

Electronically Filed  
Dec 06 2017 09:47 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 **ANOT**  
2 STEVEN B. WOLFSON  
3 District Attorney  
4 **CIVIL DIVISION**  
5 State Bar No. 001565  
6 By: **LAURA C. REHFELDT**  
7 Deputy District Attorney  
8 State Bar No. 005101  
9 500 South Grand Central Pkwy.  
10 Las Vegas, Nevada 89155-2215  
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14 Attorneys for Defendant  
15 **Clark County Coroner/Medical Examiner**

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 LAS VEGAS REVIEW JOURNAL,

11 Petitioner,

12 vs.

13 CLARK COUNTY OFFICE OF THE  
14 CORONER/MEDICAL EXAMINER,

15 Respondent.

Case No: A-17-758501-W  
Dept. No: XXIV

16 **NOTICE OF APPEAL**

17 Notice is hereby given that the Clark County Office of the Coroner/Medical Examiner,  
18 defendant above named, hereby appeals to the Supreme Court of Nevada from the ORDER  
19 GRANTING PETITIONER LVRJ'S PUBLIC RECORDS ACT APPLICATION  
20 PURSUANT TO NEV. REV. STAT. § 239.001/PETITION FOR WRIT OF MANDAMUS  
21 entered in this action on November 9, 2017.

22 DATED this 28 day of November, 2017.

23 STEVEN B. WOLFSON  
24 DISTRICT ATTORNEY

25 By: 

26 LAURA C. REHFELDT

27 District Attorney

State Bar No. 005101

500 South Grand Central Pkwy. 5<sup>th</sup> Flr.

Las Vegas, Nevada 89155-2215

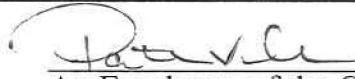
Attorney for Defendant

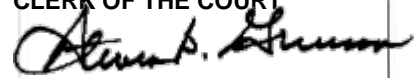
**Clark County Coroner Medical Examiner**

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 28<sup>th</sup> day of November, 2017, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** to the following parties by the method shown below:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Margaret A. McLetchie, Esq. Alina M. Shell, Esq. McLetchie Shell LLC 701 East Bridger Avenue #520 Las Vegas, NV 89101 <a href="mailto:alina@nvlitigation.com">alina@nvlitigation.com</a> <a href="mailto:maggie@nvlitigation.com">maggie@nvlitigation.com</a>	<i>Petitioner Las Vegas Review Journal</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)

  
An Employee of the Clark County District  
Attorney's Office – Civil Division



1 **ASTA**  
2 STEVEN B. WOLFSON  
3 District Attorney  
4 **CIVIL DIVISION**  
5 State Bar No. 001565  
6 By: **LAURA C. REHFELDT**  
7 Deputy District Attorney  
8 State Bar No. 005101  
9 500 South Grand Central Pkwy.  
10 Las Vegas, Nevada 89155-2215  
11 (702) 455-4761  
12 Fax (702) 382-5178  
13 E-Mail: [Laura.Rehfeldt@ClarkCountyDA.com](mailto:Laura.Rehfeldt@ClarkCountyDA.com)  
14 Attorneys for Defendant  
15 **Clark County Coroner/Medical Examiner**

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 LAS VEGAS REVIEW JOURNAL, )  
12 )  
13 Petitioner, )  
14 vs. )  
15 CLARK COUNTY OFFICE OF THE )  
16 CORONER/MEDICAL EXAMINER, )  
17 Respondent. )

Case No: A-17-758501-W  
Dept. No: XXIV

17 **CASE APPEAL STATMENT**

- 18 **1. Name of appellant filing this case appeal statement:** Clark County Office of  
19 the Coroner/Medical Examiner ("Coroner").
- 20 **2. Identify the judge issuing the decision, judgment, or order appealed from:**  
21 The Honorable Jim Crocket, Eighth Judicial District Court, Department XXIV.
- 22 **3. Identify each appellant and the name and address of counsel for each**  
23 **appellant:** Clark County Office of the Coroner/Medical Examiner, represented by:

24  
25 Laura Rehfeldt  
26 Clark County District Attorney – Civil Division  
27 500 South Grand Central Pkwy., Fifth Floor  
28 P. O. Box 552215  
Las Vegas, Nevada 89155-2215

1           **4. Identify each respondent and the name and address of appellate counsel, if**  
2 **known, for each respondent (if the name of a respondent's appellate counsel is unknown,**  
3 **indicate as much and provide the name and address of that respondent's trial counsel):**

4 Las Vegas Review Journal ("LVRJ") represented by:

5           Margaret A. McLetchie, Esq,  
6           Alina M. Shell, Esq.  
7           McLetchie Shell LLC  
            701 East Bridger Avenue #520  
            Las Vegas, NV 89101

8           **5. Indicate whether any attorney identified above in response to question 3 or 4**  
9 **is not licensed to practice law in Nevada and, if so, whether the district court granted**  
10 **that attorney permission to appear under SCR 42 (attach a copy of any district court**  
11 **order granting such permission):** Not applicable. All attorneys are licensed in Nevada.

12           **6. Indicate whether appellant was represented by appointed or retained counsel**  
13 **in the district court:** Appellants were represented by retained counsel, counsel named above.

14           **7. Indicate whether appellant is represented by appointed or retained counsel on**  
15 **appeal:** Appellants are represented by retained counsel, counsel named above.

16           **8. Indicate whether appellant was granted leave to proceed in forma pauperis,**  
17 **and the date of entry of the district court order granting such leave:** No.

18           **9. Indicate the date the proceedings commenced in the district court (e.g., date**  
19 **complaint, indictment, information, or petition was filed):** On July 17, 2017 a Public  
20 Records Act Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus  
21 ("Petition") was filed by the Las Vegas Review Journal ("LVRJ") against the Coroner.

22           **10. Provide a brief description of the nature of the action and result in the district**  
23 **court, including the type of judgment or order being appealed and the relief granted by**  
24 **the district court:** This case involves a public records request under NRS 239.011 by the  
25 LVRJ to the Coroner for reports of autopsies of children dating back to January 2012. The  
26 matter was briefed and heard before the Eighth Judicial District Court, Department XXIV. On  
27 November 9, 2017, an Order Granting Petitioner LVRJ's Public Records Act Application to  
28 Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus was entered granting the relief

requested in the Petition and requiring that the autopsy reports be provided on a rolling basis, but no later than December 28, 2017.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: No.

12. Indicate whether this appeal involves child custody or visitation: No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: Yes.

DATED this 28 day of November, 2017.

STEVEN B. WOLFSON  
DISTRICT ATTORNEY

By: Laura C. Rehfeldt  
LAURA C. REHFELDT  
District Attorney  
State Bar No. 005101  
500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
P. O. Box 552215  
Las Vegas, Nevada 89155-2215  
Attorney for Defendant  
Clark County Coroner Medical Examiner

### CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 28 day of November, 2017, I served a true and correct copy of the foregoing NOTICE OF APPEAL to the following parties by the method shown below:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Margaret A. McLetchie, Esq. Alina M. Shell, Esq. McLetchie Shell LLC 701 East Bridger Avenue #520 Las Vegas, NV 89101 <a href="mailto:alina@nvlitigation.com">alina@nvlitigation.com</a> <a href="mailto:maggie@nvlitigation.com">maggie@nvlitigation.com</a>	<i>Petitioner Las Vegas Review Journal</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)

[Signature]  
An Employee of the Clark County District  
Attorney's Office – Civil Division

DEPARTMENT 24  
**CASE SUMMARY**  
**CASE NO. A-17-758501-W**

**Las Vegas Review-Journal, Plaintiff(s)**

**vs.**

**Clark County Office of the Coroner/ Medical Examiner,  
Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 24**  
Judicial Officer: **Crockett, Jim**  
Filed on: **07/17/2017**  
Cross-Reference Case Number: **A758501**

CASE INFORMATION

**Statistical Closures**

11/09/2017    Stipulated Judgment

Case Type: **Writ of Mandamus**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number            A-17-758501-W  
Court                    Department 24  
Date Assigned           07/17/2017  
Judicial Officer         Crockett, Jim

PARTY INFORMATION

**Plaintiff**

**Las Vegas Review-Journal**

*Lead Attorneys*

**McLetchie, Margaret A.**  
*Retained*  
702-728-5300(W)

**Defendant**

**Clark County Office of the Coroner/ Medical Examiner**

DATE

EVENTS & ORDERS OF THE COURT

INDEX

07/17/2017



Petition

Filed by: Plaintiff Las Vegas Review-Journal  
*Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus  
Expedited Matter Pursuant to Nev. Rev. Stat. 239.011*

07/17/2017



Exhibits

Filed By: Plaintiff Las Vegas Review-Journal  
*Appendix of Exhibits in Support of Public Records Act Application Pursuant to NRS 239.001/  
Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011*

07/17/2017



Initial Appearance Fee Disclosure

Filed By: Plaintiff Las Vegas Review-Journal  
*Initial Appearance Fee Disclosure (NRS Chapter 19)*

07/18/2017



Summons

Filed by: Plaintiff Las Vegas Review-Journal  
*Summons - Civil*

08/04/2017



Stipulation and Order

Filed by: Plaintiff Las Vegas Review-Journal  
*Stipulation and Order Regarding Briefing Schedule*











08/04/2017



Notice of Entry of Order

Filed By: Plaintiff Las Vegas Review-Journal  
*Notice of Entry of Order*

DEPARTMENT 24  
**CASE SUMMARY**  
**CASE NO. A-17-758501-W**

08/17/2017	 Memorandum Filed By: Plaintiff Las Vegas Review-Journal <i>Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
08/17/2017	 Declaration Filed By: Plaintiff Las Vegas Review-Journal <i>Attorney Margaret A. McLetchie's Declaration in Support of Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
08/30/2017	 Response Filed by: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Response to Petition and Memorandum Supporting Writ for Mandamus for Access to Autopsy Reports of Juvenile Deaths</i>
09/07/2017	 Reply Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to Response to Petition and Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
09/25/2017	 Supplement Filed by: Plaintiff Las Vegas Review-Journal <i>Supplement to Reply to Response to Petition and Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
09/28/2017	 <b>Petition for Writ of Mandamus</b> (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Plaintiff's Petition for Writ of Mandamus</i>
11/09/2017	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Petitioner LVRJ's Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus</i>
11/09/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
11/28/2017	 Notice of Appeal Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Appeal</i>
11/28/2017	 Case Appeal Statement Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Case Appeal Statement</i>

**DATE**

**FINANCIAL INFORMATION**

<b>Defendant</b> Clark County Office of the Coroner/ Medical Examiner	
Total Charges	24.00
Total Payments and Credits	24.00
<b>Balance Due as of 11/29/2017</b>	<b>0.00</b>
 <b>Plaintiff</b> Las Vegas Review-Journal	
Total Charges	270.00
Total Payments and Credits	270.00

DEPARTMENT 24  
**CASE SUMMARY**  
**CASE NO. A-17-758501-W**

Balance Due as of 11/29/2017

**0.00**



# DISTRICT COURT CIVIL COVER SHEET

County, Nevada  
 Case No. **A-17-758501-W** Department 24  
*(Assigned by Clerk's Office)*

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <div style="text-align: center;">The Las Vegas Review-Journal                      c/o McLetchie Shell LLC                      701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101                      (702) 728-5300</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Clark County Office of the Coroner/Medical Examiner                      1704 Pinto Lane Las Vegas, Nevada 89106                      (702) 455-3210</div>
Attorney (name/address/phone): <div style="text-align: center;">Margaret A. McLetchie and Alina M. Shell                      McLetchie Shell LLC                      701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101                      (702) 728-5300</div>	Attorney (name/address/phone): <div style="text-align: center;">Mary-Anne Miller and Laura Rehfeldt                      Clark County District Attorney's Office, Civil Division                      500 S. Grand Central Parkway Las Vegas, Nevada 89106                      (702) 671-2500</div>

## II. Nature of Controversy *(please select the one most applicable filing type below)*

### Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

*Business Court filings should be filed using the Business Court civil coversheet.*

**07/17/2017**

Date

Signature of Initiating party or representative

*See other side for family-related case filings.*

*Steven D. Grierson*

**ORDR**

MARGARET A MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

**MCLEATCHIE SHELL LLC**

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

Telephone: (702) 728-5300; Fax: (702) 425-8220

Email: maggie@nvlitigation.com

*Counsel for Petitioner*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Respondent.

Case No.: A-17-758501-W

Dept. No.: XXIV

**ORDER GRANTING**

**PETITIONER LVRJ'S PUBLIC**  
**RECORDS ACT APPLICATION**  
**PURSUANT TO NEV. REV. STAT.**  
**§ 239.001/ PETITION FOR WRIT**  
**OF MANDAMUS**

The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus, having come on for hearing on September 28, 2017, the Honorable Jim Crockett presiding, Petitioner Las Vegas Review-Journal (the "LVRJ") appearing by and through its counsel, Margaret A. McLetchie and Alina M. Shell, and Respondent Clark County Office of the Coroner/Medical Examiner ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

///

///

///

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the LVRJ sent the Coroner’s Office a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”).

2. The LVRJ’s request sought all autopsy reports of autopsies conducted of anyone under the age of 18 from 2012 through the date of the request.

3. The Coroner’s Office responded via email on April 13, 2017. It provided a spreadsheet with information consisting of the Coroner case number, name of decedent, date of death, gender, age, race, location of death, and cause and manner of death, but refused to provide “autopsy reports, notes or other documents.”

4. In its April 13, 2017 email, the Coroner’s Office stated it would not disclose the autopsy reports because they contain medical information and confidential information about a decedent’s body. The Coroner’s Office relied on Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 (“AGO 82-12”) as the basis for non-disclosure.

5. The LVRJ followed up by emailing the Clark County District Attorney’s Office on April 13, 2017, requesting legal support for the refusal to provide records.

6. The District Attorney’s Office, Civil Division, on behalf of the Coroner’s Office, responded via email on April 14, 2017, again relying on AGO 82-12 and also relying on Assembly Bill 57, 79<sup>th</sup> Sess. (Nev. 2017) (a bill then pending consideration in the 2017 session of the Nevada Legislature and proposing changes to Nevada law regarding a coroner’s duty to notify next-of-kin of the death of a family member but not addressing public records) as the bases for its refusal to disclose the requested records.

7. The Coroner’s Office did not assert any other basis for withholding records within five (5) business days.

8. On May 9, 2017, following a meeting between the Coroner and the LVRJ, the Coroner mailed a second spreadsheet to the LVRJ listing child deaths dating back to 2011 in which the Coroner conducted autopsies.

1           9.       On May 23, 2017, counsel for the LVRJ wrote to the Coroner's Office to  
2 address concerns with the Coroner's Office's refusal to provide access to any of the  
3 requested juvenile autopsy reports.

4           10.      On May 26, 2017, the Coroner's Office (via the District Attorney)  
5 responded to the May 23, 2017 letter, again relying on the legal analysis in AGO 82-12, and  
6 agreed to consider providing redacted versions of autopsies of juveniles if the LVRJ  
7 provided a specific list of cases it wished to review.

8           11.      In its May 26, 2017 response, the Coroner's Office for the first time also  
9 asserted that the records may be protected by Nev. Rev. Stat. § 432B.407 and that privacy  
10 interests outweighed public disclosure.

11          12.      The LVRJ provided the Coroner's Office with a list of specific cases it  
12 wanted reports for via email on May 26, 2017.

13          13.      The Coroner's Office responded to the May 26, 2017 email on May 31,  
14 2017.

15          14.      In its May 31, 2017 response, the Coroner's Office stated that responsive  
16 records were "subject to privilege will not be disclosed" and that it would also redact other  
17 records. However, it did not assert any specific privilege.

18          15.      The Coroner's Office also asked the LVRJ to specify the records it wanted  
19 to receive first, which the LVRJ did on June 12, 2017.

20          16.      On July 9, 2017, in a response to a further email from the LVRJ inquiring  
21 on the status of the records, the Coroner's Office indicated it would not produce any records  
22 that pertained to any case that was subsequently handled by a child death review team  
23 pursuant to Nev. Rev. Stat. § 432B.407. By that time, the Coroner had determined which  
24 cases were not handled by the child death review team and provided a list to the LVRJ.

25          17.      On July 11, 2017, the Coroner's Office provided sample files of redacted  
26 autopsy reports for other autopsies of juveniles that were not handled by a child death review  
27 team. The samples files were heavily redacted; the Coroner's Office asserted that the  
28 redacted language consisted of information that was medical, related to the health of the

1 decedent's mother, could be marked with stigmata or considered an invasion of privacy.  
2 Statements of diagnosis or opinion that were medical or health related that went to the cause  
3 of death were not redacted.

4 18. On July 11, 2017, the Coroner's Office also demanded that the LVRJ  
5 commit to payment for further work in redacting files for production, and declined to  
6 produce records without payment. The Coroner's Office indicated it would take two persons  
7 10-12 hours to redact the records it was willing to produce, and that the LVRJ would have  
8 to pay \$45.00 an hour for the two reviewers, one of which would be an attorney. The  
9 Coroner's Office contended that conducting a privilege review and redacting autopsy  
10 reports required the "extraordinary use of personnel" under Nev. Rev. Stat. § 239.055. The  
11 Coroner's Office stated it did not intend to seek fees for the work associated with the  
12 previously provided spreadsheets and redacted reports.

13 19. On July 17, 2017, the LVRJ filed its Application Pursuant to Nev. Rev.  
14 Sta. § 239.001/Application for Writ of Mandamus/Application for Declaratory and  
15 Injunctive Relief ("Application"), and requested expedited consideration pursuant to Nev.  
16 Rev. Stat. § 239.011(2).

17 20. On August 17, 2017, the LVRJ submitted a Memorandum in support of its  
18 Application. The Coroner's Office submitted its Response on August 30, 2017, and the  
19 LVRJ submitted its Reply on September 7, 2017. The LVRJ also submitted a Supplement  
20 on September 25, 2017 that included autopsy records the LVRJ had received from White  
21 Pine County and Lander County in response to public records requests.

22 21. The Court held a hearing on the LVRJ's Application on September 28,  
23 2017.

## 24 II.

### 25 CONCLUSIONS OF LAW

26 22. The purpose of the NPRA is to foster democratic principles by ensuring  
27 easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) ("The purpose  
28 of this chapter is to foster democratic principles by providing members of the public with

1 access to inspect and copy public books and records to the extent permitted by law”); *see*  
2 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011)  
3 (holding that “the provisions of the NPRA are designed to promote government transparency  
4 and accountability”).

5 23. To fulfill that goal, the NPRA must be construed and interpreted liberally;  
6 government records are presumed public records subject to the Act, and any limitation on the  
7 public’s access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2)  
8 and 239.001(3); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada  
9 legislature intended the provisions of the NPRA to be “liberally construed to maximize the  
10 public’s right of access”).

11 24. The Nevada Legislature has made it clear that—unless they are explicitly  
12 confidential—public records must be made available to the public for inspection or copying.  
13 Nev. Rev. Stat. § 239.010(1); *see also Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,  
14 266 P.3d 623, 627 (2011).

15 **A. The Coroner’s Office Has Not Met Its Burden in Withholding or Redacting**  
16 **Records.**

17 25. The NPRA “considers all records to be public documents available for  
18 inspection unless otherwise explicitly made confidential by statute or by a balancing of  
19 public interests against privacy or law enforcement justification for nondisclosure.” *Reno*  
20 *Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010).

21 26. If a statute explicitly makes a record confidential or privileged, the public  
22 entity need not produce it. *Id.*

23 28. If a governmental entity seeks to withhold a document that is not explicitly  
24 made confidential by statute, it must prove by a preponderance of the evidence that the  
25 records are confidential or privileged, and must also prove by a preponderance of the  
26 evidence that the interest in nondisclosure outweighs the strong presumption in favor of  
27 public access. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also Donrey of*  
28 *Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990).

1           29. In balancing those interests, “the scales must reflect the fundamental right  
2 of a citizen to have access to the public records as contrasted with the incidental right of the  
3 agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of*  
4 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.  
5 27, 359 P.2d 413, 421–22 (1961)).

6           30. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court  
7 hereby finds that the Coroner’s Office has not established by a preponderance of the evidence  
8 that the withheld records are confidential or privileged such that withholding the autopsy  
9 records pertaining to cases that were subsequently handled by a child death review team  
10 pursuant to Nev. Rev. Stat. § 432B.407(6) in their entirety is justified, nor has it established  
11 by a preponderance of the evidence that any interest in nondisclosure outweighs the strong  
12 presumption in favor of public access.

13           31. Further, with regard to the proposed redactions to the autopsy reports the  
14 Coroner’s Office was willing to disclose, the Court finds that the Coroner’s Office has not  
15 established by a preponderance of the evidence that the redacted material is privileged or  
16 confidential.

17           ***The Coroner’s Office Did Not Comply With the NPRA’s Mandate to Provide***  
18           ***Legal Authority in Support of Its Decision to Withhold or Redact Records***  
19           ***Within Five Days.***

20           32. The NPRA provides that a governmental entity must provide timely and  
21 specific notice if it is denying a request because the entity determines the documents sought  
22 are confidential. Nev. Rev. Stat. § 239.0107(1)(d) states that, within five (5) business days  
23 of receiving a request,

24           [i]f the governmental entity must deny the person’s request because the  
25 public book or record, or a part thereof, is confidential, provide to the  
26 person, in writing: (1) Notice of that fact; and (2) A citation to the specific  
27 statute or other legal authority that makes the public book or record, or a  
28 part thereof, confidential.

33. The Coroner's Office cannot rely on privileges, statutes, or other authorities that it failed to assert within five (5) business days to meet its burden of establishing that privilege attaches to any of the requested records.

***The Attorney General Opinion Does Not Justify Non-Disclosure.***

34. In its April 13, 2017 response to the LVRJ's records request, the Coroner's Office relied on a 1982 Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 as a basis for its refusal to produce the requested autopsy reports.

35. The Court finds that, consistent with Nevada Supreme Court precedent, Attorney General Opinions are not binding legal authority. *See Univ. & Cmty. Coll. Sys. of Nevada v. DR Partners*, 117 Nev. 195, 203, 18 P.3d 1042, 1048 (2001) (citing *Goldman v. Bryan*, 106 Nev. 30, 42, 787 P.2d 372, 380 (1990)); *accord Redl v. Secretary of State*, 120 Nev. 75, 80, 85 P.3d 797, 800 (2004).

36. Because it is not binding legal authority, the legal analysis contained in AGO 82-12 does not satisfy the Coroner's Office's burden of establishing that the records are confidential and that the interest in non-disclosure outweighs the presumption in favor of access.

***Nevada Assembly Bill 57 Does Not Justify Non-Disclosure.***

44. The Coroner's Office also cites to Assembly Bill 57, a bill adopted during the 2017 legislative session which made changes to Nevada laws pertaining to next-of-kin notifications as evidence that the privacy interest in autopsy reports outweighs the public's right of access.

45. The Court finds that Assembly Bill 57 (which had not been passed by Nevada Legislature at the time the Coroner's Office cited it in its April 14, 2017 email) is not "legal authority" as required by Nev. Rev. Stat. § 239.0107(d)(1).

46. Moreover, the Court finds that Assembly Bill 57 does not demonstrate a legislative intent to undermine or negate the NPRA's mandates regarding producing public records. Thus, the Coroner's Office cannot rely on Assembly Bill 57 to meet its burden of



1 establishing that the records are confidential and that the interest in non-disclosure  
2 outweighs the presumption in favor of access.

3 ***Nev. Rev. Stat. § 432B.407 Does Not Justify Non-Disclosure.***

4 37. On July 9, 2017, in a response to a further email from the LVRJ inquiring  
5 on the status of the records, the Coroner's Office indicated it would not produce any records  
6 that pertained to any case that was subsequently handled by a child death review team  
7 pursuant to Nev. Rev. Stat. § 432B.403, *et. seq.* The Coroner's Office specifically cited Nev.  
8 Rev. Stat. § 432B.407, a statute which pertains to information acquired by child death  
9 review teams, as a basis for refusing to produce the records.

10 38. In addition to not being timely cited, Nev. Rev. Stat. § 432B.407 does not  
11 satisfy the Coroner's Office's burden of establishing that any interest in nondisclosure  
12 outweighs the public's interest in the records.

13 39. Pursuant to Nev. Rev. Stat. § 432B.403, the State can organize child death  
14 review teams to review the records of selected cases of children under the age of 18 to assess  
15 and analyze the deaths, make recommendations for changes to law and policy, support the  
16 safety of children, and a prevent future deaths.

17 40. Under Nev. Rev. Stat. § 432B.407(1), a child death review team may  
18 access, inter alia, "any autopsy and coroner's investigative records" relating to the death of  
19 a child. Nev. Rev. Stat. § 432B.407(1)(b). Section 432B.407(6) in turn provides that  
20 "information acquired by, and the records of, a multidisciplinary team to review the death  
21 of a child are confidential, must not be disclosed, and are not subject to subpoena, discovery  
22 or introduction into evidence in any civil or criminal proceeding."

23 41. However, the Court finds that nothing in the language of Nev. Rev. Stat. §  
24 432B.407(6) indicates that records obtained by child death review teams are automatically  
25 confidential simply because the Coroner's Office transmitted those records at some point in  
26 time to a child death review team.

27 42. Moreover, to the extent that Nev. Rev. Stat. § 432B.407 renders any  
28 records confidential, nothing in the language of Nev. Rev. Stat. § 432B.407 indicates

1 records obtained by a child death review team must be kept confidential in perpetuity.  
2 Instead, the records of a child death review team must be kept confidential only during a  
3 child death review team's review of a child fatality.

4 43. Thus, the Coroner's Office's reliance on Nev. Rev. Stat. § 432B.407 does  
5 not meet its burden of establishing that the records are confidential and that the interest in  
6 non-disclosure outweighs the presumption in favor of access.

7 ***HIPAA Does Not Justify Non-Disclosure.***

8 44. In addition to its reliance on Nev. Rev. Stat. § 432B.407, the Coroner's  
9 Office in its September 7, 2017 Response also pointed to privacy protections for medical  
10 data under the Health Insurance Portability and Privacy Act (HIPAA) and NRS Chapter  
11 629, as persuasive authority for its position that the requested records should be kept  
12 confidential.

13 47. However, in addition to that fact that the Coroner's Office failed to timely  
14 cite HIPAA as a basis for withholding or redacting the requested records, the Coroner's  
15 Office, it is not a covered entity under HIPAA.

16 48. Pursuant to 45 C.F.R. § 160.103, a covered entity is defined as: (1) a health  
17 plan; (2) a "health care clearinghouse;" or (3) "[a] health care provider who transmits any  
18 health information in electronic form in connection with a transaction covered by  
19 [HIPAA]." Moreover, 42 C.F.R. § 160.102 specifically states that HIPAA only applies to  
20 those three categories of health care entities. Thus, by its plain language, HIPAA is not  
21 intended to apply to autopsy records, and cannot be used by the Coroner's Office to withhold  
22 the requested records.

23 49. Accordingly, both because the Coroner's Office did not timely assert any  
24 legal or statutory authority to meet its burden in withholding the records, and because it has  
25 not met its burden in withholding or redacting the requested records, the Court finds that the  
26 Coroner's Office must disclose the requested records to the LVRJ in unredacted form.

27 ///  
28

1           **B. The NPRA Does Not Permit Government Entities to Charge to Redact or**  
2           **Withhold Records or to Conduct a Privilege Review.**

3           50.     The fees provisions relevant to public records requests are those set forth  
4           in Nev. Rev. Stat. §§ 239.052 and 239.055(1).

5           51.     The Coroner's Office relied on Nev. Rev. Stat. § 239.055(1) for fees for  
6           "extraordinary use." That statute provides that "... if a request for a copy of a public record  
7           would require a governmental entity to make extraordinary use of its personnel or  
8           technological resources, the governmental entity may, in addition to any other fee  
9           authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such  
10          extraordinary use..." In its Responding Brief, even the Coroner's Office acknowledged that  
11          in 2013, the Nevada Legislature modified Nev. Rev. Stat. § 39.055 to limit fees for the "  
12          extraordinary use of personnel" to 50 cents per page.

13          52.     The Court finds that Nev. Rev. Stat. § 239.055(1) does not allow  
14          governmental entities to charge a fee for privilege review or to redact or withhold records.  
15          Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring requesters to pay  
16          public entities to charge for undertaking a review for responsive documents, confidentiality,  
17          and redactions would be inconsistent with the plain terms of the statute and with the mandate  
18          to liberally construe the NPRA. *See* Nev. Rev. Stat. § 239.001(3).

19          53.     Further, allowing a public entity to charge a requester for legal fees  
20          associated with reviewing for confidentiality is impermissible because "[t]he public official  
21          or agency bears the burden of establishing the existence of privilege based upon  
22          confidentiality." *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6  
23          P.3d 465, 468 (2000).

24          54.     Moreover, the Court finds that no provision within the NPRA allows a  
25          governmental entity to charge a requester for a privilege review. Rather, the NPRA provides  
26          that a governmental entity may charge for providing a copy of a record, (Nev. Rev. Stat. §  
27          239.052(1)), for providing a transcript of an administrative proceeding, (Nev. Rev. Stat. §  
28          239.053), for information from a geographic information system (Nev. Rev. Stat. §

1 239.054), or for the “extraordinary use” of personnel or technology. Nev. Rev. Stat. §  
2 239.055. A privilege review does not fall within any of these provisions.

3 55. The Court therefore finds that the Coroner’s Office cannot charge the  
4 LVRJ a fee under Nev. Rev. Stat. § 239.055(1) to conduct a review of the requested records.

5 56. Pursuant to Nev. Rev. Stat. § 239.052(1) “a governmental entity may charge  
6 a fee for providing a copy of a public record.” However, that fee may not exceed the “actual  
7 cost to the governmental entity to provide a copy of the public records ...” *Id.*

8 57. The LVRJ indicated it wished to receive electronic copies of the requested  
9 records. The LVRJ is not requesting hard copies, and the NPRA does not permit a per page  
10 fee to be charged for electronic copies. Thus, because the only cost for electronic copies is  
11 that of the medium (a CD), the Court finds that the Coroner’s Office may not charge any  
12 additional fee besides the cost of the CD.

### 13 III.

#### 14 ORDER

15 58. Based on the foregoing findings of fact and conclusions of law, the Court  
16 hereby orders as follows:

17 59. The Coroner’s Office shall produce autopsy reports of autopsies conducted  
18 of anyone under the age of 18 conducted from 2012 through April 13, 2017 to the LVRJ in  
19 unredacted form.

20 60. The Coroner’s Office shall make the records available to the LVRJ  
21 expeditiously and on a rolling basis. The Coroner’s Office must provide all the requested  
22 records to the LVRJ by no later than December 28, 2017.

23 61. At the hearing, the Coroner’s Office stated it would be able to produce CDs  
24 with electronic copies of the requested records at a cost of \$15.00 per CD, and the LVRJ  
25 stated it was willing to pay such a fee or provide its own CD. In producing the requested  
26 records, the Coroner’s Office may charge the LVRJ a fee of up to \$15.00 per CD consistent  
27 with Nev. Rev. Stat. § 239.052(1). No additional fees shall be permitted.

28 ///

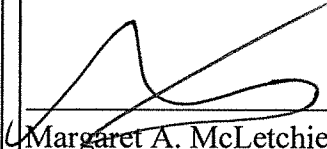
A75B501 - ORDER GRANTING  
PETITIONER LVRT'S PUBLIC  
RECORDS ACT APPLICATION  
PURSUANT TO NRS 239.001  
PETITION FOR WRIT OF  
MANDAMUS

ORDER

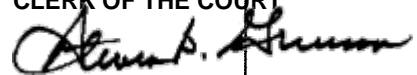
It is so ORDERED this 8 day of Nov. 2017.

  
DISTRICT COURT JUDGE

Prepared and submitted by:

  
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Alina M. Shell, NBN 11711  
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8 Email: maggie@nvlitigation.com  
9 *Counsel for Petitioner*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

10 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

11 Petitioner,

Dept. No.: XXIV

12 vs.

**NOTICE OF ENTRY OF ORDER**

13 CLARK COUNTY OFFICE OF THE  
14 CORONER/MEDICAL EXAMINER,

Respondent.

15  
16 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:  
17 PLEASE TAKE NOTICE that on the 9<sup>th</sup> day of November, 2017, an Order  
18 Granting Petitioner LVRJ's Public Records Act Application Pursuant to Nev. Rev. Stat.  
19 239.001/ Petition for Writ of Mandamus was entered in the above-captioned action. A copy  
20 of the Order is attached hereto as Exhibit 1.

21 Respectfully submitted this 9<sup>th</sup> day of November, 2017.

22 /s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931

Alina M. Shell, Nevada Bar No. 11711

**MCLETCHIE SHELL LLC**

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Email: maggie@nvlitigation.com

*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of November, 2017, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner*, Clark County District Court Case No. A-17-758501-W, to be served electronically using the Odyssey File & Serve electronic filing service system, to all parties with an email address on record.

I hereby further certify that on the 9<sup>th</sup> day of November, 2017, pursuant to Nev. R. Civ. P. 5(b)(2)(B) I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Mary-Anne Miller and Laura Rehfeldt  
**Clark County District Attorney's Office**  
500 S. Grand Central Pkwy., Ste. 5075  
Las Vegas, NV 89106  
*Counsel for Respondent, Clark County Office of the Coroner/Medical Examiner*

/s/ Pharan Burchfield  
An Employee of MCLETCHIE SHELL LLC

# EXHIBIT 1



*Steven D. Grierson*

1 **ORDR**

2 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

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*Counsel for Petitioner*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

10 Petitioner,

Dept. No.: XXIV *11/8/17*

11 vs.

**ORDER GRANTING**

**PETITIONER LVRJ'S PUBLIC**

**RECORDS ACT APPLICATION**

**PURSUANT TO NEV. REV. STAT.**

**§ 239.001/ PETITION FOR WRIT**

**OF MANDAMUS**

12 CLARK COUNTY OFFICE OF THE  
13 CORONER/MEDICAL EXAMINER,

14 Respondent.

15  
16  
17 The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev.  
18 Rev. Stat. § 239.001/Petition for Writ of Mandamus, having come on for hearing on  
19 September 28, 2017, the Honorable Jim Crockett presiding, Petitioner Las Vegas Review-  
20 Journal (the "LVRJ") appearing by and through its counsel, Margaret A. McLetchie and  
21 Alina M. Shell, and Respondent Clark County Office of the Coroner/Medical Examiner  
22 ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court  
23 having read and considered all of the papers and pleadings on file and being fully advised,  
24 and good cause appearing therefor, the Court hereby makes the following findings of fact  
25 and conclusions of law:

26 ///

27 ///

28 ///

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the LVRJ sent the Coroner's Office a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPRA").

2. The LVRJ's request sought all autopsy reports of autopsies conducted of anyone under the age of 18 from 2012 through the date of the request.

3. The Coroner's Office responded via email on April 13, 2017. It provided a spreadsheet with information consisting of the Coroner case number, name of decedent, date of death, gender, age, race, location of death, and cause and manner of death, but refused to provide "autopsy reports, notes or other documents."

4. In its April 13, 2017 email, the Coroner's Office stated it would not disclose the autopsy reports because they contain medical information and confidential information about a decedent's body. The Coroner's Office relied on Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 ("AGO 82-12") as the basis for non-disclosure.

5. The LVRJ followed up by emailing the Clark County District Attorney's Office on April 13, 2017, requesting legal support for the refusal to provide records.

6. The District Attorney's Office, Civil Division, on behalf of the Coroner's Office, responded via email on April 14, 2017, again relying on AGO 82-12 and also relying on Assembly Bill 57, 79<sup>th</sup> Sess. (Nev. 2017) (a bill then pending consideration in the 2017 session of the Nevada Legislature and proposing changes to Nevada law regarding a coroner's duty to notify next-of-kin of the death of a family member but not addressing public records) as the bases for its refusal to disclose the requested records.

7. The Coroner's Office did not assert any other basis for withholding records within five (5) business days.

8. On May 9, 2017, following a meeting between the Coroner and the LVRJ, the Coroner mailed a second spreadsheet to the LVRJ listing child deaths dating back to 2011 in which the Coroner conducted autopsies.

9. On May 23, 2017, counsel for the LVRJ wrote to the Coroner's Office to address concerns with the Coroner's Office's refusal to provide access to any of the requested juvenile autopsy reports.

10. On May 26, 2017, the Coroner's Office (via the District Attorney) responded to the May 23, 2017 letter, again relying on the legal analysis in AGO 82-12, and agreed to consider providing redacted versions of autopsies of juveniles if the LVRJ provided a specific list of cases it wished to review.

11. In its May 26, 2017 response, the Coroner's Office for the first time also asserted that the records may be protected by Nev. Rev. Stat. § 432B.407 and that privacy interests outweighed public disclosure.

12. The LVRJ provided the Coroner's Office with a list of specific cases it wanted reports for via email on May 26, 2017.

13. The Coroner's Office responded to the May 26, 2017 email on May 31, 2017.

14. In its May 31, 2017 response, the Coroner's Office stated that responsive records were "subject to privilege will not be disclosed" and that it would also redact other records. However, it did not assert any specific privilege.

15. The Coroner's Office also asked the LVRJ to specify the records it wanted to receive first, which the LVRJ did on June 12, 2017.

16. On July 9, 2017, in a response to a further email from the LVRJ inquiring on the status of the records, the Coroner's Office indicated it would not produce any records that pertained to any case that was subsequently handled by a child death review team pursuant to Nev. Rev. Stat. § 432B.407. By that time, the Coroner had determined which cases were not handled by the child death review team and provided a list to the LVRJ.

17. On July 11, 2017, the Coroner's Office provided sample files of redacted autopsy reports for other autopsies of juveniles that were not handled by a child death review team. The samples files were heavily redacted; the Coroner's Office asserted that the redacted language consisted of information that was medical, related to the health of the

1 decedent's mother, could be marked with stigmata or considered an invasion of privacy.  
2 Statements of diagnosis or opinion that were medical or health related that went to the cause  
3 of death were not redacted.

4 18. On July 11, 2017, the Coroner's Office also demanded that the LVRJ  
5 commit to payment for further work in redacting files for production, and declined to  
6 produce records without payment. The Coroner's Office indicated it would take two persons  
7 10-12 hours to redact the records it was willing to produce, and that the LVRJ would have  
8 to pay \$45.00 an hour for the two reviewers, one of which would be an attorney. The  
9 Coroner's Office contended that conducting a privilege review and redacting autopsy  
10 reports required the "extraordinary use of personnel" under Nev. Rev. Stat. § 239.055. The  
11 Coroner's Office stated it did not intend to seek fees for the work associated with the  
12 previously provided spreadsheets and redacted reports.

13 19. On July 17, 2017, the LVRJ filed its Application Pursuant to Nev. Rev.  
14 Sta. § 239.001/Application for Writ of Mandamus/Application for Declaratory and  
15 Injunctive Relief ("Application"), and requested expedited consideration pursuant to Nev.  
16 Rev. Stat. § 239.011(2).

17 20. On August 17, 2017, the LVRJ submitted a Memorandum in support of its  
18 Application. The Coroner's Office submitted its Response on August 30, 2017, and the  
19 LVRJ submitted its Reply on September 7, 2017. The LVRJ also submitted a Supplement  
20 on September 25, 2017 that included autopsy records the LVRJ had received from White  
21 Pine County and Lander County in response to public records requests.

22 21. The Court held a hearing on the LVRJ's Application on September 28,  
23 2017.

## 24 II.

### 25 CONCLUSIONS OF LAW

26 22. The purpose of the NPRA is to foster democratic principles by ensuring  
27 easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) ("The purpose  
28 of this chapter is to foster democratic principles by providing members of the public with

1 access to inspect and copy public books and records to the extent permitted by law”); *see*  
2 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011)  
3 (holding that “the provisions of the NPRA are designed to promote government transparency  
4 and accountability”).

5 23. To fulfill that goal, the NPRA must be construed and interpreted liberally;  
6 government records are presumed public records subject to the Act, and any limitation on the  
7 public’s access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2)  
8 and 239.001(3); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada  
9 legislature intended the provisions of the NPRA to be “liberally construed to maximize the  
10 public’s right of access”).

11 24. The Nevada Legislature has made it clear that—unless they are explicitly  
12 confidential—public records must be made available to the public for inspection or copying.  
13 Nev. Rev. Stat. § 239.010(1); *see also Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,  
14 266 P.3d 623, 627 (2011).

15 **A. The Coroner’s Office Has Not Met Its Burden in Withholding or Redacting**  
16 **Records.**

17 25. The NPRA “considers all records to be public documents available for  
18 inspection unless otherwise explicitly made confidential by statute or by a balancing of  
19 public interests against privacy or law enforcement justification for nondisclosure.” *Reno*  
20 *Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010).

21 26. If a statute explicitly makes a record confidential or privileged, the public  
22 entity need not produce it. *Id.*

23 28. If a governmental entity seeks to withhold a document that is not explicitly  
24 made confidential by statute, it must prove by a preponderance of the evidence that the  
25 records are confidential or privileged, and must also prove by a preponderance of the  
26 evidence that the interest in nondisclosure outweighs the strong presumption in favor of  
27 public access. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also Donrey of*  
28 *Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990).

1           29. In balancing those interests, “the scales must reflect the fundamental right  
2 of a citizen to have access to the public records as contrasted with the incidental right of the  
3 agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of*  
4 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.  
5 27, 359 P.2d 413, 421–22 (1961)).

6           30. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court  
7 hereby finds that the Coroner’s Office has not established by a preponderance of the evidence  
8 that the withheld records are confidential or privileged such that withholding the autopsy  
9 records pertaining to cases that were subsequently handled by a child death review team  
10 pursuant to Nev. Rev. Stat. § 432B.407(6) in their entirety is justified, nor has it established  
11 by a preponderance of the evidence that any interest in nondisclosure outweighs the strong  
12 presumption in favor of public access.

13           31. Further, with regard to the proposed redactions to the autopsy reports the  
14 Coroner’s Office was willing to disclose, the Court finds that the Coroner’s Office has not  
15 established by a preponderance of the evidence that the redacted material is privileged or  
16 confidential.

17           ***The Coroner’s Office Did Not Comply With the NPRA’s Mandate to Provide***  
18 ***Legal Authority in Support of Its Decision to Withhold or Redact Records***  
19 ***Within Five Days.***

20           32. The NPRA provides that a governmental entity must provide timely and  
21 specific notice if it is denying a request because the entity determines the documents sought  
22 are confidential. Nev. Rev. Stat. § 239.0107(1)(d) states that, within five (5) business days  
23 of receiving a request,

24           [i]f the governmental entity must deny the person’s request because the  
25 public book or record, or a part thereof, is confidential, provide to the  
26 person, in writing: (1) Notice of that fact; and (2) A citation to the specific  
27 statute or other legal authority that makes the public book or record, or a  
28 part thereof, confidential.

33. The Coroner's Office cannot rely on privileges, statutes, or other authorities that it failed to assert within five (5) business days to meet its burden of establishing that privilege attaches to any of the requested records.

***The Attorney General Opinion Does Not Justify Non-Disclosure.***

34. In its April 13, 2017 response to the LVRJ's records request, the Coroner's Office relied on a 1982 Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 as a basis for its refusal to produce the requested autopsy reports.

35. The Court finds that, consistent with Nevada Supreme Court precedent, Attorney General Opinions are not binding legal authority. *See Univ. & Cmty. Coll. Sys. of Nevada v. DR Partners*, 117 Nev. 195, 203, 18 P.3d 1042, 1048 (2001) (citing *Goldman v. Bryan*, 106 Nev. 30, 42, 787 P.2d 372, 380 (1990)); *accord Redl v. Secretary of State*, 120 Nev. 75, 80, 85 P.3d 797, 800 (2004).

36. Because it is not binding legal authority, the legal analysis contained in AGO 82-12 does not satisfy the Coroner's Office's burden of establishing that the records are confidential and that the interest in non-disclosure outweighs the presumption in favor of access.

***Nevada Assembly Bill 57 Does Not Justify Non-Disclosure.***

44. The Coroner's Office also cites to Assembly Bill 57, a bill adopted during the 2017 legislative session which made changes to Nevada laws pertaining to next-of-kin notifications as evidence that the privacy interest in autopsy reports outweighs the public's right of access.

45. The Court finds that Assembly Bill 57 (which had not been passed by Nevada Legislature at the time the Coroner's Office cited it in its April 14, 2017 email) is not "legal authority" as required by Nev. Rev. Stat. § 239.0107(d)(1).

46. Moreover, the Court finds that Assembly Bill 57 does not demonstrate a legislative intent to undermine or negate the NPRA's mandates regarding producing public records. Thus, the Coroner's Office cannot rely on Assembly Bill 57 to meet its burden of

1 establishing that the records are confidential and that the interest in non-disclosure  
2 outweighs the presumption in favor of access.

3 *Nev. Rev. Stat. § 432B.407 Does Not Justify Non-Disclosure.*

4 37. On July 9, 2017, in a response to a further email from the LVRJ inquiring  
5 on the status of the records, the Coroner's Office indicated it would not produce any records  
6 that pertained to any case that was subsequently handled by a child death review team  
7 pursuant to Nev. Rev. Stat. § 432B.403, *et. seq.* The Coroner's Office specifically cited Nev.  
8 Rev. Stat. § 432B.407, a statute which pertains to information acquired by child death  
9 review teams, as a basis for refusing to produce the records.

10 38. In addition to not being timely cited, Nev. Rev. Stat. § 432B.407 does not  
11 satisfy the Coroner's Office's burden of establishing that any interest in nondisclosure  
12 outweighs the public's interest in the records.

13 39. Pursuant to Nev. Rev. Stat. § 432B.403, the State can organize child death  
14 review teams to review the records of selected cases of children under the age of 18 to assess  
15 and analyze the deaths, make recommendations for changes to law and policy, support the  
16 safety of children, and a prevent future deaths.

17 40. Under Nev. Rev. Stat. § 432B.407(1), a child death review team may  
18 access, inter alia, "any autopsy and coroner's investigative records" relating to the death of  
19 a child. Nev. Rev. Stat. § 432B.407(1)(b). Section 432B.407(6) in turn provides that  
20 "information acquired by, and the records of, a multidisciplinary team to review the death  
21 of a child are confidential, must not be disclosed, and are not subject to subpoena, discovery  
22 or introduction into evidence in any civil or criminal proceeding."

23 41. However, the Court finds that nothing in the language of Nev. Rev. Stat. §  
24 432B.407(6) indicates that records obtained by child death review teams are automatically  
25 confidential simply because the Coroner's Office transmitted those records at some point in  
26 time to a child death review team.

27 42. Moreover, to the extent that Nev. Rev. Stat. § 432B.407 renders any  
28 records confidential, nothing in the language of Nev. Rev. Stat. § 432B.407 indicates



1 records obtained by a child death review team must be kept confidential in perpetuity.  
2 Instead, the records of a child death review team must be kept confidential only during a  
3 child death review team's review of a child fatality.

4 43. Thus, the Coroner's Office's reliance on Nev. Rev. Stat. § 432B.407 does  
5 not meet its burden of establishing that the records are confidential and that the interest in  
6 non-disclosure outweighs the presumption in favor of access.

7 ***HIPAA Does Not Justify Non-Disclosure.***

8 44. In addition to its reliance on Nev. Rev. Stat. § 432B.407, the Coroner's  
9 Office in its September 7, 2017 Response also pointed to privacy protections for medical  
10 data under the Health Insurance Portability and Privacy Act (HIPAA) and NRS Chapter  
11 629, as persuasive authority for its position that the requested records should be kept  
12 confidential.

13 47. However, in addition to that fact that the Coroner's Office failed to timely  
14 cite HIPAA as a basis for withholding or redacting the requested records, the Coroner's  
15 Office, it is not a covered entity under HIPAA.

16 48. Pursuant to 45 C.F.R. § 160.103, a covered entity is defined as: (1) a health  
17 plan; (2) a "health care clearinghouse;" or (3) "[a] health care provider who transmits any  
18 health information in electronic form in connection with a transaction covered by  
19 [HIPAA]." Moreover, 42 C.F.R. § 160.102 specifically states that HIPAA only applies to  
20 those three categories of health care entities. Thus, by its plain language, HIPAA is not  
21 intended to apply to autopsy records, and cannot be used by the Coroner's Office to withhold  
22 the requested records.

23 49. Accordingly, both because the Coroner's Office did not timely assert any  
24 legal or statutory authority to meet its burden in withholding the records, and because it has  
25 not met its burden in withholding or redacting the requested records, the Court finds that the  
26 Coroner's Office must disclose the requested records to the LVRJ in unredacted form.

27 ///  
28

1           **B. The NPRA Does Not Permit Government Entities to Charge to Redact or**  
2           **Withhold Records or to Conduct a Privilege Review.**

3           50.     The fees provisions relevant to public records requests are those set forth  
4           in Nev. Rev. Stat. §§ 239.052 and 239.055(1).

5           51.     The Coroner's Office relied on Nev. Rev. Stat. § 239.055(1) for fees for  
6           "extraordinary use." That statute provides that "... if a request for a copy of a public record  
7           would require a governmental entity to make extraordinary use of its personnel or  
8           technological resources, the governmental entity may, in addition to any other fee  
9           authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such  
10          extraordinary use...." In its Responding Brief, even the Coroner's Office acknowledged that  
11          in 2013, the Nevada Legislature modified Nev. Rev. Stat. § 39.055 to limit fees for the "  
12          extraordinary use of personnel" to 50 cents per page.

13          52.     The Court finds that Nev. Rev. Stat. § 239.055(1) does not allow  
14          governmental entities to charge a fee for privilege review or to redact or withhold records.  
15          Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring requesters to pay  
16          public entities to charge for undertaking a review for responsive documents, confidentiality,  
17          and redactions would be inconsistent with the plain terms of the statute and with the mandate  
18          to liberally construe the NPRA. *See* Nev. Rev. Stat. § 239.001(3).

19          53.     Further, allowing a public entity to charge a requester for legal fees  
20          associated with reviewing for confidentiality is impermissible because "[t]he public official  
21          or agency bears the burden of establishing the existence of privilege based upon  
22          confidentiality." *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6  
23          P.3d 465, 468 (2000).

24          54.     Moreover, the Court finds that no provision within the NPRA allows a  
25          governmental entity to charge a requester for a privilege review. Rather, the NPRA provides  
26          that a governmental entity may charge for providing a copy of a record, (Nev. Rev. Stat. §  
27          239.052(1)), for providing a transcript of an administrative proceeding, (Nev. Rev. Stat. §  
28          239.053), for information from a geographic information system (Nev. Rev. Stat. §

1 239.054), or for the “extraordinary use” of personnel or technology. Nev. Rev. Stat. §  
2 239.055. A privilege review does not fall within any of these provisions.

3 55. The Court therefore finds that the Coroner’s Office cannot charge the  
4 LVRJ a fee under Nev. Rev. Stat. § 239.055(1) to conduct a review of the requested records.

5 56. Pursuant to Nev. Rev. Stat. § 239.052(1) “a governmental entity may charge  
6 a fee for providing a copy of a public record.” However, that fee may not exceed the “actual  
7 cost to the governmental entity to provide a copy of the public records ...” *Id.*

8 57. The LVRJ indicated it wished to receive electronic copies of the requested  
9 records. The LVRJ is not requesting hard copies, and the NPRA does not permit a per page  
10 fee to be charged for electronic copies. Thus, because the only cost for electronic copies is  
11 that of the medium (a CD), the Court finds that the Coroner’s Office may not charge any  
12 additional fee besides the cost of the CD.

13 **III.**

14 **ORDER**

15 58. Based on the foregoing findings of fact and conclusions of law, the Court  
16 hereby orders as follows:

17 59. The Coroner’s Office shall produce autopsy reports of autopsies conducted  
18 of anyone under the age of 18 conducted from 2012 through April 13, 2017 to the LVRJ in  
19 unredacted form.

20 60. The Coroner’s Office shall make the records available to the LVRJ  
21 expeditiously and on a rolling basis. The Coroner’s Office must provide all the requested  
22 records to the LVRJ by no later than December 28, 2017.

23 61. At the hearing, the Coroner’s Office stated it would be able to produce CDs  
24 with electronic copies of the requested records at a cost of \$15.00 per CD, and the LVRJ  
25 stated it was willing to pay such a fee or provide its own CD. In producing the requested  
26 records, the Coroner’s Office may charge the LVRJ a fee of up to \$15.00 per CD consistent  
27 with Nev. Rev. Stat. § 239.052(1). No additional fees shall be permitted.

28 ///

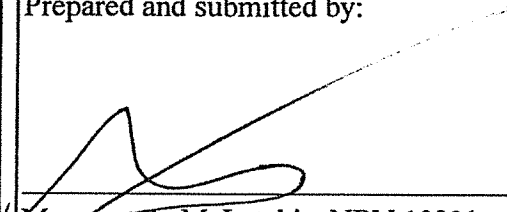
A75B501 - ORDER GRANTING  
PETITIONER LVRT'S PUBLIC  
RECORDS ACT APPLICATION  
PURSUANT TO NRS 239.001  
PETITION FOR WRIT OF  
MANDAMUS

ORDER

It is so ORDERED this 8 day of July, 2017.

  
DISTRICT COURT JUDGE

Prepared and submitted by:

  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**September 28, 2017**

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A-17-758501-W      Las Vegas Review-Journal, Plaintiff(s)  
vs.  
Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

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**September 28, 2017      9:00 AM      Petition for Writ of  
Mandamus**

**HEARD BY:** Crockett, Jim

**COURTROOM:** Phoenix Building Courtroom -  
11th Floor

**COURT CLERK:** Katrina Hernandez

**RECORDER:**

**REPORTER:** Bill Nelson

**PARTIES**

**PRESENT:**      McLetchie, Margaret A.      Attorney for Plaintiff  
                         Shell, Alina      Attorney for Plaintiff

**JOURNAL ENTRIES**

- Laura Rehfeldt, Esq. present on behalf of Defendant.

Court noted the arguments by Counsel and cited from applicable Attorney General's opinions as well as AB 57. Court noted arguments by Counsel, commented on the balance of interests, and FINDS it is clearly outweighed by public interest. Court noted its further inclinations. Arguments by Counsel. COURT ORDERED, motion GRANTED and Court DECLARES they are public records and must be provided to the requestor with statutory legal authority within 5 DAYS. As to attorneys fees for review, redaction fees, and fee per copy, COURT ORDERED, discs to be produced at \$15.00 per disc, production due as the discs are created, and complete production no later than 12/28/17. Court further noted any justifications for redactions need to be asserted. Court further stated its findings. Ms. Shell to prepare the order, circulate to opposing Counsel for approval as to form and content only, and submit it to the Court within TEN days after the transcript is received.

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PETITIONER LVRJ'S PUBLIC RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. 239.001/ PETITION FOR WRIT OF MANDAMUS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

LAS VEGAS REVIEW-JOURNAL,

Plaintiff(s),

vs.

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Defendant(s),

Case No: A-17-758501-W

Dept No: XXIV

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 29 day of November 2017.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk