

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL

Respondent.

No. 75095

Electronically Filed
Mar 14 2018 02:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXIV
County Clark Judge Honorable Jim Crockett
District Ct. Case No. A-17-758501-W

2. **Attorney filing this docketing statement:**

Attorney Micah S. Echols, Esq. Telephone 702-382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, NV 89145

Attorney Laura C. Rehfeldt, Deputy District Attorney
Telephone 702-455-4761
Firm Clark County District Attorney's Office-Civil Division
Address 500 S. Grand Central Pkwy, 5th Floor, P.O. Box 552215
Las Vegas, NV 89155-2215

Client Clark County Office of the Coroner/Medical Examiner ("Coroner")

3. **Attorney(s) representing respondent(s):**

Attorney Margeret A. McLetchie, Esq. & Alina M. Shell, Esq.
Telephone 702-728-5300
Firm McLetchie Shell, LLC
Address 701 E. Bridger Avenue, Ste. 520, Las Vegas, NV 89101
Client Las Vegas Review-Journal ("LVRJ")

4. **Nature of disposition below (check all that apply):**

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify) |
- Order Granting Petitioner Las Vegas
Review-Journal's Motion for Attorney's
Fees and Costs (filed 02/01/18)
(**Exhibit 3**)

5. **Does this appeal raise issues concerning any of the following:** N/A.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal, Case No. 74604—Current pending appeal from the writ of mandamus filed in the same underlying District Court case. The Coroner intends to file a motion to consolidate the instant appeal with the appeal in Case No. 74604.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner, District Court Case No. A-17-758501-W. This is the underlying District Court case from which this appeal arises.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

The companion appeal (Case No. 74604) involves a Nevada Public Records Law issue and review of a district court order granting the media access to confidential autopsy reports of children.

This appeal challenges the District Court's interpretation of NRS 239.011(2) and the award of attorney fees and costs to LVRJ.

The District Court held a hearing on the motion for fees and costs on January 11, 2018 and awarded LVRJ the full amount of requested fees (\$31,552.50) and costs (\$825.02) for a total award of \$32,377.50 against the Coroner.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) Whether the District Court erred by interpreting NRS 239.011(2) in isolation, instead of in harmony with the statutory scheme, including NRS 239.012.

(2) Whether the term “damages” in NRS 239.012 includes attorney fees, such that this statute creates a “good faith” exception to an award of attorney fees under NRS 239.011(2).

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

The cases below are similar to the extent that they involve records requests by the media and challenges to the nondisclosure by the public entity:

Steven B. Wolfson, Las Vegas Review-Journal v. Clark County District Attorney, Case No. 73457.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal involves an interpretation of NRS 239.011(2) and NRS 239.012, which are within the Nevada Public Records Act.

13. **Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive

assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be retained by the Supreme Court according to NRAP 17(a)(10) and (11) because this appeal raises issues of first impression that are of statewide public importance.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A.
Was it a bench or jury trial?

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from** February 1, 2018. *See Exhibit 3.*

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order was served** February 1, 2018. *See Id.*

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):** N/A.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing

☐ NRCP 52(b) Date of filing

☐ NRCP 59 Date of filing

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion .

(c) Date written notice of entry of order resolving tolling motion was served .

Was service by:

☐ Delivery

☐ Mail

19. **Date notice of appeal filed** February 5, 2018.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRAP 3A(b)(8)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court's order awarding fees and costs to LVRJ is independently appealable as a special order under NRAP 3A(b)(8).

22. **List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Petitioner: Las Vegas Review-Journal

Respondent: Clark County Office of the Coroner/Medical Examiner

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

On July 17, 2017, LVRJ filed a Public Records Act Application pursuant to NRS 239.011/Petition for Writ of Mandamus, seeking production of autopsy records of juveniles from the time period of January 1, 2012 to April 13, 1017. The Coroner argued that the records should not be disclosed under state law and the balancing test applied by *Donrey of Nev. Inc. v. Bradshaw*, 103 Nev. 630, 798 P.2d 144 (1990) and its progeny. The District Court found in favor of the LVRJ and ordered that the Coroner produce the requested records, pursuant to the order filed on November 9, 2017. The November 9, 2017 order was stayed pending appeal by the District Court in an order filed on January 11, 2018. The Coroner appealed from the November 9, 2017 order granting petition, which docketed in this Court as Case No. 74604.

LVRJ filed a motion for attorney fees and costs, requesting \$31,552.50 in fees and \$852.02 in costs. On February 1, 2018, the District Court entered an order awarding fees and costs to LVRJ totaling \$32,377.50 against the Coroner. This order is the subject of the instant appeal.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

EXHIBIT	DOCUMENT DESCRIPTION
1	Public Records Act Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus (filed 07/17/17)
2	Notice of Entry of Order with Order Granting Petitioner LVRJ’s Public Records Act Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus (filed 11/09/17)
3	Notice of Entry of Order with Order Granting Petitioner Las Vegas Review-Journal’s Motion for Attorney’s Fees and Costs (filed 02/01/18)

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Clark County Office of the
Coroner/Medical Examiner

Name of appellant

Micah S. Echols, Esq. and Laura
Rehfeldt, Deputy District Attorney

Name of counsel of record

March 14, 2018

Date

/s/ Micah S. Echols

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 14th day of March, 2018, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By electronic service in accordance with the Court's Master Service List as follows:

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.

Dated this 14th day of March, 2018.

/s/ Leah Dell

Signature

Exhibit 1

Steven D. Grierson

PET

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

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Las Vegas, NV 89101

Telephone: (702)-728-5300

Email: alina@nvlitigation.com

Counsel for Petitioner

**EIGHTH JUDICIAL 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.: Department 24

PUBLIC RECORDS ACT
APPLICATION PURSUANT TO
NRS § 239.001/ PETITION FOR
WRIT OF MANDAMUS

EXPEDITED MATTER PURSUANT
TO NEV. REV. STAT. § 239.011

COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through its undersigned counsel, and hereby brings this Petition for Writ of Mandamus for declaratory and injunctive relief and seeking an order requiring the Clark County Office of the Coroner/Medical Examiner (the "Coroner's Office") to provide Petitioner access to public records. Petitioner also requests an award for all fees and costs associated with its efforts to obtain withheld and/or improperly redacted public records as provided for by Nev. Rev. Stat. § 239.011(2). Further, the Review-Journal respectfully asks that this matter be expedited pursuant to Nev. Rev. Stat. § 239.011(2).

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Petitioner hereby alleges as follows:

NATURE OF ACTION

1. Petitioner brings this application for relief pursuant to Nev. Rev. Stat. § 239.011. *See also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630, n.4 (2011).

2. The Review Journal's application to this court is the proper means to secure the Coroner's Office's compliance with the Nevada Public Records Act. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630 n.4 (2011); *see also DR Partners v. Bd. Of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)) (a writ of mandamus is the appropriate procedural remedy to compel compliance with the NPRA).

3. Petitioner is entitled to an expedited hearing on this matter pursuant to Nev. Rev. Stat. § 239.011, which mandates that "the court shall give this matter priority over other civil matters to which priority is not given by other statutes."

PARTIES

4. Petitioner, the Review-Journal, a daily newspaper, is the largest newspaper in Nevada. It is based at 1111 W. Bonanza Road, Las Vegas, Nevada 89125.

5. Respondent is a public agency in the County of Clark, Nevada. The Coroner's Office is subject to the Nevada State Public Records Act pursuant to Nev. Rev. Stat. § 239.005(5)(b).

JURISDICTION AND VENUE

6. This Court has jurisdiction to issue writs of mandamus. Nev. Const., Art. 6, § 6; Nev. Rev. Stat. § 34.160.

7. This Court has jurisdiction pursuant to Nev. Rev. Stat. § 239.011, as the court of Clark County where all relevant public records sought are held.

8. Venue is proper in the Eighth Judicial District Court of Nevada pursuant to Nev. Rev. Stat. § 239.011. All parties and all relevant actions to this matter were and are in Clark County, Nevada.

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1 General Opinion (AGO No. 82-12), AB 57 (then-pending legislation). (*Id.* at LVRJ018-19,
2 LVRJ021-24.)

3 16. The Coroner's Office did not assert any other basis for withholding
4 records (such as Nev. Rev. Stat. § 432B.407) within five (5) business days.

5 17. On May 23, 2017, the Review-Journal (via counsel) wrote to the
6 Coroner's Office to address concerns with the Coroner's Office's refusal to provide access
7 to any of the requested juvenile autopsy reports. (Exh. 4; LVRJ025-28.)

8 18. On May 26, 2017, the Coroner's Office (via the District Attorney)
9 responded to the May 23, 2017 letter, and agreed to consider providing redacted versions of
10 autopsies of juveniles if the Review-Journal provided a specific list of cases it wished to
11 review. (Exh. 5; LVRJ029-71.)

12 19. In its May 26, 2017 response, the Coroner's Office, for the first
13 time, also asserted that the records may be protected by Nev. Rev. Stat. § 432B.407 and, for
14 the first time, detailed that privacy interests outweighed public disclosure. (*Id.*, at LVRJ031-
15 33.)

16 20. The Review-Journal provided the Coroner's Office with a list of
17 specific cases it wanted reports for via email on May 26, 2017. (Exh. 6, LVRJ073.)

18 21. The Coroner's Office responded to the May 26, 2017 email on May
19 31, 2017. (*Id.*, at LVRJ072.)

20 22. On May 31, 2017, the Coroner's Office stated that responsive
21 records were "subject to privilege and will not be disclosed" and that it would also redact
22 other records. However, it did not assert any specific privilege. (*Id.*)

23 23. The Coroner's Office also asked the Review-Journal to specify the
24 records it wanted to receive first, which the Review-Journal did on June 12, 2017. (Exh. 7;
25 LVRJ075-79.)

26 24. On July 9, 2017, in a response to a further email from the Review-
27 Journal inquiring on the status of the records, the Coroner's Office indicated it would not
28

1 produce any records that pertained to any case that was subsequently handled by a child
2 death review team pursuant to Nev. Rev. Stat. § 432B.403, *et. seq.* (Exh. 8; LVRJ080)

3 25. On July 11, 2017, the Coroner's Office provided sample files of
4 redacted autopsy reports for other autopsies of juveniles (cases that were not handled by a
5 child death review team). (Exh. 9; LVRJ095-122.) The samples files were heavily redacted,
6 but the Coroner's Office did not specify the bases for redactions.

7 26. On July 11, 2017, the Coroner's Office also demanded payment for
8 further work in redacting files for production (i.e., keeping information from the Review-
9 Journal), and refused to produce records without payment. (*Id.* at LVRJ087-88.)
10 Specifically, the Coroner's Office indicated it would take two persons 10-12 hours to redact
11 the records it was willing to produce, and that the Review-Journal would have to pay \$45.00
12 an hour for the two reviewers, one of which would be an attorney. (*Id.* at LVRJ087.)

13 27. The Review-Journal is willing to inspect the records in person.

14 28. The Coroner's Office's practice of charging impermissible fees
15 deters NPRA requests from Review-Journal reporters.

16 LEGAL AUTHORITY

17 *Legal Framework*

18 29. The NPRA reflects that records of governmental entities belong to
19 the public in Nevada. Nev. Rev. Stat. § 239.010(1) mandates that, unless a record is
20 confidential, "all public books and public records of a governmental entity must be open at
21 all times during office hours to inspection by any person, and may be fully copied..." The
22 NPRA reflects specific legislative findings and declarations that "[its] purpose is to foster
23 democratic principles by providing members of the public with access to inspect and copy
24 public books and records to the extent permitted by law" and that it provisions "must be
25 construed liberally to carry out this important purpose." Nev. Rev. Stat. § 239.010(1) and
26 (2).

27 30. Here, the Coroner's Office has conceded that the requested records
28 are public records, and it has not met its burden of establishing that, nonetheless, the records

1 it is withholding should not be produced. Moreover, regarding the records it is willing to
2 produce, the Coroner's Office is not entitled to redact the records in the manner it has
3 proposed. Further, the Coroner's Office cannot demand that the Review-Journal pay the
4 Coroner's Office to review and redact records for production.

5 ***Failure to Timely Assert Claims of Confidentiality***

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

10 [i]f the governmental entity must deny the person's request because the
11 public book or record, or a part thereof, is confidential, provide to the
12 person, in writing: (1) Notice of that fact; and (2) A citation to the specific
13 statute or other legal authority that makes the public book or record, or a
14 part thereof, confidential.

15 32. Accordingly, the Coroner's Office cannot rely on legal authority it
16 failed to timely assert in response to the Request.

17 ***The Records Sought Are Subject to Disclosure***

18 33. Even if it had timely asserted claims of confidentiality, he
19 Coroner's Office did not, and cannot, establish its heavy burden in withholding records.

20 34. In accordance with the presumption of openness and "emphasis on
21 disclosure," both the NPRA and the Nevada Supreme Court place a high burden on a
22 governmental entity to justify disclosure. First, the law requires that, if a governmental
23 entity seeks to withhold or redact a public record in its control it must prove by a
24 preponderance of the evidence that the record or portion thereof that it seeks to redact is
25 confidential. *See* Nev. Rev. Stat. § 239.0113; *see also Reno Newspapers, Inc. v. Gibbons*,
26 127 Nev. 873, 882, 266 P.3d 623, 629 (2011); *accord Nevada Policy Research Inst., Inc. v.*
27 *Clark Cty. Sch. Dist.*, No. 64040, 2015 WL 3489473, at *2 (D. Nev. May 29, 2015). It is of
28 note that, as a general matter, "[i]t is well settled that privileges, whether creatures of statute
or the common law, should be interpreted and applied narrowly." *DR Partners v. Bd. of Cty.*

1 *Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Ashokan v. State*,
2 *Dept. of Ins.*, 109 Nev. 662, 668, 856 P.2d 244, 247 (1993)). This is especially so in the
3 public records context: as noted above, any restriction on disclosure "must be construed
4 narrowly." Nev. Rev. Stat. § 239.001(2)-(3).

5 35. Second, in addition to first establishing the existence of the
6 privilege it asserts and applying it narrowly, unless the privilege is absolute, the
7 governmental entity bears the burden of establishing that the interest in withholding
8 documents outweighs the interest in disclosure pursuant to the balancing test first articulated
9 in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). See *DR Partners v.*
10 *Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) ("Unless a
11 statute provides an absolute privilege against disclosure, the burden of establishing the
12 application of a privilege based upon confidentiality can only be satisfied pursuant to a
13 balancing of interests."); see also *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879,
14 266 P.3d 623, 627 (2011) ("...when the requested record is not explicitly made confidential
15 by a statute, the balancing test set forth in *Bradshaw* must be employed" and "any limitation
16 on the general disclosure requirements of Nev. Rev. Stat. § 239.010 must be based upon a
17 balancing or 'weighing' of the interests of non-disclosure against the general policy in favor
18 of open government").

19 36. Further, in applying the *Donrey* balancing test, the burden remains
20 squarely on the agency:

21 In balancing the interests . . . , the scales must reflect the fundamental right
22 of a citizen to have access to the public records as contrasted with the
23 incidental right of the agency to be free from unreasonable interference . . .
24 . The citizen's predominant interest may be expressed in terms of the burden
25 of proof which is applicable in this class of cases; the burden is cast upon
the agency to explain why the records should not be furnished.

26 *Id.* (quoting from *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421-22 (1961) and citing
27 *Bradshaw*, 106 Nev. at 635-36, 798 P.2d at 147-48).

28 ///

1 37. Here, the Coroner's Office has not met its burden, and the public
2 interest in disclosure outweighs any interest in secrecy. Specifically, the Review-Journal is
3 investigating how child deaths are handled, which implicates important child welfare and
4 public policy interests.

5 38. AGO No. 82-12, the 1982 Nevada Attorney General Opinion does
6 not justify non-disclosure. An Attorney General Opinion does not have the force of law. In
7 addition, the 1982 Opinion was based on the Attorney General's interpretation of the 1965
8 version of Nev. Rev. Stat. § 239.010, which lacked the robust protections for the right of
9 access to public records that underpin the current version of the NPRA. Notably, the version
10 of the NPRA the Attorney General relied on in issuing the 1982 opinion did not include
11 Nev. Rev. Stat. § 239.0107, a provision of the NPRA first adopted in 2007 which delineates
12 the process for requesting public records and the burden a governmental entity must satisfy
13 in withholding such records. Further, the 1982 Opinion did not consider the public interest
14 in disclosure of autopsy reports.

15 39. Nev. Rev. Stat. § 432B.407 applies only to the child death review
16 teams and does not apply to the Coroner's Office. A document does not become forever
17 confidential for all purposes simply because it was transmitted to a child death review team.

18 40. Accordingly, the reports that were transmitted to the child death
19 review team should be produced and all the requested reports should be produced without
20 redactions.

21 ***The Fees the Coroner's Office Is Demanding Are Improper***

22 41. The NPRA does not allow for fees to be charged for a governmental
23 entity's privilege review, or for redacting material the governmental entity contends is
24 privileged or otherwise protected from disclosure.

25 42. The only fees permitted are set forth in Nev. Rev. Stat. § 239.052
26 and Nev. Rev. Stat. § 239.055(1).

27 43. Nev. Rev. Stat. § 239.052(1) provides that "a governmental entity
28 may charge a fee for providing a copy of a public record." (Emphasis added.)

44. Nev. Rev. Stat. § 239.055(1), the provision the Coroner's Office is relying on for its demand for fees, also allows for fees for "extraordinary use" in connection with providing copies. It provides that "... 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...."

45. Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring requesters to pay public entities for undertaking a review for responsive documents and confidentiality would be inconsistent with the plain terms of the statute and with the mandate to interpret the NPRA broadly.

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

47. Even if Respondent could, as it has asserted, charge for its privilege review as "extraordinary use," such fees would be capped at 50 cents per page. Nev. Rev. Stat. § 239.055(1).

48. The fee the Coroner's Office is demanding the Review-Journal pay conflicts with the NPRA's provision that a governmental entity may only "charge a fee not to exceed 50 cents per page" for "extraordinary use of its personnel or technological resources." Nev. Rev. Stat. § 239.055(1).

CLAIM FOR RELIEF

49. Petitioner re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1-48 with the same force and effect as if fully set forth herein.

50. The Review-Journal should be provided with the records it has requested pursuant to the NPRA.

1 51. The records sought are subject to disclosure, and Respondent has
2 not met its burden of establishing otherwise.

3 52. A writ of mandamus is necessary to compel Respondent's
4 compliance with the NPRA.

5 53. The NPRA does not permit the fees the Coroner's Office is
6 demanding.

7 54. The NPRA permits governmental entities to charge a fee of up to
8 50 cents per page for "extraordinary use" of personnel or technology to produce copies of
9 records responsive to a public records request. Nev. Rev. Stat. § 239.055(1). The Coroner's
10 Office's Public Records Policy, however, requires requesters to pay a fee of up to \$83.15
11 per hour just to find responsive records and review them for privilege.

12 55. The Coroner's Office either does not understand its obligations to
13 comply with the law or it is intentionally disregarding the plain terms of the NPRA to
14 discourage reporters from accessing public records.

15 56. The Coroner's Office is legally obligated to undertake a search and
16 review of responsive records free of charge when it receives an NPRA request. It also has
17 the burden of establishing confidentiality, and is required to provide specific notice of any
18 confidentiality claims within five days. Yet it has demanded payment for staff time –and
19 attorney time. The Coroner's Office is also conditioning its compliance with NPRA on
20 payment.

21 57. The Coroner's Office is demanding payment not for providing
22 copies, but simply for locating documents responsive to a request—and then for having its
23 director and attorney determine whether documents should be withheld. Not only is this
24 interpretation belied by the plain terms of the NPRA,¹ requiring a requester to pay a public
25 entity's attorneys to withhold documents would be an absurd result. *See S. Nevada*

26
27 ¹ *See Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876 (2014) ("It is a fundamental canon of
28 statutory construction" that, "unless otherwise defined, words will be interpreted as taking
their ordinary, contemporary, common meaning.") (quotation omitted).

1 *Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (noting that
2 courts must "interpret provisions within a common statutory scheme harmoniously with one
3 another in accordance with the general purpose of those statutes and to avoid unreasonable
4 or absurd results, thereby giving effect to the Legislature's intent") (quotation omitted); *see*
5 *also Cal. Commercial Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330
6 (2003) ("When a statute is not ambiguous, this court has consistently held that we are not
7 empowered to construe the statute beyond its plain meaning, unless the law as stated would
8 yield an absurd result.")

9 WHEREFORE, the Petitioner prays for the following relief:

- 10 1. That the court handle this matter on an expedited basis as mandated
11 by Nev. Rev. Stat. § 239.011;
- 12 2. Injunctive relief ordering the Coroner's Office to immediately
13 make available complete copies of all records requested without charging fees, other than
14 permissible fees should the Review-Journal request copies;
- 15 3. Declaratory relief;
- 16 4. Reasonable costs and attorney's fees; and
- 17 5. Any further relief the Court deems appropriate.

18
19 DATED this the 17th day of July, 2017.

20 Respectfully submitted,

21
22
23
24 Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
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25
26
27
28 Counsel for Petitioner

Exhibit 2

Steven D. Grierson

1 **NEOJ**
2 MARGARET A MCLEATCHIE, Nevada Bar No. 10931
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Email: maggie@nvlitigation.com
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 vs.

NOTICE OF ENTRY OF ORDER

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

14 Respondent.

15
16 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
17 PLEASE TAKE NOTICE that on the 9th 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 9th day of November, 2017.

22 /s/ Margaret A. McLetchie

23 Margaret A. McLetchie, Nevada Bar No. 10931

24 Alina M. Shell, Nevada Bar No. 11711

25 **MCLEATCHIE SHELL LLC**

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An Employee of MCLETCHIE SHELL LLC

EXHIBIT 1

Steven D. Grierson

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9 *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

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

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

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, 79th 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.

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

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

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

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

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

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

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

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

25 46. Moreover, the Court finds that Assembly Bill 57 does not demonstrate a
26 legislative intent to undermine or negate the NPRA's mandates regarding producing public
27 records. Thus, the Coroner's Office cannot rely on Assembly Bill 57 to meet its burden of
28

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 ///

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

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

51. The Coroner's Office relied on Nev. Rev. Stat. § 239.055(1) for fees for "extraordinary use." That statute provides that "... 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...." In its Responding Brief, even the Coroner's Office acknowledged that in 2013, the Nevada Legislature modified Nev. Rev. Stat. § 39.055 to limit fees for the "extraordinary use of personnel" to 50 cents per page.

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

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

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

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

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

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

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

III.

ORDER

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

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

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

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

///


A75B501 - ORDER GRANTING
PETITIONER WRIT'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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Exhibit 3



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9 *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 vs.

NOTICE OF ENTRY OF ORDER

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

14 Respondent.

15
16 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
17 PLEASE TAKE NOTICE that on the 1st day of February, 2018, an Order Granting
18 Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs was entered in
19 the above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

20 Respectfully submitted this 1st day of February, 2018.

21 /s/ Margaret A. McLetchie

22 Margaret A. McLetchie, Nevada Bar No. 10931

23 Alina M. Shell, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

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25 Las Vegas, Nevada 89101

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 1st day of February, 2018, pursuant to Administrative
3 Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY
4 OF ORDER in *Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical*
5 *Examiner*, Clark County District Court Case No. A-17-758501-W, to be served electronically
6 using the Odyssey File & Serve electronic filing service system, to all parties with an email
7 address on record.

8 I hereby further certify that on the 1st day of February, 2018, pursuant to Nev. R.
9 Civ. P. 5(b)(2)(B) I mailed a true and correct copy of the foregoing NOTICE OF ENTRY
10 OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to
11 the following:

12 Mary-Anne Miller and Laura Rehfeldt
13 **Clark County District Attorney's Office**
14 500 S. Grand Central Pkwy., Ste. 5075
15 Las Vegas, NV 89106
16 *Counsel for Respondent, Clark County Office of the Coroner/Medical Examiner*

17 /s/ Pharan Burchfield
18 An Employee of MCLETCHIE SHELL LLC
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EXHIBIT 1

Steven D. Grierson

1 **ORDR**
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3 ALINA M. SHELL, Nevada Bar No. 11711
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DISTRICT COURT

CLARK COUNTY NEVADA

10 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

11 Petitioner,

Dept. No.: XXIV

12 vs.

ORDER GRANTING PETITIONER
LAS VEGAS REVIEW-JOURNAL'S
MOTION FOR ATTORNEY'S FEES
AND COSTS

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

15 Respondent.

16 The Las Vegas Review-Journal's Motion of Attorney's Fees and Costs, having
17 come on for hearing on January 11, 2018, the Honorable Jim Crockett presiding, Petitioner
18 Las Vegas Review-Journal (the "LVRJ") appearing by and through its counsel, Margaret A.
19 McLetchie, and Respondent Clark County Office of the Coroner/Medical Examiner
20 ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court
21 having read and considered all of the papers and pleadings on file and being fully advised,
22 and good cause appearing therefor, the Court hereby makes the following findings of fact
23 and conclusions of law:

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I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

The Records Request and The Coroner's Office's Response

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." 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.

4. 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.

5. 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, 79th 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.

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

7. 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 8. 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 9. 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 to
6 justify non-disclosure, and agreed to consider providing redacted versions of autopsies of
7 juveniles if the LVRJ provided a specific list of cases it wished to review.

8 10. 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 11. 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 12. The Coroner's Office responded to the May 26, 2017 email on May 31,
14 2017.

15 13. 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 14. 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 15. 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 16. 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 17. 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 *The Litigation*

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

18 19. On August 17, 2017, the LVRJ submitted a Memorandum in support of its
19 Application. The Coroner's Office submitted its Response on August 30, 2017, asserting a
20 number of arguments against production of the public records. The LVRJ submitted its
21 Reply on September 7, 2017.

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

24 21. Subsequently, on November 9, 2017, the Court entered an order rejecting
25 each of the Coroner's Office's arguments and granting the LVRJ's Application, requiring
26 the Coroner's Office to produce the requested records. The Court also ordered that the
27 Coroner's Office was not entitled to any fees or costs for the record, other than the medium
28 the records were to be electronically provided on.

The LVRJ's Motion for Attorney's Fees and Costs

22. On November 29, 2016, The LVRJ filed a Motion for Attorney's Fees and Costs pursuant to Nev. Rev. Stat. § 239.011(2).

23. In its Motion and supporting exhibits, the LVRJ requested compensation at the following rates for work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	27.9	\$450.00	\$12,465.00 ¹
Alina M. Shell	51.3	\$350.00	\$17,220.00 ²
Leo Wolpert	2.1	\$175.00	\$367.50
Pharan Burchfield	8.9	\$150.00	\$1,335.00
Administrative Support	6.6	\$25.00	\$165.00
		Total Fees Requested	\$31,552.50

24. The LVRJ also requested \$825.02 in costs associated with the litigation, for a combined total request for \$32,377.52 in fees and costs.

25. The LVRJ provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

26. The Coroner's Office filed an Opposition to the LVRJ's Motion on December 14, 2017, and the LVRJ filed a Reply on January 4, 2018.

27. In its Opposition, the Coroner's Office asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of the NPRA which provides immunity from damages for public officers who act in good faith in disclosing or refusing to disclose records—the LVRJ had to establish the Coroner's Office acted in bad faith in refusing to disclose the requested

¹ This total reflected voluntary reductions for some time entries, made by counsel for the LVRJ in her billing discretion.

² See *supra* n.1.

1 records to obtain attorney's fees and costs.

2 28. Alternatively, the Coroner's Office argued the fees and costs sought by
3 counsel for the LVRJ should be apportioned and reduced, largely relying on case law
4 regarding prevailing market rates from federal cases (including Prison Litigation Reform
5 Act case law).

6 29. This Court conducted a hearing on the LVRJ's Motion on January 11,
7 2018.

8 **II.**

9 **CONCLUSIONS OF LAW**

10 ***Legal Standard for the Recovery of Attorney's Fees in NPRA Cases***

11 30. Recovery of attorney fees as a cost of litigation is permissible by
12 agreement, statute, or rule. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*,
13 117 Nev. 948, 956, 35 P.3d 964, 969 (2001).

14 31. In this case, recovery of attorney's fees is authorized by the NPRA, which
15 provides in pertinent part that "[i]f the requester prevails [on a petition for public records],
16 the requester is entitled to recover his or her costs and reasonable attorney's fees in the
17 proceeding from the governmental entity whose officer has custody of the book or record."
18 Nev. Rev. Stat. § 239.011(2).

19 32. Thus, pursuant to Nev. Rev. Stat. § 239.011(2) (the "Fees Statute"), a
20 prevailing party (in this case, the LVRJ) is entitled to its reasonable fees and costs.

21 33. The Fees Statute is explicit and plain. There is no limitation on the
22 entitlement to fees it contains other than the fact that the fees and costs be "reasonable." The
23 Fees Statute does not have any language requiring a prevailing requester to demonstrate that
24 a public officer or employee acted in bad faith in refusing to disclose public records.

25 34. The fact that a separate statute, § 239.012 (the "Damages Immunity
26 Statute"), provides for immunity for good faith actions of public officers or employees in
27 responding to NPRA requests does not change the interpretation of the Fees Statute for
28 multiple reasons.

35. First, as set forth above, the language of the Fees Statute is plain: if a requester prevails in an action to obtain public records, “the requester is entitled to recover his or her reasonable costs and attorney’s fees in the proceeding from the governmental entity whose officer has custody of the book or record.” Nev. Rev. Stat. § 239.011(2). The Fees Statute does not require a requester to demonstrate a governmental entity acted in bad faith; it only requires that the requester prevail.

36. Because the Fees Statute is clear on its face, this court “cannot go beyond the statute in determining legislative intent.” *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (citation and internal quotation marks omitted); *see also Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (same); *see also State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (“We must attribute the plain meaning to a statute that is not ambiguous.”); *see also Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm’n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) (“When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.”)

37. Second, the separate Damages Immunity Statute only provides for immunity from *damages*—not immunity from fees. *See* Nev. Rev. Stat. § 239.012 (specifying that a public officer or his or her employer are “immune from liability for damages, either to the requester or to the person whom the information concerns”). Damages and fees are different. *See, e.g., Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 956 35 P.3d 964, 968 (2001) (comparing procedure for seeking attorney’s fees as a cost of litigation with fees sought as special damages pursuant to Nev. R. Civ. P. 9(g)); *see also Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617 (7th Cir. 2013) (noting that “an award of attorneys’ fees differs from ‘damages’”); *see also United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993) (noting that attorney fees may be awarded for unfair practice, while punitive damages are awarded for tort based on same conduct).

///

38. Third, the Damages Immunity Statute specifically only refers to immunity for actions of "[a] public officer or employee," (i.e., an individual), whereas the Fees Statute makes "governmental entit[ies]" liable for fees for failing to disclose records. Nev. Rev. Stat. § 239.011(2).

39. Nev. Rev. Stat. § 239.005(5) defines "governmental entity" as follows:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State, including, without limitation, an agency of the Executive Department, or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; or

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools.

40. The officers and employees whose "good faith" actions are subject to immunity pursuant to the Damages Immunity Statute are not governmental entities. In contrast, the Respondent (in this case, the Coroner's Office) is a "governmental entity" within the meaning of Nev. Rev. Stat. § 239.005(5) and is therefore responsible for fees pursuant to the Fees Statute. Thus, the difference in terms between the Fees Statute and the Damages Immunity Statute supports not reading a "good faith" requirement from the separate Damages Immunity Statute into the Fees Statute.

41. Fourth, the Damages Immunity Statute provides immunity to public officers or employees for disclosing *or* refusing to disclose public records, whereas a prevailing party's entitlement to fees and costs under Nev. Rev. Stat. § 239.011(2) attaches only in those instances where a requester successfully petitions court after a governmental entity refuses to disclose public records. This fact further urges against reading a "good faith" requirement from the separate Damages Immunity Statute into the Fees Statute.

42. Fifth, it is not necessary to read a good faith requirement into the Fees Statute to reconcile it with the separate Damages Immunity Statute. This is so because the good faith provision applies to an entirely different matter than the attorney fees and costs provision. As set forth above, the Damages Immunity Statute addresses when a public

officer or employee (and his or her employer) is immune from *damages to anyone* for producing records or for failing to produce records if the *officer or employee* acted in good faith. In contrast, the Fees Statute sets forth when a *governmental entity* is responsible to a requester for fees and costs in a petition to obtain records). See *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) ("Courts must construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.") (citation omitted) (emphasis added).

43. Sixth, reading a "good faith" exception into the Fees Statute would be inconsistent with the legislative mandates regarding interpretation of the NPRA, which specifically sets forth "[l]egislative findings and declaration." Nev. Rev. Stat. § 239.001. Nev. Rev. Stat. § 239.001(1) explains that "[t]he purpose of [the NPRA] 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." Nev. Rev. Stat. § 239.001(2) and (3) in turn provide that "[t]he provisions of this chapter must be construed liberally to carry out this important purpose;" and that [a]ny 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." Reading a good faith limitation into the Fees Statute would be inconsistent with these mandates, and would hinder access to records by making it more expensive for requesters to seek court redress when governmental entities fail to produce public records.

44. Seventh, even if it were relevant, the legislative history of the NPRA does not support the Coroner's Office's position and makes clear there is no bad faith requirement in the fees and costs provision. In 1993, via AB 365,³ the NPRA was amended to strengthen the NPRA. Section 2 of AB 365 addressed fees and costs, while Section 3 separately

³ The LVRJ attached the complete legislative history of AB 365 as Exhibit 6 to its Reply to Respondent's Opposition to Motion for Attorney's Fees and Costs, and the page references in this Order correspond to the numbering therein.

1 addressed good faith liability from damages. With regard to Section 2, on May 7, 1993,
2 there was discussion making clear that, as initially written, Section 2 mandated that if the
3 requester prevails, "he was entitled to recover his costs and fees and attorney's fees in the
4 proceeding, from the agency whose officer had custody of the record." (*Id.*, pp. 43-44.) That
5 is all it said as originally written. The Legislature did, however, write one (and only one)
6 limitation into the fees and costs provision: it added the word "reasonable" to qualify the
7 fees and costs to which a requester is entitled. (*Id.*, p. 44.) Then, a separate discussion ensued
8 regarding Section 3 and addressing good faith immunity (*id.*, p. 44 (*after passing a motion*
9 *finalizing the fees and costs language*, the committee went on to discuss Section 3).) The
10 discussion included an explanation that Section 3 "was for a civil penalty to be imposed on
11 a public employee who acted in bad faith." (*Id.*, p. 45.) Thus, the legislative history does not
12 support a "good faith" limitation on the Fees Statute.

13 45. Further, a strict reading of the Fees Statute (one without a good faith
14 exception read into it) is more in keeping in with the policy favoring access expressed in the
15 NPRA as well as the provision allowing for a court remedy upon a governmental entity's
16 failure to produce public records. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644,
17 651, 730 P.2d 438, 443 (1986) "(We conclude a strict reading of the statute is more in
18 keeping with the policy favoring open meetings expressed in NRS chapter 241 and the spirit
19 of the Open Meeting Law...").

20 46. Accordingly, the LVRJ, which prevailed in this litigation, is entitled to its
21 reasonable attorney's costs and fees that it expended in this matter to obtain public records
22 from the Coroner's Office, regardless of whether the Coroner's Office acted in "good faith."
23 ***The LVRJ's Requested Fees and Costs Are Reasonable, and the Brunzell Factors Support***
24 ***a Full Award of Fees and Costs to the LVRJ.***

25 47. As noted above, the LVRJ is entitled to its "reasonable" attorney's fees and
26 costs in this matter.

27 48. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31
28 (1969), a court must consider four elements in determining the reasonable value of

1 attorneys' services:

2 (1) the qualities of the advocate: his ability, his training, education,
3 experience, professional standing and skill; (2) the character of the work to
4 be done: its difficulty, its intricacy, its importance, time and skill required,
5 the responsibility imposed and the prominence and character of the parties
6 where they affect the importance of the litigation; (3) the work actually
7 performed by the lawyer: the skill, time and attention given to the work; (4)
8 the result: whether the attorney was successful and what benefits were
9 derived.

10 *Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (citation omitted); accord *Shuette v. Beazer Homes*
11 *Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

12 49. The Court has carefully reviewed and considered the motion for fees,
13 supporting detail of work performed and costs, and supporting declarations in light of the
14 *Brunzell* factors in determining an appropriate award of fees and costs to the LVRJ

15 50. As to the first factor, the "qualities of the advocate," the Court finds that
16 the rates sought are reasonable in light of their ability, training, education, experience,
17 professional standing and skill. The rates sought for staff are also reasonable, and
18 compensable.

19 51. The Court also finds that the second *Brunzell* factor, the "character of the
20 work" performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of
21 a full award of fees and costs to the LVRJ.

22 52. As the Coroner's Office noted in its Opposition to the LVRJ's Motion for
23 Attorney's Fees and Costs, this case involved an unsettled and contentious area of public
24 records law with serious legal questions of public importance. The Coroner's Office asserted
25 a number of claims of confidentiality requiring versatility and comfort with various areas of
26 law. And, as the NPRA reflects, the work involved in seeking access to public records is
27 important: access to public records fosters democratic principles. Nev. Rev. Stat. §
28 239.001(1). Representing the newspaper of record also necessarily involves a high level of
responsibility and immediate attention. Further, NPRA matters involve matters of high
prominence.

///

61. Nothing in this Order precludes the LVRJ from seeking compensation for fees and costs incurred after November 9, 2017 if appropriate upon conclusion of the appeal in this matter.

ORDER

It is so ORDERED this 30 day of January, 2018.

DISTRICT COURT JUDGE

Prepared and submitted by:

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