting the documents. To the contrary, the City was required to include the amount under NRS 239.055.

personnel from participating in public records requests and certain types of tasks that the statute requires governmental entities perform is without merit.

First, LVRJ's argument that a requestor should not have to pay for a governmental entity's attorneys to review documents is inconsistent with its hardline position that the extraordinary use fee must be calculated strictly by the number of pages responsive to a request, *not* the actual cost incurred by the governmental entity for the employee's time to fulfill the request. (*See e.g.*, Opening Brief at 21.) Using LVRJ's theory, it does not matter which employees the governmental entity chooses to prepare the request or the per hour cost to the entity for those employees' time because the only thing that matters (according to LVRJ) when it comes to calculating the extraordinary use fee is the number of pages. Furthermore, if the City did use LVRJ's proposed calculation, then the cost associated with this request would be $34,989.50.

Second, nowhere in the NPRA does it allow a requester to dictate which employees a governmental entity may assign to work on preparing a response to a request. Rather, NRS 239.055 simply says that if a request "would require a governmental entity to make extraordinary use of its personnel or technological resources," the governmental entity may charge the extraordinary use fee. There are no exceptions, exclusions or limitations on which personnel may be used to satisfy a request. Such a requirement would be illogical, as the personnel required to prepare records responsive to a request is determined by the nature of the

request.

For example, when a requestor specifically requests documents that it knows will likely contain attorney-client privileged communications or other confidential information, it is reasonable and appropriate for attorneys to be involved in preparing the request. Here, LVRJ, a sophisticated party presumably capable of identifying the precise information it seeks, crafted remarkably broad search terms that it knew would contain privileged documents. LVRJ asked for "*all emails* pertaining to or discussing work performed by Elizabeth Trosper or Trosper Communications on behalf of the City of Henderson", "*All documents* pertaining to or discussing *contracts, agreements, or possible contracts*, with Elizabeth Trosper or Trosper Communications", and "*All documents* pertaining to or discussing *the terms* under which Elizabeth Trosper or Trosper Communications provided, provide, or will provide services to the City of Henderson." (I JA013-014 (emphasis added).) As the master of its own search terms, LVRJ certainly could have narrowed its terms to avoid privileged or confidential communications and documents, but it refused to do so. As a result, the City appropriately used attorneys to designate information that was privileged and/or confidential.

Third, LVRJ's characterization of the work the City performed in response to the Request as a "privilege review" is not only misleading, but fails to acknowledge the statutory requirements imposed on governmental entities when responding to public records requests. The NPRA provides "members of the

public with access to inspect and copy *public books and records to the extent permitted by law*." NRS 239.001(1) (emphasis added).

The NPRA does not define "public books and records"; instead, it provides a list of several hundred statutes that declare certain types of information confidential and then says "unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records." NRS 239.010(1). This Court has recognized, however, that "an individual's privacy is also an important interest, especially because private and personal information may be recorded in government files." *Reno Newspapers v. Sheriff*, 126 Nev. 211, 218, 234 P.3d 922, 927 (2010).

This Court has held that if a "public record 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[.]" *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 611 (2015). Instead, where possible, governmental entities must "redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential." NRS 239.010(3).

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It is only when governmental entities act in "good faith in disclosing or refusing to disclose information pursuant to a public records request" that "they are immune from liability or damages, either to the requester or to the person whom the information concerns." NRS 239.012. If a governmental entity does not make a good faith effort in determining whether a record contains confidential information, its immunity evaporates. In other words, governmental entities are legally obligated to review responsive documents to determine whether they contain confidential and/or privileged information, and if they do, whether such information can be redacted and provided to the requestor.

Without question, there are many types of documents for which no substantive review or analysis is necessary to determine whether the document is a public record including, but not limited to, contracts, minutes of public meetings, plans, drawings and permits. Normally, little or no personnel time is needed to review these types of records to make sure confidential information is not produced. But where, as here, a requestor provides broad search terms asking for all documents and emails matching those search terms, a governmental entity must (1) search for potentially responsive records; (2) undertake a review of the documents and emails to verify that only public books and records are being produced; (3) redact, as NRS 239.010 requires, any confidential information contained in the records; and (4) prepare copies of the records.

LVRJ contends that the City cannot charge the extraordinary use fee for the time it takes to search for, review, and redact voluminous records – no matter how much time it takes. Again, there is nothing in the statute supporting this argument. Extraordinary personnel time is not limited to standing at a copy machine for hours; the legislature used the phrase "***preparing*** the requested information" – a broader phrase than copying – for a reason. NRS 239.055 (emphasis added).

This interpretation is buttressed by the mandate in NRS 239.010 requiring governmental entities to redact confidential information where feasible instead of withholding an entire document containing some confidential information.[6] The redaction requirement promotes the openness in government the NPRA seeks to establish and balances it with the fact that governments maintain records containing confidential information necessary for the operation of government. It makes no sense to tell government entities that they must redact documents, but then prohibit them from charging for extraordinary use of personnel to complete the time-intensive task of pouring over hundreds or thousands (or in this case tens of thousands) of pages redacting information to which the requestor is not entitled.

[6] It is important to emphasize that when a governmental entity undertakes a review of requested documents, it is not merely trying to protect its own confidential information (such as attorney-client privileged communications), but it is also responsible for protecting private, personal information of its citizens. The City takes its responsibility to safeguard confidential records seriously. Nonpublic records are not only exempt from disclosure under the NPRA, but the inadvertent disclosure of such records could result in significant consequences for individuals and the public at large.

Put simply, the extraordinary use fee encompasses all facets of preparing public records, not merely the task of physically making copies of the documents. *See Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d at 614 (leaving undisturbed the district court's order requiring redaction of confidential information and requiring the requester "to pay the costs associated with the production of the requested documents").

4. The City's Policy of Charging Extraordinary Use Fees to Prepare Information in Response to a Voluminous Public Records Request Does Not Conflict With the Purpose of the NPRA.

LVRJ's Opening Brief cites a handful of cases for the proposition that a local government may not enact or enforce local laws that conflict with state statutes. (Opening Brief at 23-24.) It argues that the NPRA is a comprehensive statutory scheme that "sets forth clear limits on the fees a governmental entity can assess a fee for and how much a governmental entity can charge a requestor for records." (*Id.*) LVRJ concludes that the expressed intent of the legislature is "to limit such charges only to those related to the production of records[.]" (*Id.* at 25.) LVRJ is incorrect for two reasons.

First, LVRJ's preemption argument is contrary to the plain language of the NPRA. As explained above, the legislature authorized governmental entities to charge various fees when responding to public records requests. Contrary to LVRJ's contention, many of those fees have nothing to do with the copying of

records. *See* NRS 239.030 (fee for certifying records); NRS 239.053 (certified court reporter fees); NRS 239.054 (fees related to providing information from a geographic information system; NRS 239.055 (fees for extraordinary use of personnel or technological resources). None of these fees are intended to be profit centers for governmental entities. Instead, fees are permitted to allow governmental entities to recoup reasonable costs associated with fulfilling requests.

The NPRA does not dictate the amount of these fees; rather, it provides parameters within which governmental entities may establish their own fees. *See* NRS 239.052 (stating that fees for making copies must not exceed the actual cost to provide the copy and requiring governmental entities to prepare a list of fees that it charges); NRS 239.030 (authorizing governmental entities to "prescribe" the fees it will charge to certify records); NRS 239.053 (allowing governmental entities to enter into contracts with certified court reporters regarding per-page transcription fees); NRS 239.054 (authorizing recoupment of "reasonable costs" related to the provision of information from a geographic information system); NRS 239.055 (imposing a $0.50 per page cap on the extraordinary use fee, but requiring that such fee "must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources.") As explained above, the City's Code and Policy regarding extraordinary use fees are well within the parameters of NRS 239.055.

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Second, charging extraordinary use fees to review and redact voluminous records in response to a highly burdensome public records requests in which the requesting party refuses to consider modifying its search terms does not contravene the purpose or intent of the NPRA. It is important to remember that LVRJ's Request was *extremely unique*. In 2016, the City Clerk's office fulfilled over 2,300 public records requests and charged the extraordinary use fee *one time*. (II JA294.) Most of these requests were fulfilled in a matter of days and free of charge. (*Id.*)

However, when a sophisticated party like LVRJ propounds an onerous public records request resulting in nearly 70,000 pages, it is neither unreasonable nor contrary to the principles of transparency embodied in the NPRA for a governmental entity to seek reimbursement for the extraordinary use of its personnel to review and redact the privileged and/or confidential portions of those documents. After the City ascertained the enormity of the Request, it endeavored to work with LVRJ to make the request more manageable in hopes of decreasing or eliminating extraordinary use fees altogether, but LVRJ rebuffed those attempts. While the NPRA does not contain a "meet and confer" requirement, it does contain an extraordinary use provision that allows governmental entities to recoup the costs associated with responding to burdensome requests.

LVRJ contends that allowing governmental entities to charge extraordinary use fees to review and redact records "incentives [*sic*] governmental entities to

make searching for and segregating confidential material from public records prohibitively expensive." (Opening Brief at 26.) LVRJ's "slippery slope" argument is unavailing because NRS 239.055 specifically states that the extraordinary use fee "must be reasonable" and is capped at $0.50 per page. The legislature put specific measures into place to prevent governmental entities from making public records prohibitively expensive.

The City is not suggesting that governmental entities should be able to charge to redact records for ordinary requests. Governmental entities must shoulder the burden of redacting when fulfilling normal requests. But when extraordinary use of personnel is necessary to fulfill a highly burdensome request, all costs associated with preparing the information should be reimbursable, as long as they are reasonable and do not exceed $0.50 per page.

The facts in this case demonstrate that LVRJ is misusing the NPRA. For LVRJ, regardless of whether this case was ever about transparency, it became a case about recouping attorney's fees and costs.

C. The District Court Was Correct in Finding That the City's Withholding Log Was Timely and in Compliance With Nevada Law.

The only issue the District Court actually decided was the adequacy of the City's Withholding Log. (III JA449.) For the reasons set forth below, this Court should affirm the District Court's determination that the City's Withholding Log was (1) timely; and (2) in compliance with Nevada law.

1. The City Timely Asserted the Basis for Withholding Documents.

LVRJ argues that the City "waived its ability to assert any privileges" because "it failed to assert any claims of confidentiality within five business days as mandated by Nev. Rev. Stat. § 239.0107(1)(d)." (Opening Brief at 31-32.) The plain language of the NPRA, legislative history, and common sense demonstrate that LVRJ is incorrect. The City's Initial Response complied with the law.

a. The City's Initial Response complied with the plain language of NRS 239.0107.

When interpreting statutes, this Court gives effect to legislative intent. *McNeil v. State*, 132 Nev. Adv. Op. 54, 375 P.3d 1022, 1025 (2016). "The starting point for determining legislative intent is the statute's plain meaning; when a statute is clear on its face, a court cannot go beyond the statute in determining legislative intent." *Id.* (*quoting State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011)). Courts avoid "statutory interpretation that renders language meaningless or superfluous[.]" *In re George J.*, 128 Nev. Adv. Op. 32, 279 P.3d 187, 190 (2012). When a statute is silent "it is not the business of the court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done." *McKay v. Bd. of Cnty. Comm'rs of Douglas Cnty*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987).

Under NRS 239.0107(1), a governmental entity must do one of the following things, as applicable, within five business days of receiving a public

records request: (a) provide access to the requested records; (b) notify the requester that it does not have custody or control of the records; (c) notify the requester that it is unable to make the records available within five business days and provide a date when the records will be available; or (d) if the governmental entity must deny the request due to confidentiality, provide notice of that fact and a citation to the statute or other legal authority that makes the record, or part thereof, confidential.

The City's Initial Response to LVRJ's public records request satisfied the requirements of NRS 239.0107(1). There is no dispute the City provided the Initial Response within five business days of receiving LVRJ's request. (II JA230.) Pursuant to NRS 239.0107(1)(c), the City notified LVRJ, in writing, that extraordinary use of personnel was required to fulfill the Request and, in accordance with NRS 239.055, provided LVRJ with the anticipated amount of the extraordinary use fee before preparing the requested information. (*Id.*) The Initial Response notified LVRJ that the Request would be completed three weeks from the date it started processing the Request.[7]

[7] LVRJ criticizes the Initial Response because it stated the Request would be complete within three weeks of when the City started preparing the documents, instead of providing a date certain. (Opening Brief at 32-33.) But where a governmental entity intends to charge the extraordinary use fee, it is required to tell the requester the amount of the fee before preparing the requested information. NRS 239.055. Ostensibly, this is to allow a requester to decide whether to proceed with the request in light of the fee before the governmental entity starts processing the request and the requester starts incurring fees. On the rare occasions when the City charges the extraordinary use fee, it typically asks requesters for a 50%

Notwithstanding the fact that the Initial Response complied with NRS 239.0107(1)(c), LVRJ contends that because the City did not also provide its confidentiality designations within five business days, the City waived its ability to do so under NRS 239.0107(1)(d). NRS 239.0107(1)(d) states:

> (d) If the governmental entity ***must deny*** the person's request because the public book or record, or a part thereof, is confidential, provide to the person, in writing:
>
> (1) Notice of that fact; and
>
> (2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

(Emphasis added.)

Noticeably absent from this subsection, or any other section of the NPRA, is language stating that if a governmental entity does not provide its confidentiality designations within the initial five-business-day response period, the designations are waived. Nothing in the plain language supports LVRJ's position.

Had the legislature intended to punish governmental entities by doing something so severe as stripping them of the right to assert a privilege if it is not asserted within the initial five-business-day response period, that intent would have been expressly stated in the statute. It is not, and LVRJ has cited no case law or other authority supporting its contrary contention. Because the City properly responded under NRS 239.0107(1)(c), it was not required to provide confidentiality designations within the initial five-business-day response period.

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deposit so that there is no misunderstanding about the fee or the requester's desire to pursue the request.

b. Legislative history directly contradicts a waiver of confidentiality.

While the plain language of NRS 239.0107 is clear on its face and does not impose a waiver of confidentiality as LVRJ contends, to the extent this Court were to find that the statute is ambiguous and turn to legislative history for guidance, the legislative history directly belies LVRJ's position. NRS 239.0107 was added to Chapter 239 during the 2007 legislative session via Senate Bill 123. S.B. 123, 2007 Leg., 74th Sess. (Nev. 2007). Initially, SB 123 contained a section providing for the precise waiver of confidentiality for which LVRJ now advocates. (II JA271.) Section 4(2) of the original bill provided:

> If a governmental entity must deny a person's request to inspect or copy a public book or record because the public book or record, or a part thereof, has been declared by law to be confidential but the governmental entity fails to comply with the provisions of paragraph (d) of subsection 1, ***the governmental entity shall be deemed to have waived its right to claim that the public book or record is confidential and must allow the person to inspect or copy the public book or record,*** or a part thereof, unless the governmental entity or the administrative head of the governmental entity, as applicable, determines that:
>
> (a) The failure of the governmental entity to comply with the provisions of paragraph (d) of subsection 1 was due to excusable neglect; or
>
> (b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.

Id. (emphasis added).

The Legislature specifically *deleted* this waiver of confidentiality provision

from SB 123 in Amendment No. 415, thus unmistakably demonstrating that it did not intend for a waiver of confidentiality to be included in the statute. (II JA276-282; *see also* JA284-292 (Senator Care, the sponsor of SB 123, explaining that "Section 9 is deleted. That was the section about liability. *There is no waiver of the confidential status of the document if the government fails a timely response*.") (Emphasis added)).

"Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." *INS v. Cardoza–Fonseca*, 480 U.S. 421, 442 (1987) (*quoting Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 392–393 (1980) (Stewart, J., dissenting). Thus, "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." *Russello v. United States*, 464 U.S. 16, 23–24 (1983); *see also Cent. Delta Water Agency v. State Water Res. Control Bd.*, 17 Cal. App. 4th 621, 633 (Cal. Ct. App. 1993) (explaining that the "fact that the Legislature chose to omit a provision from the final version of a statute which was included in an earlier version constitutes strong evidence that the act as adopted should not be construed to incorporate the original provision."); *Berry v. Am. Exp. Publ'g, Inc.*, 147 Cal. App. 4th 224, 230 (2007) ("The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be

construed to include the omitted provision."). "The simple reason for this canon [of statutory construction] is that a court 'should not grant through litigation what could not be achieved through legislation.'" *Berry*, 147 Cal. App. 4th at 239. Accordingly, "courts must not interpret a statute to include terms the Legislature deleted from earlier drafts." *Id.*

Here, the Legislature's rejection of a waiver of confidentiality in the original draft of SB 123 demonstrates that no such waiver was intended, and therefore, should not be read into the statute.

c. Imposing a waiver of confidentiality defies common sense.

Inserting a waiver penalty into the NPRA also defies common sense. First, NRS 239.010 contains an extensive list of statutes governing certain types of records that are confidential and therefore not accessible to the public. Governmental entities are responsible for protecting this information. It does not make sense for the legislature to specifically protect this information – which is often personal and sensitive – on the one hand, but then force a governmental entity to make this information open to the public if it does not assert confidentiality within five business days of receiving the request. Such an interpretation only serves to harm the persons to which the information pertains.

Second, LVRJ's position fails to take into account the realities of responding to a public records request. Governmental entities receive public records requests involving hundreds, if not thousands, of records. They also may receive requests

for records that are difficult to locate or may be stored off-site. It is not always possible to review or obtain all of the requested records and make a confidentiality determination within the initial five-business-day response period. NRS 239.0107(1)(d) only applies if the governmental entity determines within the five-business-day period that it "***must deny*** the person's request because the public book or record, or a part thereof, is confidential[.]" (Emphasis added). If a governmental entity does not know whether it "must deny" the person's request within the five-business-day period, such as, for example, when a request seeks a large number of documents, then subsection (d) is not the proper mechanism to respond.

The Legislature specifically contemplated that governmental entities may need more time to respond to public records requests by enacting NRS 239.0107(1)(c), which allows them additional time to complete a request as long as they inform the requestor of the need for additional time within five business days. LVRJ's interpretation of the statute would effectively render NRS 239.0107(1)(c) meaningless because governmental entities would be forced to find and review all requested documents within five business days—regardless of the number, nature or location—and make confidentiality designations under subsection (d) or else waive confidentiality altogether.

The City properly responded to LVRJ's request within five business days pursuant to NRS 239.0107(1)(c), and then provided its privilege assertions after

completing a review of the requested emails. As the District Court properly concluded, the timing of the City's confidentiality designations was proper under the NPRA.

2. The City's Withholding Log Complies With Nevada Law.

Because the City's Withholding Log complies with the requirements of the NPRA and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011), this Court should affirm the District Court's Order.

Under the NPRA, when a governmental entity intends to redact or withhold confidential information from a public records request, it is required to provide the requester written notice of that fact and a "citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential." NRS 239.0107(1)(d). In *Gibbons*, this Court explained that after the initiation of an NPRA action, the requesting party generally is entitled to a withholding log. 127 Nev. at 882-83, 266 P.3d at 629. The Court declined "to spell out an exhaustive list of what such a log must contain or the precise form that this log must take because, depending on the circumstances of each case, what constitutes an adequate log will vary." *Id.* at 883. Instead, the Court stated that in most cases the log should contain "a general factual description of each record withheld and a specific explanation for nondisclosure."[8] *Id.*

[8] The Court also noted that governmental entities do not need to provide such detail as to compromise confidential information, and the court recognized that providing

a. The City properly designated documents under the attorney-client privilege.

"The attorney-client privilege is a long-standing privilege at common law that protects communications between attorneys and clients." *Wynn Resorts v. Eighth Jud. Dist. Ct.*, 399 P.3d 334, 341 (Nev. 2017). Nevada codified the privilege in NRS 49.095, which requires that "the communications must be between an attorney and client, for the purpose of facilitating the rendition of professional legal services, and be confidential." *Id.* A communication is considered confidential if "it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." NRS 49.055. The purpose of the attorney-client privilege is to protect confidential communications between a party and its attorney for the purposes of encouraging "full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Premiere Digital Access, Inc. v. Cent. Tel. Co.*, 360 F. Supp. 2d 1168, 1172 (D. Nev. 2005) (*quoting Upjohn Co. v. U.S.*, 449 U.S. 383 (1981)).

LVRJ takes issue with the City's description of certain documents identified in the Withholding Log that were redacted or withheld based upon the attorney-

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an individual description of each record may become overly burdensome when responding to large requests. *Gibbons*, 127 Nev. at 883 n.3, 266 P.3d at 629 n.3.

client privilege. (Opening Brief at 35-37.) The City's Withholding Log, however, complies with the NPRA and the principles announced in *Gibbons*. The Withholding Log provides the following information for each withheld or redacted document: (1) a specific document number so that LVRJ would know which documents were missing from the universe of documents it inspected; (2) the identity of email senders/authors and recipients; (3) a general description of the document, including the type of document, e.g. electronic correspondence, internal report, etc.; (4) an explanation of the basis for the redaction or non-production; (5) the specific legal authority for withholding or redacting the document; and (6) whether the document was withheld entirely, or produced in redacted form. This level of organization and detail complies with *Gibbons*.

Notwithstanding, LVRJ criticizes, for example, a group of entries in the Withholding Log for containing the description: "Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms." (Opening Brief at 35.) These entries describe the type of document at issue (electronic correspondence), that the document contains communications between attorney and client, and even identifies the subject of the legal advice – the Trosper contract terms. Further, the Withholding Log provides the name of the attorney rendering the legal advice and includes the recipients of the communication. The City cannot provide any additional detail regarding the description without

disclosing privileged information.

In another example, LVRJ surmises that the redactions in document 5249 entitled Public Information & Market Weekly Report are not subject to confidentiality based on the content of the unredacted portions of the report. (Opening Brief at 36.) The City acknowledges that the report, prepared by City management, largely contains information accessible to the public – which is why it only redacted discreet portions of the report disclosing legal advice from various attorneys in the City Attorney's Office.

LVRJ also complains that a number of documents containing the following description are too generically described: "Electronic correspondence containing communication between attorney and staff for the purpose of facilitating the rendition of professional legal services." (Opening Brief at 37.) A good number of these documents, however, are redacted emails that leave the subject line unredacted so that LVRJ can see the subject of the communication. For example, the subject line of Documents 1807, 1808, and 1809 says "Trosper Communications public records request – attorney-client privileged communication." (I JA093-111.) These emails, dated just days after LVRJ submitted its public records Request, are between City attorneys and staff and contain advice regarding the Request at issue in this case. (*Id.*) The unredacted portions of these emails contain more than enough information, even without the Withholding Log, for the LVRJ to understand the basis for asserting the attorney-

client privilege.

As another example, Documents 2485, 2487 and 2491 are redacted emails bearing the subject line "[Action Needed] – HDA position letter: West Henderson project rezoning item." (I JA112-122.) Only the communications between a member of the City Council and the City Attorney are redacted. (*Id.*) The only reason these documents are even responsive to LVRJ's Request is because Elizabeth Trosper was one of about twenty people who received the original email, which the City Council member forwarded to the City Attorney for legal advice. Again, between the Withholding Log and the documents themselves, more than enough information exists to understand the City's assertion of attorney-client privilege.

Unlike in *Gibbons* where the government simply informed the requesting party that "all [the requested] emails are either privileged or are not considered public records" and then included a string of citations, 127 Nev. at 885, 266 P.3d at 631, the City's Withholding Log contains specific explanations for withholding or redacting each document together with the authority for doing so and a general description of the document. The unredacted portions of the documents provide additional information about the context in which confidentiality was asserted. In short, the information provided by the City satisfies both the NPRA and *Gibbons*.

To the extent, however, the Court determines that any of the City's attorney-client privilege designations are inadequate, the remedy is not forced production of

those documents. Failure to serve a privilege log or serving an inadequate privilege log does not constitute a waiver of a timely asserted attorney-client privilege. *Catalina Island Yacht Club v. Superior Court*, 242 Cal. App. 4th 1116, 1126-27 (Cal. Ct. App. 2015) ("the court may not impose a waiver of the attorney-client privilege or work product doctrine as a sanction for failing to provide an adequate response to an inspection demand or an adequate privilege log."). Instead, the remedy should either be an order requiring the City to provide additional detail in the Withholding Log or an *in camera* inspection by the District Court. *See id.*; *see also Gibbons*, 127 Nev. at 883-84 (*in camera* review may be used to supplement a log.)

b. The City properly designated documents under the deliberative process privilege.

The City also withheld documents based on the deliberative process privilege because the documents contained information that was predecisional and deliberative and therefore confidential. The deliberative process privilege protects the deliberative and decision-making processes of the executive branch of government, and is meant to "shield[] from mandatory disclosure 'inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency[.]'" *DR Partners v. Bd. of Cnty. Comm'rs*, 116 Nev. 616, 622-23, 6 P.3d 465, 469 (2000) (*quoting Paisley v. C.I.A.*, 712 F.2d 686, 697 (D.C.Cir.1983)).

This privilege is meant to allow a governmental agency to "engage in that frank exchange of opinions and recommendations necessary to the formulation of policy without being inhibited by fear of later public disclosure." *Id*. at 623, 6 P.3d at 469 (*quoting Paisley*, 712 F.2d at 698); s*ee also, Nevada v. United States DOE*, 517 F. Supp. 2d 1245, 1262 (D. Nev. 2007) ("The purpose of [the deliberative process] privilege is 'to allow agencies freely to explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny.'") (*quoting Carter v. United States DOC*, 307 F.3d 1084, 1089 (9th Cir. 2002)). "The key question in every case is 'whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.'" *Labor & Workforce Dev. Agency v. Superior Court*, 19 Cal. App. 5th 12, 27 (Cal. Ct. App. 2018).

For the privilege to apply, a governmental agency must "pinpoint an agency decision or policy" to which the documents contributed. *DR Partners*, 116 Nev. at 623, 6 P.3d at 469. Once the governmental agency demonstrates that the documents contributed to an agency decision or policy, the agency must then show that the documents were both (1) predecisional and (2) deliberative. *Id*.

The entries asserting deliberative process privilege in the City's Withholding Log (I JA069-070; 072-073.) demonstrate that the withheld materials involved the City's mental impressions and decision-making process prior to any final decision.

Nevada v. United States DOE, 517 F. Supp at 1262 ("whether the disclosure of materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Thus, predecisional materials are privileged to the extent that they reveal the mental processes of decision-makers.") (*quoting Carter*, 307 F.3d at 1090).

LVRJ takes issue with several of the City's deliberative process designations arguing that the Withholding Log fails to show that the withheld documents involve "significant policy judgments." (Opening Brief at 39-40.) The deliberative process privilege, however, applies to records containing opinions, recommendations or advice that contribute to "an agency decision or policy." *DR Partners*, 116 Nev. at 623, 6 P.3d at 469. Documents 1362-1367, 3862, 3864 and 3866 are "Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement." (I JA069-073.) The Ninth Circuit has held that the deliberative process privilege "cover[s] all 'recommendations, draft documents, proposals, suggestions and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency,' as well as documents which would 'inaccurately reflect or prematurely disclose the views of the agency.'" *Nevada v. United States DOE*, 517 F. Supp at 1263 (*quoting Nat'l Wildlife Fed'n v. U.S. Forest Serv.*, 861 F.2d 1114 (9th Cir. 1988). The documents identified in the

Withholding Log exposes the City's decision-making process regarding a decision to communicate important information to the public via a public statement. If the City had to disclose the communications relating to the draft statement, or the draft statement itself, it would discourage the City from candid discussion and hinder its ability to perform its job effectively.

Documents 7717 and 7718 contain the City's "mental impressions and strategy of City management regarding changes to organizational structure within the City Manager's Office." (I JA072-073.) The City was in the process of making certain organizational changes and the email and attachment concerned discussions about the changes and what would be best for the department. (*Id.*) These documents contain suggestions reflecting the "personal opinions of the writer" that merit protection to safeguard the deliberative process, not a final decision. According, the City's assertion of the deliberative process privilege on its Withholding Log was proper.

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X. CONCLUSION

Based on the foregoing, this Court should affirm the District Court's Order denying LVRJ's Amended Petition.

DATED this 23rd day of April, 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this RESPONDENT'S ANSWERING BRIEF complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman font 14.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 13,803 words.

Finally, I hereby certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 23rd day of April, 2018.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Bailey ❖ Kennedy, and that on April 23, 2018, the RESPONDENT'S ANSWERING BRIEF was electronically filed with the Clerk of the Nevada Supreme Court, and therefore service was made in accordance with the Master Service List as follows:

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ADDENDUM

STATUTES

NRS 30.010 1

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OTHER AUTHORITIES

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West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 30. Declaratory Judgments
Uniform Act (Refs & Annos)

N.R.S. 30.010

30.010. Short title

Currentness

NRS 30.010 to 30.160, inclusive, may be cited as the Uniform Declaratory Judgments Act.

Credits

Added by Laws 1929, c. 22, § 16.

Notes of Decisions (9)

N. R. S. 30.010, NV ST 30.010
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Actions for Personal Injuries by Wrongful Act, Neglect or Default (Refs & Annos)

N.R.S. 41.130

41.130. Liability for personal injury

Currentness

Except as otherwise provided in NRS 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for the conduct of the person causing the injury, that other person or corporation so responsible is liable to the person injured for damages.

Credits

Added by CPA (1911), § 707. NRS amended by Laws 1997, c. 384, § 3, eff. July 11, 1997.

Notes of Decisions (74)

N. R. S. 41.130, NV ST 41.130
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

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49.055. "Confidential" defined, NV ST 49.055

West's Nevada Revised Statutes Annotated
Title 4. Witnesses and Evidence (Chapters 47-56) (Refs & Annos)
Chapter 49. Privileges (Refs & Annos)
Lawyer and Client (Refs & Annos)

N.R.S. 49.055

49.055. "Confidential" defined

Currentness

A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

Credits

Added by Laws 1971, p. 782.

Editors' Notes

SUBCOMMITTEE'S COMMENT

Sections 41 to 49, inclusive, (now NRS 49.035-49.115), are taken without substantive change from Draft Federal Rule 5-03.

Notes of Decisions (13)

N. R. S. 49.055, NV ST 49.055
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

49.095. General rule of privilege, NV ST 49.095

West's Nevada Revised Statutes Annotated
Title 4. Witnesses and Evidence (Chapters 47-56) (Refs & Annos)
Chapter 49. Privileges (Refs & Annos)
Lawyer and Client (Refs & Annos)

N.R.S. 49.095

49.095. General rule of privilege

Currentness

A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

1. Between the client or the client's representative and the client's lawyer or the representative of the client's lawyer.

2. Between the client's lawyer and the lawyer's representative.

3. Made for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest.

Credits

Added by Laws 1971, p. 783.

Editors' Notes

SUBCOMMITTEE'S COMMENT

Sections 41 to 49, inclusive, (now NRS 49.035-49.115), are taken without substantive change from Draft Federal Rule 5-03.

Notes of Decisions (95)

N. R. S. 49.095, NV ST 49.095

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49.095. General rule of privilege, NV ST 49.095

Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.0107

239.0107. Requests for inspection or copying of public books or records: Actions by governmental entities

Effective: October 1, 2013

Currentness

1. Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity shall do one of the following, as applicable:

(a) Except as otherwise provided in subsection 2, allow the person to inspect or copy the public book or record or, if the request is for the person to receive a copy of the public book or record, provide such a copy to the person.

(b) If the governmental entity does not have legal custody or control of the public book or record, provide to the person, in writing:

(1) Notice of that fact; and

(2) The name and address of the governmental entity that has legal custody or control of the public book or record, if known.

(c) Except as otherwise provided in paragraph (d), if the governmental entity is unable to make the public book or record available by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request, provide to the person, in writing:

(1) Notice of that fact; and

(2) A date and time after which the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person. If the public book or record or the copy of the public book or record is not available to the person by that date and time, the person may inquire regarding the status of the request.

(d) If the governmental entity must deny the person's request because the public book or record, or a part thereof, is confidential, provide to the person, in writing:

(1) Notice of that fact; and

(2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

2. If a public book or record of a governmental entity is readily available for inspection or copying, the person who has legal custody or control of the public book or record shall allow a person who has submitted a request to inspect, copy or receive a copy of a public book or record.

Credits

Added by Laws 2007, c. 435, § 4. Amended by Laws 2013, c. 98, § 2.

Notes of Decisions (2)

N. R. S. 239.0107, NV ST 239.0107
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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Chapter 239. Public Records (Refs & Annos)
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N.R.S. 239.001

239.001. Legislative findings and declaration

Effective: May 20, 2015

Currentness

The Legislature hereby finds and declares that:

1. The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law;

2. The provisions of this chapter must be construed liberally to carry out this important purpose;

3. Any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly;

4. The use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services; and

5. If a public book or record is declared by law to be open to the public, such a declaration does not imply, and must not be construed to mean, that a public book or record is confidential if it is not declared by law to be open to the public and is not otherwise declared by law to be confidential.

Credits

Added by Laws 2007, c. 435, § 2. Amended by Laws 2011, c. 452, § 2, eff. July 1, 2011; Laws 2015, c. 123, § 7.7, eff. May 20, 2015.

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239.001. Legislative findings and declaration, NV ST 239.001

Notes of Decisions (7)

N. R. S. 239.001, NV ST 239.001
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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N.R.S. 239.010

239.010. Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested

Effective: January 1, 2018 to June 30, 2018

Currentness

<Section effective until July 1, 2018, or until the date the Department of Motor Vehicles has sufficient resources to carry out the amendatory provisions of Laws 2015, c. 119, and all required notifications of that fact are promulgated by the Department. See also, sections effective July 1, 2018, to Jan. 1, 2019; Jan. 1, 2019, to Jan. 1, 2020; and Jan. 1, 2020. See also, sections effective on the date the requirements specified in Laws 2015, c. 119 have occurred.>

1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 41.071, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 136.050, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.504, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.249, 391.035, 391.120, 392.029, 392.147, 392.264, 392.271, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 450.140, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571571.160, 584.583, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425,

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2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

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(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Credits

Added by Laws 1911, c. 149, § 1. NRS amended by Laws 1963, p. 26; Laws 1965, p. 69; Laws 1993, pp. 1230, 2307, 2623; Laws 1995, pp. 503, 716; Laws 1997, c. 497, § 7; Laws 1999, c. 291, § 6, eff. May 26, 1999; Laws 2007, c. 435, § 8; Laws 2013, c. 98, § 1; Laws 2013, c. 414, § 3; Laws 2013, c. 414, § 3.5, eff. July 1, 2015; Laws 2015, c. 32, § 2, eff. May 6, 2015; Laws 2015, c. 123, § 8, eff. May 20, 2015; Laws 2015, c. 147, § 2.5, eff. Jan. 1, 2016; Laws 2015, c. 183, § 2, eff. May 25, 2015; Laws 2015, c. 201, § 7, eff. July 1, 2015; Laws 2015, c. 203, § 2, eff. May 27, 2015; Laws 2015, c. 226, § 1, eff. May 27, 2015; Laws 2015, c. 262, § 10, eff. July 1, 2015; Laws 2015, c. 279, § 2.5, eff. May 29, 2015; Laws 2015, c. 293, § 3, eff. Oct. 1, 2015; Laws 2015, c. 378, § 9.5, eff. Jan. 1, 2016; Laws 2015, c. 404, § 63, eff. Oct. 1, 2015; Laws 2015, c. 409, § 52, eff. Oct. 1, 2015; Laws 2015, c. 430, § 14.5, eff. Jan. 1, 2016; Laws 2015, c. 457, § 8, eff. July 1, 2015; Laws 2015, c. 494, § 3.7, eff. June 9, 2015; Laws 2015, c. 503, § 7, eff. Jan. 1, 2016; Laws 2015, c. 511, § 4, eff. June 10, 2015; Laws 2015, c. 521, § 6, eff. July 1, 2015; Laws 2015, c. 522, § 314, eff. July 1, 2015; Laws 2015, c. 533, § 2.5, eff. Jan 1, 2017; Laws 2015 (29th ss), c. 1, § 15, eff. Dec. 19, 2015; Laws 2017, c. 12, § 28, eff. Jan. 1, 2018; Laws 2017, c. 92, § 5, eff. July 1, 2017; Laws 2017, c. 99, § 7, eff. Oct. 1, 2017; Laws 2017, c. 114, § 2.7, eff. Oct. 1, 2017; Laws 2017, c. 119, § 10, eff. May 24, 2017; Laws 2017, c. 157, § 6, eff. July 1, 2017; Laws 2017, c. 164, § 9, eff. Jan. 1, 2018; Laws 2017, c. 166, § 8, eff. Oct. 1, 2017; Laws 2017, c. 172, § 198, eff. July 1, 2017; Laws 2017, c. 183, § 10, eff. July 1, 2017; Laws 2017, c. 190, § 3, eff. May 27, 2017; Laws 2017, c. 212, § 4, eff. Oct. 1, 2017; Laws 2017, c. 275, § 41, eff. July 1, 2017; Laws 2017, c. 294, § 16, eff. Oct. 1, 2017; Laws 2017, c. 307, § 19, eff. July 1, 2017; Laws 2017, c. 314, § 42, eff. July 1, 2017; Laws 2017, c. 327, § 137, eff. June 3, 2017; Laws 2017, c. 338, § 23, eff. July 1, 2017; Laws 2017, c. 341, § 32, eff. July 1, 2017; Laws 2017, c. 363, § 33, eff. Jan. 1, 2018; Laws 2017, c. 376, § 163, eff. July 1, 2017; Laws 2017, c. 384, § 28, eff. July 1, 2017; Laws 2017, c. 401, § 17, eff. Jan. 1, 2018; Laws 2017, c. 461, § 18, eff. July 1, 2017; Laws 2017, c. 500, § 25, eff. July 1, 2017; Laws 2017, c. 506, § 29, eff. July 1, 2017; Laws 2017, c. 548, § 97, eff. Jan. 1, 2018; Laws 2017, c. 556, § 34, eff. July 1, 2017; Laws 2017, c. 568, § 11, eff. Jan. 1, 2018.

N. R. S. 239.010, NV ST 239.010
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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239.011. Application to court for order allowing inspection or..., NV ST 239.011

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N.R.S. 239.011

239.011. Application to court for order allowing inspection or copying, or requiring that copy be provided, of public book or record in legal custody or control of governmental entity for less than 30 years

Effective: October 1, 2013

Currentness

1. If a request for inspection, copying or copies of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order:

(a) Permitting the requester to inspect or copy the book or record; or

(b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester,

as applicable.

2. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.

Credits

Added by Laws 1993, p. 1230. Amended by Laws 1997, c. 497, § 8; Laws 2013, c. 98, § 3.

Notes of Decisions (4)

N. R. S. 239.011, NV ST 239.011

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239.011. Application to court for order allowing inspection or..., NV ST 239.011

Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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239.012. Immunity for good faith disclosure or refusal to disclose..., NV ST 239.012

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N.R.S. 239.012

239.012. Immunity for good faith disclosure or refusal to disclose information

Currentness

A public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns.

Credits

Added by Laws 1993, p. 1230.

N. R. S. 239.012, NV ST 239.012
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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N.R.S. 239.030

239.030. Furnishing of certified copies of public records

Currentness

Every officer having custody of public records, the contents of which are not declared by law to be confidential, shall furnish copies certified to be correct to any person who requests them and pays or tenders such fees as may be prescribed for the service of copying and certifying.

Credits

Added by Laws 1909, c. 73, § 1. NRS amended by Laws 1973, p. 353.

N. R. S. 239.030, NV ST 239.030
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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Reproduction of Records

N.R.S. 239.052

239.052. Fees: Limitations; waiver; posting of sign or notice

Effective: October 1, 2013

Currentness

1. Except as otherwise provided in this subsection, a governmental entity may charge a fee for providing a copy of a public record. Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public record unless a specific statute or regulation sets a fee that the governmental entity must charge for the copy. A governmental entity shall not charge a fee for providing a copy of a public record if a specific statute or regulation requires the governmental entity to provide the copy without charge.

2. A governmental entity may waive all or a portion of a charge or fee for a copy of a public record if the governmental entity:

(a) Adopts a written policy to waive all or a portion of a charge or fee for a copy of a public record; and

(b) Posts, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice that states the terms of the policy.

3. A governmental entity shall prepare and maintain a list of the fees that it charges at each office in which the governmental entity provides copies of public records. A governmental entity shall post, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice which states:

(a) The fee that the governmental entity charges to provide a copy of a public record; or

(b) The location at which a list of each fee that the governmental entity charges to provide a copy of a public record may be obtained.

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239.052. Fees: Limitations; waiver; posting of sign or notice, NV ST 239.052

4. The fee for providing a copy of a public book or record in the custody of a law library operated by a governmental entity must not exceed 50 cents per page.

Credits

Added by Laws 1997, c. 497, § 2, eff. July 1, 1999. Amended by Laws 2013, c. 98, § 4.

Notes of Decisions (1)

N. R. S. 239.052, NV ST 239.052
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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N.R.S. 239.053

239.053. Additional fee for transcript of administrative proceedings; money remitted to court reporter; posting of sign or notice

Currentness

1. If a person requests a copy of a transcript of an administrative proceeding that has been transcribed by a certified court reporter, a governmental entity shall charge, in addition to the actual cost of the medium in which the copy of the transcript is provided, a fee for each page provided which is equal in amount to the fee per page charged by the court reporter for the copy of the transcript, as set forth in the contract between the governmental entity and the court reporter. For each page provided, the governmental entity shall remit to the court reporter who transcribed the proceeding an amount equal to the fee per page set forth in the contract between the governmental entity and the court reporter.

2. The governmental entity shall post, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice which states that, in addition to the actual cost of the medium in which the copy of the transcript is provided, the fee charged for a copy of each page of the transcript is the fee per page set forth in the contract between the governmental entity and the court reporter.

Credits

Added by Laws 1997, c. 497, § 5.

N. R. S. 239.053, NV ST 239.053
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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N.R.S. 239.054

239.054. Additional fee for information from geographic information system

Currentness

1. A fee for the provision of information from a geographic information system may include, in addition to the actual cost of the medium in which the information is provided, the reasonable costs related to:

(a) The gathering and entry of data into the system;

(b) Maintenance and updating of the database of the system;

(c) Hardware;

(d) Software;

(e) Quality control; and

(f) Consultation with personnel of the governmental entity.

2. As used in this section, "geographic information system" means a system of hardware, software and data files on which spatially oriented geographical information is digitally collected, stored, managed, manipulated, analyzed and displayed.

Credits

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239.054. Additional fee for information from geographic information..., NV ST 239.054

Added by Laws 1997, c. 497, § 4.

N. R. S. 239.054, NV ST 239.054
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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N.R.S. 239.055

239.055. Additional fee when extraordinary use of personnel or resources is required; limitation

Effective: October 1, 2013

Currentness

1. Except as otherwise provided in NRS 239.054 regarding information provided from a geographic information system, if a request for a copy of a public record would require a governmental entity to make extraordinary use of its personnel or technological resources, the governmental entity may, in addition to any other fee authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such extraordinary use. Such a request must be made in writing, and upon receiving such a request, the governmental entity shall inform the requester, in writing, of the amount of the fee before preparing the requested information. The fee charged by the governmental entity must be reasonable and must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources. The governmental entity shall not charge such a fee if the governmental entity is not required to make extraordinary use of its personnel or technological resources to fulfill additional requests for the same information.

2. As used in this section, "technological resources" means any information, information system or information service acquired, developed, operated, maintained or otherwise used by a governmental entity.

Credits

Added by Laws 1997, c. 497, § 3. Amended by Laws 2013, c. 98, § 4.5.

Notes of Decisions (2)

N. R. S. 239.055, NV ST 239.055
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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239.055. Additional fee when extraordinary use of personnel or..., NV ST 239.055

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West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 241. Meetings of State and Local Agencies (Refs & Annos)

N.R.S. 241.037

241.037. Action by Attorney General or person denied right conferred by chapter; limitation on actions

Effective: July 1, 2013

Currentness

1. The Attorney General may sue in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter. The injunction:

(a) May be issued without proof of actual damage or other irreparable harm sustained by any person.

(b) Does not relieve any person from criminal prosecution for the same violation.

2. Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to have an action taken by the public body declared void, to require compliance with or prevent violations of this chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection.

3. Except as otherwise provided in NRS 241.0365:

(a) Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter.

(b) Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken.

241.037. Action by Attorney General or person denied right..., NV ST 241.037

Credits

Added by Laws 1983, p. 1012. Amended by Laws 1985, p. 147; Laws 2013, c. 193, § 10, eff. July 1, 2013.

Notes of Decisions (8)

N. R. S. 241.037, NV ST 241.037
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

2.47.085 - City-wide fee schedule for public records and document services.

A. The records committee shall approve and update a city-wide fee schedule for public records and document services applicable to all city departments and divisions of the city in compliance with state and federal law and the policy goals of the city.

B. The city-wide fee schedule for public records and document services shall provide for a mechanism whereby city officials may waive some or all of a fee to provide copies of public records.

C. The city-wide fee schedule for public records and document services may contain a fee for the extraordinary use of personnel or technological resources pursuant to NRS 239.055 if the public records request will require more than ten hours of city personnel time to search for, compile, segregate, redact, remove, scan and/or reproduce records responsive to the records request, which hourly rate charged for the extraordinary use of personnel time shall not exceed $35.00 per hour. The total fee under this provision shall not exceed $0.50 per page contained in the records request.

D. The city-wide fee schedule for public records and document services shall be posted on the city website and in all other locations required by NRS chapter 239.

(Ord. No. 3450 , § 1, 10-17-2017)

Nevada Administrative Code
Chapter 239. Public Records
Availability and Inspection of Public Records

NAC 239.864

239.864. Fee for providing copy of public record: Estimate of fee; deposit. (NRS 239.008, 378.255)

Currentness

If an agency of the Executive Department charges a fee for providing a copy of a public record:

1. A records official shall provide a person who requests a copy of a public record with an estimate of the fee for the copy, if the estimated actual cost is more than $25. The estimate of the fee must include, without limitation, the amount of postage that the agency will charge the person if the person requested to have the copy delivered by mail.

2. A records official:

(a) May require the person who requests a copy of a public record to pay a deposit of not more than the estimate of the actual cost of providing the copy; and

(b) Shall require the person who requests a copy of a public record to pay the fee for providing the copy, including, without limitation, postage for mailing the copy, if applicable, before the person receives the copy.

Credits

(Added to NAC by Library & Archives Admin'r by R107-13, eff. 12-22-2014)

Current with amendments included in the State of Nevada Register of Administrative Regulations, Volume 241, dated January 31, 2018 and Supplement 2017-2, dated December 31, 2017.

Nev. Admin. Code 239.864, NV ADC 239.864

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