

# EXHIBIT “F”

Doc #	Basis for Redaction/Non-Production	Authority	Redaction
3	Attorney Client Privilege	NRS 49.095	Redaction
181	Attorney Client Privilege	NRS 49.095	
184	Attorney Client Privilege	NRS 49.095	Redaction
191	Attorney Client Privilege	NRS 49.095	
193	Attorney Client Privilege	NRS 49.095	
195	Attorney Client Privilege	NRS 49.095	Redaction
199	Attorney Client Privilege	NRS 49.095	
226	Attorney Client Privilege	NRS 49.095	
227	Attorney Client Privilege	NRS 49.095	
233	Attorney Client Privilege	NRS 49.095	
234	Attorney Client Privilege	NRS 49.095	
237	Attorney Client Privilege	NRS 49.095	
238	Attorney Client Privilege	NRS 49.095	
244	Attorney Client Privilege	NRS 49.095	
245	Attorney Client Privilege	NRS 49.095	
246	Attorney Client Privilege	NRS 49.095	
249	Attorney Client Privilege	NRS 49.095	
251	Attorney Client Privilege	NRS 49.095	
252	Attorney Client Privilege	NRS 49.095	
267	Attorney Client Privilege	NRS 49.095	
647	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
669	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
1362	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1363	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1364	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1365	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1366	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1367	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1807	Attorney Client Privilege	NRS 49.095	Redaction
1808	Attorney Client Privilege	NRS 49.095	Redaction
1809	Attorney Client Privilege	NRS 49.095	Redaction
2485	Attorney Client Privilege	NRS 49.095	Redaction
2487	Attorney Client Privilege	NRS 49.095	Redaction
2491	Attorney Client Privilege	NRS 49.095	Redaction
3352	Attorney Client Privilege	NRS 49.095	Redaction
3862	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
3864	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
3866	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
4016	Attorney Client Privilege	NRS 49.095	
4056	Attorney Client Privilege	NRS 49.095	
4057	Attorney Client Privilege	NRS 49.095	
4058	Attorney Client Privilege	NRS 49.095	
4078	Attorney Client Privilege	NRS 49.095	

Doc #	Basis for Redaction/Non-Production	Authority	Redaction
4083	Attorney Client Privilege	NRS 49.095	
4084	Attorney Client Privilege	NRS 49.095	
4090	Attorney Client Privilege	NRS 49.095	
4091	Attorney Client Privilege	NRS 49.095	
4092	Attorney Client Privilege	NRS 49.095	
4093	Attorney Client Privilege	NRS 49.095	
4094	Attorney Client Privilege	NRS 49.095	
4095	Attorney Client Privilege	NRS 49.095	
4944	Attorney Client Privilege	NRS 49.095	Redaction
4954	Attorney Client Privilege	NRS 49.095	Redaction
4955	Attorney Client Privilege	NRS 49.095	Redaction
5249	Attorney Client Privilege	NRS 49.095	Redaction
5253	Attorney Client Privilege	NRS 49.095	Redaction
5695	Attorney Client Privilege	NRS 49.095	Redaction
6535	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
6759	Attorney Client Privilege	NRS 49.095	
6882	Attorney Client Privilege	NRS 49.095	
6883	Attorney Client Privilege	NRS 49.095	
6958	Attorney Client Privilege	NRS 49.095	
6959	Attorney Client Privilege	NRS 49.095	
6978	Attorney Client Privilege	NRS 49.095	
7009	Attorney Client Privilege	NRS 49.095	Redaction
7019	Attorney Client Privilege	NRS 49.095	
7059	Attorney Client Privilege	NRS 49.095	
7127	Attorney Client Privilege	NRS 49.095	
7199	Attorney Client Privilege	NRS 49.095	
7406	Attorney Client Privilege	NRS 49.095	
7496	Attorney Client Privilege	NRS 49.095	
7507	Attorney Client Privilege	NRS 49.095	
7509	Attorney Client Privilege	NRS 49.095	
7631	Attorney Client Privilege	NRS 49.095	
7636	Attorney Client Privilege	NRS 49.095	
7676	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	
7678	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
7698	Attorney Client Privilege	NRS 49.095	
7703	Attorney Client Privilege	NRS 49.095	
7717	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
7718	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	

Doc #	Basis for Redaction/Non-Production	Authority	Redaction
		DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
9218	Deliberative Process Privilege		
12153	Attorney Client Privilege	NRS 49.095	
12154	Attorney Client Privilege	NRS 49.095	
12156	Attorney Client Privilege	NRS 49.095	
12184	Attorney Client Privilege	NRS 49.095	
12185	Attorney Client Privilege	NRS 49.095	
12189	Attorney Client Privilege	NRS 49.095	
12328	Attorney Client Privilege	NRS 49.095	Redaction
13422	Attorney Client Privilege	NRS 49.095	Redaction
13423	Attorney Client Privilege	NRS 49.095	Redaction
13425	Attorney Client Privilege	NRS 49.095	Redaction
13428	Attorney Client Privilege	NRS 49.095	Redaction

**EXHIBIT “G”**

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
3		internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services and/or containing legal advice	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
181	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
184	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
191	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
193		Draft Trooper contract containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
195	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
199	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
226	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
227	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
233	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
234	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
237	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
238	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
244	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
245	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
246	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
249	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
251	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
252	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
267	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
647		Employer identification Number for tax return, possible SS#	Confidential personal information - Employer Identification Number	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
669		Employer identification Number for tax return, possible SS#	Confidential personal information - Employer Identification Number	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
1362	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1363	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1364	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1365	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1366	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1367	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1807	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction



Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
1808	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
1809	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
2485	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
2487	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
2491	attorney and Garri Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re HAD	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
3352		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
3852	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
3854	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
3855	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
4016	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4056	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4057	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4058	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4078	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4083	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4084	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4090	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	



Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
4091	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4092	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4093	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4094	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4095	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4944	Kathy Blaha (PIO), Joanne Wershuba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
4954	Kathy Blaha (PIO), Joanne Wershuba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
4955	Kathy Blaha (PIO), Joanne Wershuba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5249		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5253		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5695		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
6759		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6882	attorneys within the City Attorney's Office	Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6883		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6958		Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6959		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6976	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7009	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
7019	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7059	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7127	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7199	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7406		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7496	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7507	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7509	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7631	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7636	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7676		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Donroy of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	
7678		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Donroy of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
7698	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7703	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7717	Laura Shearn (City Manager's Office), Jennifer Fannema (Human Resources)	Electronic correspondence containing mental impressions and strategy of City management regarding changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v. Board of County Com's of Clark County, 116 Nev. 616 (2000)	
7719		Draft document reflecting deliberations, thoughts, and impressions concerning changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v. Board of County Com's of Clark County, 116 Nev. 616 (2000)	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
12153	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12154	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12155	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12164	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trooper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12185	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trooper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12189	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trooper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12328	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13422	Kim Becker (PIO ), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13423	Kim Becker (PIO ), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13425	Kim Becker (PIO ), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13428	Kim Becker (PIO ), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction

# EXHIBIT “H”

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
3		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services and/or containing legal advice	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
181	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
184	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
191	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
193		Draft Trosper contract containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
195	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
199	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
226	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
227	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
233	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
234	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
237	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
238	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	



Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
244	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
245	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
246	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
249	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
251	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
252	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
267	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
647		Employer Identification Number for tax return, possible SS#	Confidential personal information - Employer Identification Number	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
669		Employer Identification Number for tax return, possible SS#	Confidential personal information - Employer Identification Number	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
1362	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1363	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1364	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1365	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1366	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
1367	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	



Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
1807	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
1808	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
1809	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
2485	Josh Reid (attorney) and Gem Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
2487	Josh Reid (attorney) and Gem Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
2491	Josh Reid (attorney) and Gem Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re HAD	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
3352		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
3862	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com's of Clark County, 116 Nev. 616 (2000)	
3864	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com's of Clark County, 116 Nev. 616 (2000)	
3866	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Com's of Clark County, 116 Nev. 616 (2000)	
4016	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4056	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4057	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4058	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4078	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4083	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4084	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
4090	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4091	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4092	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4093	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4094	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4095	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4944	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
4954	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
4955	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5249		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5253		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5695		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
6759		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6882	Kristina Gilmore (attorney), Josh Reid (attorney), Cheryl Navitskis (City Attorney Staff)	Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6883		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6958	Kristina Gilmore (attorney), Josh Reid (attorney), Cheryl Navitskis (City Attorney Staff)	Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6959		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6978	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
7009	Kristina Gilmore (attorney), Laura Kopanski (paralegal) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
7019	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7059	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7127	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7189	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7406		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7496	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7507	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7509	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7631	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7636	Karina Milana (Public relations), Kristina Gilmore (attorney) and Laura Kopanski (paralegal)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7676		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	
7676		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
7699	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7703	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7717	Laura Sheann (City Manager's Office), Jennifer Fennema (Human Resources)	Electronic correspondence containing mental impressions and strategy of City management regarding changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v. Board of County Comm's of Clark County, 116 Nev. 818 (2000)	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
7718		Draft document reflecting deliberations, thoughts, and impressions concerning changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v. Board of County Com's of Clark County, 116 Nev. 816 (2000)	
12153	Cheryl Navitskis (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12154	Cheryl Navitskis (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12155	Cheryl Navitskis (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12184	Michael Naseem (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trosper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12185	Michael Naseem (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trosper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12189	Michael Naseem (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trosper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12328	Sally Galati (attorney) and Rory Robinson (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13422	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13423	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation), Shan Ferguson (Parks and Recreation), Adam Blackmore (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13425	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13428	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation), Shan Ferguson (Parks and Recreation), Adam Blackmore (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction

# EXHIBIT “I”



## SENATE BILL NO. 123--SENATOR CARE

FEBRUARY 20, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to public records. (BDR 19-462)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

EXPLANATION Matter in *bolded italics* is new, matter between brackets [*omitted matter*] is material to be omitted

AN ACT relating to public records; providing that certain records of a nongovernmental entity are public books or records under certain circumstances; requiring a governmental entity to take action within a certain period in response to a request to inspect or copy a public book or record; making various changes regarding the confidentiality of records; providing in skeleton form a mechanism pursuant to which a person may apply to a district court for an order to allow the person to inspect or copy a confidential public book or record that has been in the custody of a governmental entity for at least 10 years; and providing other matters properly relating thereto.

## Legislative Counsel's Digest:

- 1 Under existing law, all public books and records of a governmental entity, the
- 2 contents of which are not otherwise declared by law to be confidential, must be
- 3 open at all times during office hours for inspection and copying. (NRS 239.010)
- 4 Section 4 of this bill provides that if a governmental entity receives a request to
- 5 inspect or copy a public book or record, the governmental entity must, within 2
- 6 business days after the date on which the request was received, allow the requester
- 7 to inspect or copy the public book or record, or provide to the requester written
- 8 notice to explain why the public book or record may not presently be inspected or
- 9 copied. If a governmental entity is unable to release a public book or record to a
- 10 requester because it has been declared by law to be confidential and the
- 11 governmental entity fails within 2 business days to provide notice of that fact to the
- 12 requester, the governmental entity shall be deemed to have waived its right to claim
- 13 that the book or record is confidential, and must allow the requester to inspect or





14 copy that public book or record. If a person is proximately harmed by such a  
15 deemed waiver of confidentiality, the person may bring an action for damages  
16 against the governmental entity.

17 Section 6 of this bill provides that, notwithstanding any provision of law that  
18 has declared a public book or record, or a part thereof, to be confidential, once the  
19 public book or record has been in the custody of one or more governmental entities  
20 for a period of at least 10 years, a person may apply to the appropriate district court  
21 for an order allowing him to inspect or copy the public book or record. Section 10  
22 of this bill provides that a person may not apply for such an order until October 1,  
23 2017, thus beginning the 10-year waiting period on October 1, 2007, the effective  
24 date of the bill.

25 Section 5 of this bill provides that in any judicial or administrative proceeding  
26 in which the confidentiality of a public book or record is at issue and the  
27 governmental entity that has custody of the public book or record asserts that the  
28 public book or record is confidential, the governmental entity has the burden of  
29 proving such confidentiality.

30 Sections 3 and 7 of this bill provide that although a nongovernmental entity  
31 which performs certain functions for or on behalf of a governmental entity is  
32 considered a governmental entity for the purposes of Nevada's public records law  
33 (chapter 239 of NRS), the records of a nongovernmental entity are public records  
34 that must be open for inspection and copying only if such records: (1) are created,  
35 obtained, maintained or preserved in the course of administering, managing or  
36 regulating an activity, program, institution or facility for or on behalf of a  
37 governmental entity; and (2) would otherwise be considered public records within  
38 the meaning of NRS 239.010.

39 Section 8 of this bill provides that a governmental entity shall not deny a  
40 request to inspect or copy a public book or record because the public book or record  
41 contains information that has been declared by law to be confidential if the  
42 governmental entity can redact the confidential information.

---

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Chapter 239 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this  
3 act.

4 Sec. 2. *The Legislature hereby finds and declares that:*

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

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

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

14 Sec. 3. *Records of a nongovernmental entity are public*  
15 *records that must be open for inspection and copying only if such*  
16 *records:*



1     1. Are created, obtained, maintained or preserved by the  
2 nongovernmental entity in the course of administering, managing  
3 or regulating an activity, program, institution or facility for or on  
4 behalf of a governmental entity; and

5     2. Would otherwise be considered public records within the  
6 meaning of NRS 239.010 if the records were created, obtained,  
7 maintained or preserved by a governmental entity that is described  
8 in paragraphs (a) to (d), inclusive, of subsection 4 of  
9 NRS 239.005.

10    Sec. 4. 1. Not later than the end of the second business day  
11 after the date on which it receives a request from a person to  
12 inspect or copy a public book or record, a governmental entity  
13 shall do one of the following, as applicable:

14       (a) Allow the person to inspect or copy the public book or  
15 record.

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

18           (1) Notice of that fact; and

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

21       (c) If extraordinary circumstances exist which make it  
22 impossible for the governmental entity to allow the person to  
23 inspect or copy the public book or record by the end of the second  
24 business day after the date on which the person made his request,  
25 provide to the person, in writing:

26           (1) Notice of that fact; and

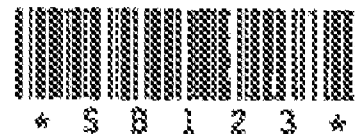
27           (2) A date and time after which the public book or record  
28 will be available for the person to inspect or copy. Such date and  
29 time must be not later than the end of the 10th business day after  
30 the date on which the notice described in this paragraph is  
31 provided by the governmental entity.

32       (d) If the governmental entity must deny the person's request  
33 to inspect or copy the public book or record because the public  
34 book or record, or a part thereof, has been declared by law to be  
35 confidential, provide to the person, in writing:

36           (1) Notice of that fact; and

37           (2) A citation to the specific legal authority that declares  
38 the public book or record, or a part thereof, to be confidential.

39     2. If a governmental entity must deny a person's request to  
40 inspect or copy a public book or record because the public book or  
41 record, or a part thereof, has been declared by law to be  
42 confidential but the governmental entity fails to comply with the  
43 provisions of paragraph (d) of subsection 1, the governmental  
44 entity shall be deemed to have waived its right to claim that the  
45 public book or record is confidential and must allow the person to



1 inspect or copy the public book or record, or a part thereof, unless  
2 the governmental entity or the administrative head of the  
3 governmental entity, as applicable, determines that:

4 (a) The failure of the governmental entity to comply with the  
5 provisions of paragraph (d) of subsection 1 was due to excusable  
6 neglect; or

7 (b) Allowing the person to inspect or copy the public book or  
8 record, or a part thereof, would adversely affect personal privacy  
9 rights.

10 3. Any decision made pursuant to subsection 2 by a  
11 governmental entity or the administrative head of a governmental  
12 entity, as applicable, is a final decision for the purposes of judicial  
13 review. A person aggrieved by such a final decision is entitled to  
14 judicial review of the decision in the manner provided in NRS  
15 233B.130 to 233B.150, inclusive, for the review of decisions of  
16 administrative agencies in contested cases.

17 4. If, pursuant to subsection 2, a governmental entity is  
18 deemed to have waived its right to claim that a public book or  
19 record is confidential and a person suffers injury as the proximate  
20 result of the release of that public book or record, or a part  
21 thereof, the person may bring an action against the governmental  
22 entity in a court of competent jurisdiction for the recovery of his  
23 actual damages and any punitive damages which the facts may  
24 warrant.

25 Sec. 5. Except as otherwise provided in section 6 of this act,  
26 if:

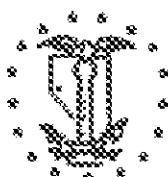
27 1. The confidentiality of a public book or record, or a part  
28 thereof, is at issue in a judicial or administrative proceeding; and

29 2. The governmental entity that has custody of the public  
30 book or record asserts that the public book or record, or a part  
31 thereof, is confidential,

32 the governmental entity has the burden of proving by a  
33 preponderance of the evidence that the public book or record, or a  
34 part thereof, is confidential.

35 Sec. 6. 1. Notwithstanding any provision of law that has  
36 declared a public book or record, or a part thereof, to be  
37 confidential, if a public book or record has been in the custody of  
38 one or more governmental entities for at least 10 years, a person  
39 may apply to the district court of the county in which is located the  
40 governmental entity that currently has custody of the public book  
41 or record for an order directing that governmental entity to allow  
42 the person to inspect or copy the public book or record, or a part  
43 thereof.

44 2. There is a rebuttable presumption that a person who  
45 applies for an order as described in subsection 1 is entitled to



1 *inspect or copy the public book or record, or a part thereof, that he*  
2 *seeks to inspect or copy.*

3 Sec. 7. NRS 239.005 is hereby amended to read as follows:

4 239.005 As used in this chapter, unless the context otherwise  
5 requires:

6 1. "Actual cost" means the direct cost related to the  
7 reproduction of a public record. The term does not include a cost  
8 that a governmental entity incurs regardless of whether or not a  
9 person requests a copy of a particular public record.

10 2. "Committee" means the Committee to Approve Schedules  
11 for the Retention and Disposition of Official State Records.

12 3. "Division" means the Division of State Library and Archives  
13 of the Department of Cultural Affairs.

14 4. "Governmental entity" means:

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

17 (b) An institution, board, commission, bureau, council,  
18 department, division, authority or other unit of government of this  
19 State or of a political subdivision of this State;

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

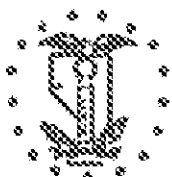
21 (d) An educational foundation, as defined in NRS 388.750, to  
22 the extent that the foundation is dedicated to the assistance of public  
23 schools ~~}; or~~

24 (e) *Any other person or nongovernmental entity that*  
25 *administers, manages or regulates an activity, program, institution*  
26 *or facility for or on behalf of a governmental entity described in*  
27 *paragraphs (a) to (d), inclusive, of this subsection.*

28 Sec. 8. NRS 239.010 is hereby amended to read as follows:

29 239.010 1. ~~{A}~~ *Except as otherwise provided in subsection*  
30 *2, all public books and public records of a governmental entity, the*  
31 *contents of which are not otherwise declared by law to be*  
32 *confidential, must be open at all times during office hours to*  
33 *inspection by any person, and may be fully copied or an abstract or*  
34 *memorandum may be prepared from those public books and public*  
35 *records. Any such copies, abstracts or memoranda may be used to*  
36 *supply the general public with copies, abstracts or memoranda of the*  
37 *records or may be used in any other way to the advantage of the*  
38 *governmental entity or of the general public. This section does not*  
39 *supersede or in any manner affect the federal laws governing*  
40 *copyrights or enlarge, diminish or affect in any other manner the*  
41 *rights of a person in any written book or record which is*  
42 *copyrighted pursuant to federal law.*

43 2. *A governmental entity shall not deny a request made*  
44 *pursuant to subsection 1 to inspect or copy a public book or record*  
45 *on the basis that the requested public book or record contains*



1 *information that has otherwise been declared by law to be*  
2 *confidential if the governmental entity can redact, delete, conceal*  
3 *or separate the confidential information from the information*  
4 *included in the public book or record that has not otherwise been*  
5 *declared by law to be confidential.*

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

8 ~~{3-}~~ 4. A person may request a copy of a public record in any  
9 medium in which the public record is readily available. An officer,  
10 employee or agent of a governmental entity who has custody of a  
11 public record shall not refuse to provide a copy of that public record  
12 in a readily available medium because he has already prepared or  
13 would prefer to provide the copy in a different medium.

14 Sec. 9. NRS 239.012 is hereby amended to read as follows:

15 239.012 ~~{A}~~ *Except as otherwise provided in subsection 4 of*  
16 *section 4 of this act, a public officer or employee who acts in good*  
17 *faith in disclosing or refusing to disclose information , and his*  
18 *employer , are immune from liability for damages, either to the*  
19 *requester or to the person whom the information concerns.*

20 Sec. 10. For the purposes of section 6 of this act, a person may  
21 not apply to a district court before October 1, 2017, for an order  
22 directing a governmental entity to allow the person to inspect or  
23 copy a public book or record, or a part thereof, regardless of  
24 whether the public book or record will have been in the custody of a  
25 governmental entity for a period of 10 years or more before that  
26 date.

③



## **EXHIBIT “J”**



## Amendment No. 415

Senate Amendment to Senate Bill No. 123

(BDR 19-462)

Proposed by: Senate Committee on Government Affairs

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Concurred in	<input type="checkbox"/>	Not	<input type="checkbox"/>	Concurred in	<input type="checkbox"/>	Not	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple-double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

EGO



Date: 4/22/2007

S.B. No. 123---Makes various changes to provisions relating to public records.  
(BDR 19-462)



## SENATE BILL NO. 123--SENATOR CARE

FEBRUARY 20, 2007

Referred to Committee on Government Affairs

SUMMARY--Makes various changes to provisions relating to public records.  
(BDR 19-462)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

EXPLANATION : Matter in *bolded italics* is new; matter between brackets ~~(omitted material)~~ is material to be omitted

AN ACT relating to public records; providing that certain records of a nongovernmental entity are public books or records under certain circumstances; requiring a governmental entity to take certain action ~~{within a certain period}~~ in response to a written request to inspect or copy a public book or record; making various changes regarding the confidentiality of records; ~~{providing in skeleton form a mechanism pursuant to which}~~ authorizing a person ~~{may}~~ to apply to a district court for an order to allow the person to inspect or copy ~~{a}~~ certain confidential public ~~{book}~~ books or ~~{record}~~ records that ~~{has}~~ have been in the custody of a governmental entity for ~~{at least 10 years}~~ a certain period; and providing other matters properly relating thereto.

## Legislative Counsel's Digest:

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential ~~{}~~ or which the governmental entity determines pursuant to a balancing test must not be disclosed, must be open at all times during office hours for inspection and copying. (NRS 239.010 ~~{}~~ ; *Donrey v. Brulshaw*, 106 Nev. 630 (1990))

Section 4 of this bill provides that if a governmental entity receives a written request to inspect or copy a public book or record, the governmental entity must, within ~~{3}~~ 5 business days after the date on which the person who has legal custody or control of the book or record has received the request ~~{was received}~~ : (1) allow the requester to inspect or copy the public book or record ~~{or provide to the requester written notice to explain why the public book or record may not presently be inspected or copied if a governmental entity is unable to release a public book or record to a requester because it has been declared by law to be confidential and the governmental entity fails within 3 business days to provide notice of that fact to the requester, the governmental entity shall be deemed to have waived its right to claim that the book or record is confidential, and must allow the requester to inspect or copy that public book or record. If a person is proximately harmed by such a deemed waiver of confidentiality, the person may bring an action for damages against the governmental entity.}~~ ~~Section~~ ; (2) if the governmental entity does not have legal custody or control of the public book or record, notify the requester of that fact and where, if known, the public book or record is located; (3) if the governmental entity cannot make the public book or record available within 5 business days, notify the requester of the date and time when

the book or record will be available; or (4) if the public book or record is confidential, notify the requester of that fact in writing, including a citation to the legal authority that makes the book or record confidential.

With the exception of public books or records pertaining to applicants for gaming licenses, section 6 of this bill provides that, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, once ~~that~~ a public book or record has been in the legal custody or control of one or more governmental entities for a period of at least ~~40~~ 30 years, a person may apply to the appropriate district court for an order allowing him to inspect or copy the public book or record. If the public book or record pertains to a natural person, a person may not apply for such a court order until 30 years after the book or record has been in the legal custody or control of a governmental entity or the death of the person to whom the book or record pertains, whichever is later. Section ~~44~~ 218 of this bill ~~provides~~ clarifies that a person may ~~not~~ apply for such an order ~~until October 1, 2017, thus beginning the 19-year waiting period~~ on or after October 1, 2007, the effective date of the bill ~~to~~, to inspect or copy public books or records that already meet the conditions set forth in section 6.

Section 5 of this bill provides that in any judicial or administrative proceeding in which the confidentiality of a public book or record is at issue and the governmental entity that has legal custody or control of the public book or record asserts that the public book or record is confidential, the governmental entity has the burden of proving such confidentiality.

Sections 3 and 7 of this bill provide that although a nongovernmental entity which performs certain functions for or on behalf of a governmental entity is considered a governmental entity for the purposes of Nevada's public records law (chapter 239 of NRS), the records of a nongovernmental entity ~~are public records that must be open for inspection and copying only if such records (1) are created, obtained, maintained or preserved in the course of administering, managing or regulating~~ that are directly related to the administration, management or regulation of an activity, program, institution or facility for or on behalf of a governmental entity ~~and (2) would otherwise be considered public records within the meaning of NRS 239.010~~ are public records that must be open for inspection and copying. Section 3 specifically excludes financial or other proprietary records of a nongovernmental entity from this requirement.

Section 8 of this bill provides that a governmental entity shall not deny a request to inspect or copy a public book or record because the public book or record contains information that ~~has been declared by law to be~~ is confidential if the governmental entity can redact the confidential information.

## THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *The Legislature hereby finds and declares that:*

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

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

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

Sec. 3. ~~{Records}~~

1. *Except as otherwise provided in subsection 2, records of a nongovernmental entity ~~are public records that must be open for inspection and copying only if such records~~*

~~1. Records created, obtained, maintained or preserved by the nongovernmental entity in the course of administering, managing or regulating that are directly related to the administration, management or regulation of an activity, program, institution or facility by the nongovernmental entity for or on behalf of a governmental entity and~~

~~2. Records that would otherwise be considered public records within the meaning of NRS 239.010 if the records were created, obtained, maintained or preserved by a governmental entity that is described in paragraphs (a) to (d), inclusive, of subsection 4 of NRS 239.005 are public records that must be open for inspection and copying.~~

2. This section does not apply to the financial or other proprietary records of the nongovernmental entity.

Sec. 4. 1. Not later than the end of the ~~second~~ fifth business day after the date on which ~~the~~ the person who has legal custody or control of a public book or record of a governmental entity receives a written request from a person to inspect or copy ~~the~~ the public book or record, a governmental entity shall do one of the following, as applicable:

(a) Allow the person to inspect or copy the public book or record.

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

(1) Notice of that fact; and

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

(c) ~~If extraordinary circumstances exist which make it impossible for~~ Except as otherwise provided in paragraph (d), if the governmental entity is unable to follow the person to inspect or copy, make the public book or record available by the end of the ~~second~~ fifth business day after the date on which the ~~person made his~~ person who has legal custody or control of the public book or record received the request, provide to the person, in writing:

(1) Notice of that fact; and

(2) A date and time after which the public book or record will be available for the person to inspect or copy. ~~Such date and time must be not later than the end of the 10th business day after the date on which the notice described in this paragraph is provided by the governmental entity.~~ If the public book or record is not available to the person to inspect or copy by that date and time, the person may inquire regarding the status of the request.

(d) If the governmental entity must deny the person's request to inspect or copy the public book or record because the public book or record, or a part thereof, ~~has been declared by law to be~~ is confidential, provide to the person, in writing:

(1) Notice of that fact; and

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

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



~~(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.~~  
~~3. Any decision made pursuant to subsection 2 by a governmental entity or the administrative head of a governmental entity, as applicable, is a final decision for the purposes of judicial review. A person aggrieved by such a final decision is entitled to judicial review of the decision in the manner provided in NRS 333B.130 to 333B.150, inclusive, for the review of decisions of administrative agencies in contested cases.~~

~~4. If, pursuant to subsection 2, a governmental entity is deemed to have waived its right to claim that a public book or record is confidential and a person suffers injury as the proximate result of the release of that public book or record, or a part thereof, the person may bring an action against the governmental entity in a court of competent jurisdiction for the recovery of his actual damages and any punitive damages which the facts may warrant. The provisions of this section must not be construed to prohibit an oral request to inspect or copy a public book or record.~~

Sec. 5. Except as otherwise provided in section 6 of this act, if:

1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial or administrative proceeding; and

2. The governmental entity that has legal custody or control of the public book or record asserts that the public book or record, or a part thereof, is confidential,

the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential.

Sec. 6. 1. ~~Notwithstanding~~ Except as otherwise provided in this subsection and subsection 3, notwithstanding any provision of law that has declared a public book or record, or a part thereof, to be confidential, if a public book or record has been in the legal custody or control of one or more governmental entities for at least ~~40~~ 30 years, a person may apply to the district court of the county in which ~~is located~~ the governmental entity that currently has legal custody or control of the public book or record is located for an order directing that governmental entity to allow the person to inspect or copy the public book or record, or a part thereof. If the public book or record pertains to a natural person, a person may not apply for an order pursuant to this subsection until the public book or record has been in the legal custody or control of one or more governmental entities for at least 30 years or until the death of the person to whom the public book or record pertains, whichever is later.

2. There is a rebuttable presumption that a person who applies for an order as described in subsection 1 is entitled to inspect or copy the public book or record, or a part thereof, that he seeks to inspect or copy.

3. The provisions of subsection 1 do not apply to any public book or record pertaining to an applicant that has been declared confidential pursuant to subsection 4 of NRS 463.120. As used in this subsection, "applicant" has the meaning ascribed to it in NRS 463.0135.

Sec. 7. NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. "Division" means the Division of State Library and Archives of the Department of Cultural Affairs.

1       4. "Governmental entity" means:

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

4       (b) An institution, board, commission, bureau, council, department, division,  
5 authority or other unit of government of this State or of a political subdivision of  
6 this State;

7       (c) A university foundation, as defined in NRS 396.405; ~~{or}~~

8       (d) An educational foundation, as defined in NRS 388.750, to the extent that  
9 the foundation is dedicated to the assistance of public schools ~~{-}~~; or

10       (e) *Any other person or nongovernmental entity that administers, manages*  
11 *or regulates an activity, program, institution or facility for or on behalf of a*  
12 *governmental entity described in paragraphs (a) to (d), inclusive, of this*  
13 *subsection.*

14       Sec. 8. NRS 239.010 is hereby amended to read as follows:

15       239.010 1. ~~{All}~~ *Except as otherwise provided in subsection 2, all public*  
16 *books and public records of a governmental entity, the contents of which are not*  
17 *otherwise declared by law to be confidential, must be open at all times during office*  
18 *hours to inspection by any person, and may be fully copied or an abstract or*  
19 *memorandum may be prepared from those public books and public records. Any*  
20 *such copies, abstracts or memoranda may be used to supply the general public with*  
21 *copies, abstracts or memoranda of the records or may be used in any other way to*  
22 *the advantage of the governmental entity or of the general public. This section does*  
23 *not supersede or in any manner affect the federal laws governing copyrights or*  
24 *enlarge, diminish or affect in any other manner the rights of a person in any written*  
25 *book or record which is copyrighted pursuant to federal law.*

26       2. *A governmental entity that has legal custody or control of a public book*  
27 *or record shall not deny a request made pursuant to subsection 1 to inspect or*  
28 *copy a public book or record on the basis that the requested public book or record*  
29 *contains information that ~~{has otherwise been declared by law to be}~~ is*  
30 *confidential if the governmental entity can redact, delete, conceal or separate the*  
31 *confidential information from the information included in the public book or*  
32 *record that ~~{has}~~ is not otherwise ~~{been declared by law to be}~~ confidential.*

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

35       ~~{3-}~~ 4. A person may request a copy of a public record in any medium in  
36 which the public record is readily available. An officer, employee or agent of a  
37 governmental entity who has legal custody or control of a public record shall not  
38 refuse to provide a copy of that public record in a readily available medium because  
39 he has already prepared or would prefer to provide the copy in a different medium.

40       Sec. 9. NRS 239.0105 is hereby amended to read as follows:

41       239.0105 1. Records of a local governmental entity are confidential and not  
42 public books or records within the meaning of NRS 239.010 if:

43       (a) The records contain the name, address, telephone number or other  
44 identifying information of a natural person; and

45       (b) The natural person whose name, address, telephone number or other  
46 identifying information is contained in the records provided such information to the  
47 local governmental entity for the purpose of:

48       (1) Registering with or applying to the local governmental entity for the  
49 use of any recreational facility or portion thereof that the local governmental entity  
50 offers for use through the acceptance of reservations; or

51       (2) On his own behalf or on behalf of a minor child, registering or  
52 enrolling with or applying to the local governmental entity for participation in an



1 instructional or recreational activity or event conducted, operated or sponsored by  
2 the local governmental entity.

3 2. The records described in subsection 1 must be disclosed by a local  
4 governmental entity only pursuant to:

5 (a) A subpoena or court order, lawfully issued, requiring the disclosure of such  
6 records;

7 (b) An affidavit of an attorney setting forth that the disclosure of such records  
8 is relevant to an investigation in anticipation of litigation; ~~{or}~~

9 (c) A request by a reporter or editorial employee for the disclosure of such  
10 records, if the reporter or editorial employee is employed by or affiliated with a  
11 newspaper, press association or commercially operated, federally licensed radio or  
12 television station ~~{; or}~~

13 ~~(d) The provisions of section 6 of this act.~~

14 3. Except as otherwise provided by specific statute or federal law, a natural  
15 person shall not provide, and a local governmental entity shall not require, the  
16 social security number of any natural person for the purposes described in  
17 subparagraphs (1) and (2) of paragraph (b) of subsection 1.

18 4. As used in this section, unless the context otherwise requires, "local  
19 governmental entity" has the meaning ascribed to it in NRS 239.121.

20 ~~{Sec. 9.} Sec. 10. {NRS 239.012 is hereby amended to read as follows:~~  
21 ~~239.012 {A} Except as otherwise provided in subsection 4 of section 4 of~~  
22 ~~this act, a public officer or employee who acts in good faith in disclosing or~~  
23 ~~refusing to disclose information, and his employer, are immune from liability for~~  
24 ~~damages, either to the requester or to the person whom the information concerned.~~  
25 ~~(Deleted by amendment.)~~

26 Sec. 11. NRS 239C.140 is hereby amended to read as follows:

27 239C.140 1. Except as otherwise provided in subsections 2 and 3, the  
28 Commission shall comply with the provisions of chapter 241 of NRS and all  
29 meetings of the Commission must be conducted in accordance with that chapter.

30 2. The Commission may hold a closed meeting to:

31 (a) Receive security briefings;

32 (b) Discuss procedures for responding to acts of terrorism and related  
33 emergencies; or

34 (c) Discuss deficiencies in security with respect to public services, public  
35 facilities and infrastructure,

36 ~ if the Commission determines, upon a majority vote of its members, that the  
37 public disclosure of such matters would be likely to compromise, jeopardize or  
38 otherwise threaten the safety of the public.

39 3. ~~{All}~~ Except as otherwise provided in section 6 of this act, all information  
40 and materials received or prepared by the Commission during a meeting closed  
41 pursuant to subsection 2 and all minutes and audiovisual or electronic reproductions  
42 of such a meeting are confidential, not subject to subpoena or discovery, and not  
43 subject to inspection by the general public.

44 Sec. 12. NRS 239C.250 is hereby amended to read as follows:

45 239C.250 1. Each political subdivision shall adopt and maintain a response  
46 plan. Each new or revised plan must be filed within 10 days after adoption or  
47 revision with:

48 (a) The Division; and

49 (b) Each response agency that provides services to the political subdivision.

50 2. The response plan required by subsection 1 must include:

51 (a) A drawing or map of the layout and boundaries of the political subdivision;

## **EXHIBIT “K”**

**MINUTES OF THE SUBCOMMITTEE OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fourth Session  
April 9, 2007**

The subcommittee of the Senate Committee on Government Affairs was called to order by Chair Terry Care at 12:53 p.m. on Monday, April 9, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**SUBCOMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Bob Beers  
Senator Randolph J. Townsend

**STAFF MEMBERS PRESENT:**

Candice Nye, Assistant to Committee Manager  
Eileen O'Grady, Committee Counsel  
Michael J. Stewart, Committee Policy Analyst  
Erin Miller, Committee Secretary

**OTHERS PRESENT:**

Barry Smith, Executive Director, Nevada Press Association  
Frederick Schlottman, Administrator, Offender Management Division,  
Carson City, Department of Corrections  
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of  
State  
Trevor Hayes, Nevada Press Association  
Wayne Carlson, Nevada Public Agency Insurance Pool  
Morgan Baumgartner, Medic West  
Richard Yeoman, Administrative Services Officer III, Nevada Department of  
Transportation  
David Emme, Chief, Administrative Services, Division of Environmental  
Protection, State Department of Conservation and Natural Resources  
Maud Naroll, Chief Planner, Budget Division, Department of Administration

Subcommittee of the Senate Committee on Government Affairs  
April 9, 2007  
Page 2

CHAIR CARE:

We open the subcommittee meeting for Senate Bill (S.B.) 123.

SENATE BILL 123: Makes various changes to provisions relating to public records. (BDR 19-462)

CHAIR CARE:

There is a mock-up of S.B. 123 (Exhibit C) that covers most of the issues we discussed in the last subcommittee hearing. The language in section 4 was changed to have a response to the request by the seventh business day as opposed to the second. There was testimony about what happens when you have an agency in Carson City but the request is submitted in Hawthorne. The seven days is to allow time to forward the request to the person who has custody or control. That is the intent of the new language.

Reading further in section 4, it says if the government agency is unable to make the public record available by the seventh business day, the person who has custody or control will notify the requestor of that fact and provide a date and time after which the record will be available for the requestor to inspect their copy. We have deleted the language about the tenth business day and added language, "If the public book or record is not available ..., the person may inquire regarding the status of the request." There is no final date when the request has to be resolved. It allows the requestor, if he or she feels they are being ignored, to inquire of the entity, and the entity will have to respond at the risk of facing suit.

There were some issues with line 39. My thought was in all cases, there would have to be statutory authority. I am told that is not necessarily true, and that is the reason it now reads "statute or other legal authority." Does anyone want to address what we have done in section 4?

BARRY SMITH (Executive Director, Nevada Press Association):

I would like to see five business days or seven calendar days as a compromise on the time period issue.

CHAIR CARE:

The testimony was for five or seven days. I met with staff this morning and told them to put seven days to see what happens.

MR. SMITH:

These are good changes. We still have to deal with the issue of the clock starting on a written request. That is a good and fair idea.

FREDERICK SCHLOTTMAN (Administrator, Offender Management Division, Carson City, Department of Corrections):

I have an inquiry as to how this legislation would work. Presumably, a member of the public or an inmate would make a records request with no limitations on the broadness of the request. It would be upon the Department to provide those records within seven business days. If they could not provide those records within seven days, at what point would those records become declassified or would the Department have to produce those records?

CHAIR CARE:

I do not know what you mean by declassified.

MR. SCHLOTTMAN:

The Department of Corrections has information that is classified from the Federal Bureau of Investigation. The information is retrieved from the National Crime Information Center computer system. The Department Director does not have the authority to declassify that information, and that information is not available to the public.

CHAIR CARE:

If it is not a public record, it would not fall under this statute.

MR. SCHLOTTMAN:

That would be a question of litigation. An inmate could say they would want to see the records because they pertain to their criminal history and might have an effect on their standing in the Department.

CHAIR CARE:

We have a separate statute that talks about who may request records from the criminal repository. What do you do presently?

MR. SCHLOTTMAN:

We turn down the request because that information is not available to the inmate.

CHAIR CARE:

This is not intended to change anything that is currently not a public record.

MR. SCHLOTTMAN:

At what point would the Department have to comply with a records request if it could not meet that request within seven business days?

CHAIR CARE:

If it is a public record, they have to let the requestor know within seven days that they are working on it. The theory here is that the governmental entity will be attempting to comply in good faith. If a requestor does not think so, a judge can make that determination.

We added "custody or control" in section 5 to clarify language. We did not change the burden language. We talked about the point at which a confidential document becomes public. The 10-year time limit is replaced with 30 years. Somebody talked about a trade secret being confidential beyond 30 years. There is a presumption that after 30 years, the need is no longer there for it to be confidential, but it is a rebuttable presumption. Guy Louis Rocha, Acting Administrator, Division of State Library and Archives, Department of Cultural Affairs, talked about the policy of the Division of State Library and Archives where it is 30 years or the death of an individual, whichever comes later. Is 30 years problematic for anyone so long as you would have an opportunity to say the information should not be public and why?

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):

In dealing with agencies with regard to records retention schedules, we come across a lot of confidential information. The rebuttable language helps, but there could be a number of agencies affected by this. There could be information that retains its confidential nature well after the 30-year period. For example, a document regarding minors or an incident that happens early in someone's life could have a need to remain confidential after 30 years.

CHAIR CARE:

You are talking about records that deal with an individual. You say the rebuttal presumption helps, but I do not know what else to do with it. If someone makes the request, the entity could appear in court and explain to the judge why the information needs to be confidential.



Subcommittee of the Senate Committee on Government Affairs  
April 9, 2007  
Page 5

MR. ANDERSON:

The 30 years or upon the death of the individual, whichever comes later, is a good standard.

CHAIR CARE:

I will see if we can get that language in the bill. Section 8 is the redaction provision. Can Committee Counsel address where we have the deletion in section 8, subsection 2?

EILEEN O'GRADY (Committee Counsel):

That was to address the same issue as it might not be declared confidential by law, but it might be confidential under a balancing test.

CHAIR CARE:

Section 9 is deleted. That was the section about liability. There is no waiver of the confidential status of the document if the government fails a timely response. There is no original language about written requests. Trevor Hayes has ideas about what to do concerning oral versus written requests. I can see both sides of the issue.

TREVOR HAYES (Nevada Press Association):

I have looked at the laws in this area and in all 50 states. A number of states that have time provisions and other mechanisms to enforce an open records law allow oral requests. We do not want language to preclude oral requests because the Nevada Press Association uses this method often and most entities respond. A good compromise would be to allow oral requests, but the mechanisms that are created by this law would not go into place until a written request was submitted. The time frame would not start until a written request, including e-mail and fax, is submitted.

CHAIR CARE:

Would that mean that after five or seven days of submitting an oral request, if you have received no response, your next step is to submit a written request?

MR. HAYES:

Yes. If you have a voluminous request, you might want to start from a written standpoint, but most requests are handled by calling an agency and asking for records.

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SENATOR BEERS:

Would the redaction provision pose a fiscal impact?

CHAIR CARE:

We can have Committee Counsel and Research Division look at that.

MR. HAYES:

With regard to time frames, I researched other states. Nine states have 3 days or less response time, and 17 states have 5 days or less. There are 33 states that have a time limit. In previous testimony, people were fearful of litigation, but current law has no time limit. There is no provision stopping litigation from commencing immediately. This bill gives the governmental entity time to work. Litigation is expensive and no one wants to deal with it.

WAYNE CARLSON (Nevada Public Agency Insurance Pool):

I have written testimony (Exhibit D). It was written before I saw the modified version so some of it can be disregarded, but some of it still applies. I have trouble with the language in section 3 pertaining to the private organization maintaining records that are public. There are records that are private business records, and I cited examples in Exhibit D. It is unclear which records are public and which are private business records. The language does not narrow it down, and it affects section 7 because the definition subjects a "person" to these issues. A person is an individual or an organization of legal structure. Therefore, it is possible an individual's personal records could become public because that individual administers a program on behalf of a public entity under a private contract.

CHAIR CARE:

I am only talking about those documents generated by the private entity that would be comparable to documents generated by the government had it done that function. This would not include personnel or proprietary information. We cannot address every situation, but I will ask Committee Counsel to craft language that might give you more comfort.

MR. CARLSON:

We ask our vendors to maintain records they create on behalf of our program as if they were government records. Perhaps something saying "created for the purpose of being a public record" would narrow that definition.

Subcommittee of the Senate Committee on Government Affairs  
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MORGAN BAUMGARTNER (Medic West):

I support what Mr. Carlson said. My company has a franchise agreement. I am not sure if a franchise agreement reaches the level of contracting or works like a business license, but we provide certain records to the government entity with which we have the franchise agreement. Those are public records, but we have the same concerns. With the way the bill is drafted, it seems like you could reach into our personnel and financial records. That is not your intent, but we would like to see language that addresses that specific concern.

CHAIR CARE:

I am trying to let taxpayers have the opportunity to know what their tax dollars are doing.

MS. BAUMGARTNER:

Our franchise agreement would have standards—such as ambulance call times—we have to submit to the public entity with which we contract. Maybe you can craft something that states those are the public records or something narrowly tailored along those lines.

RICHARD YEOMAN (Administrative Services Officer III, Nevada Department of Transportation):

We get requests all the time and have a lot of complex records. There is a necessity to put those requests in writing. There needs to be some sort of specificity addressed. I just finished a request that took 52.5 staff hours to fill. It was a "give me everything you have from here to here" request that was difficult to sort through. We had to ask them to specify their needs so we could fill the request. On the redaction point, it would take two copies to get the redacted copy to the individual. You have to make a copy of the original document, use a black marker which can be read through and make another copy to obliterate the words behind the marker. There is a minor fiscal impact but a bigger impact on time.

DAVID EMME (Chief, Administrative Services, Division of Environmental Protection, State Department of Conservation and Natural Resources):

From a practical standpoint, you have addressed our concerns. I would ask you to consider an explicit exception for the trade secret or confidential business information at the beginning of section 6.

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Page 8

MR. SCHLOTTMAN:

The Department of Corrections does not have any in-house legal staff to do redactions and limited staff to handle records. I would anticipate a substantial fiscal impact given the number of vexatious litigators within the Department.

CHAIR CARE:

In the case of litigation, it will be different. If they are going to sue, they will sue. This statute aside, they will be entitled to certain documents.

MR. SCHLOTTMAN:

Given the organized nature of some inmate groups, they would attempt to overwhelm the Department with information requests. For us to show good faith effort to honor those requests would be a substantial undertaking.

CHAIR CARE:

Do we have a vexatious litigator statute in Nevada?

MR. SCHLOTTMAN:

Yes, we do. It is not used very often.

SENATOR BEERS:

Can we exempt inmates from utilizing the statute?

CHAIR CARE:

I would hate to get into that today.

MR. SCHLOTTMAN:

That would be an interesting way to pursue this. How would inmates keep these documents in a small cell? There are logistical problems involved.

MAUD NAROLL (Chief Planner, Budget Division, Department of Administration):

The custody or control language in section 4 is an issue. If that could be changed to "legal custody," that would be better. The records center has physical custody of many agency records but not legal custody. We would appreciate that the request be in writing in order for the statute to apply.

CHAIR CARE:

I would like to recommend to the Committee that we move to amend and do pass except in section 3, the language needs to be amended to give more

Subcommittee of the Senate Committee on Government Affairs  
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comfort to the private agencies. We also need to clarify the language of custody or control to "legal custody or control." Do the Subcommittee members have a preference for five or seven days? My preference is five business days.

SENATOR BEERS:  
Five days is fine with me.

SENATOR TOWNSEND:  
I am fine with five days.

CHAIR CARE:  
We will also clarify the 30-years provision to "30 years or the death of the individual, whichever comes later" on records pertaining to an individual. The language suggested by Mr. Hayes that the requests may be oral but written requests will start the time frame should also be added. These will be my recommendations to the full Committee. This meeting is adjourned at 1:30 p.m.

RESPECTFULLY SUBMITTED:

---

Erin Miller,  
Committee Secretary

APPROVED BY:

---

Senator Terry Care, Chair

DATE: \_\_\_\_\_

**EXHIBIT “L”**



1 DECLARATION OF NATHAN HILL IN SUPPORT OF CITY OF HENDERSON'S  
2 RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S AMENDED  
3 PUBLIC RECORDS ACT APPLICATION PURSUANT TO  
4 NRS § 239.001/PETITION FOR WRIT OF MANDAMUS/APPLICATION  
5 FOR DECLARATORY AND INJUNCTIVE RELIEF

6 NATHAN HILL hereby declares that the following is true and correct under the  
7 penalties of perjury:

8 1. I am the Archives and Records Manager in the City Clerk's Office for Respondent  
9 City of Henderson (the "City").

10 2. I make this Declaration in support of the City's Response to Las Vegas Review-  
11 Journal's Amended Public Records Request Act Application Pursuant to NRS §  
12 239.001/Petition for Writ of Mandamus/Application for Declaratory and Injunctive Relief  
13 (the "Response").

14 3. I have personal knowledge of the facts set forth herein, except where stated upon  
15 information and belief, and where so stated, I believe them to be true.

16 4. I am over the age of eighteen years and am mentally competent.

17 5. The City Clerk's Office is responsible for fulfilling public records requests. During  
18 2016, the City Clerk's Office received and fulfilled over 2,300 public records requests.  
19 Examples of records requested by the public include contracts, plans, drawings, and permits.  
20

21 6. The City Clerk's Office did not charge any fees to fulfill a significant majority of  
22 these public records requests and, in most cases, the requests were completed in a matter of  
23 days.  
24

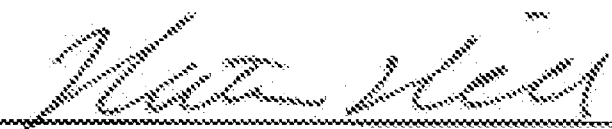
25 7. The City Clerk's Office rarely charges "extraordinary use" fees to fulfill public  
26 records requests. According to City records, the City Clerk's Office assessed the  
27 extraordinary use fee one time during 2016.  
28

1 8. I have been the Archives and Records Manager in the City Clerk's Office for seven  
2 years. To my knowledge, this is the first public records lawsuit filed against the City since I  
3 have been Archives and Records Manager.  
4

5 I declare under penalty of perjury that the foregoing is true and correct.

6 DATED this 7<sup>th</sup> day of March, 2017.

7  
8  
9 By

  
NATHAN HILL

**Case No. 75407**

---

IN THE SUPREME COURT OF  
THE STATE OF NEVADA

---

Electronically Filed  
Nov 20 2018 11:04 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CITY OF HENDERSON,  
Appellant/Cross-Respondent,

vs.

LAS VEGAS REVIEW-JOURNAL,  
Respondent/Cross-Appellant.

---

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

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**APPELLANT/CROSS-RESPONDENT'S JOINT APPENDIX VOLUME II**

---

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---

*Attorneys for Appellant/Cross-Respondent CITY OF HENDERSON*

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**November 19, 2018**

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## **CERTIFICATE OF SERVICE**

I certify that I am an employee of Bailey❖Kennedy, and that on November 19, 2018, the JOINT APPENDIX VOLUME II was filed electronically with the Clerk of the Nevada Supreme Court, and therefore, electronic service was made in accordance with the Master Service List as follows:

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Alina M. Shell, Esq.  
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Las Vegas Review-Journal

/s/ Susan Russo

An Employee of Bailey❖Kennedy

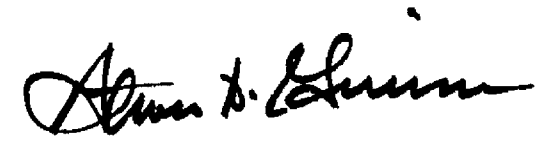
<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES NUMBER</b>
I	Affidavit of Service	12/29/2016	JA023 – JA024
I	Amended Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus / Application for Declaratory and Injunctive Relief - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011	02/08/2017	JA026 – JA167
V	City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time	4/05/2018	JA0813 – JA0950
IV	City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs	7/10/2017	JA0530 – JA0642
II	City of Henderson's Response to Las Vegas Review-Journal's Amended Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus/Application for Declaratory	03/08/2017	JA0190 – JA0295
IV	COH's Opposition to LVRJ's Motion for Clarification	11/29/2017	JA0721 – JA0744

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES NUMBER</b>
V	Las Vegas Review-Journal's Case Appeal Statement	3/26/2018	JA0796 – JA0799
V	Las Vegas Review-Journal's Notice of Cross Appeal	3/26/2018	JA0794 – JA0795
IV	LVRJ's Motion for Clarification	11/08/2017	JA0716 – JA0720
IV	LVRJ's Motion for Extension of Time to Submit Proposed Order Granting for Attorney's Fees and Costs	8/24/2017	JA0703 – JA0708
IV	LVRJ's Motion for Extension of Time to Submit Proposed Order Granting for Attorney's Fees and Costs (Second Request)	9/7/2017	JA0713 – JA0715
I	Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief	02/08/2017	JA0168 – JA0189
V	Minutes from Hearing on City of Henderson's Motion to Stay	4/11/2018	JA0972
IV	Minutes from Hearing on Motion for Attorney Fees and Costs	8/03/2017	JA0660
V	Minutes from Hearing on Motion for Clarification	12/13/2017	JA0751
IV	Minutes from Hearing on Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs	8/10/2017	JA0687
III	Minutes of Hearing Re: Petition for Writ of Mandamus	03/30/2017	JA0419
III	Notice of Appeal	06/09/2017	JA0451 – JA0452



<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES NUMBER</b>
IV	Notice of Change of Hearing	11/29/2017	JA0745 – JA0746
V	Notice of Entry of Order Denying LVRJ's Motion for Clarification	1/04/2018	JA0759 – JA0763
III	Notice of Entry of Order Denying Petition for Writ of Mandamus	05/15/2017	JA0445 – JA0450
V	Notice of Entry of Order Granting City of Henderson's Motion for Stay Pending Resolution Nevada Supreme Court Appeal	5/21/2018	JA0975 – JA0980
V	Notice of Entry of Order on Las Vegas Review-Journal's Motion for Attorneys' Fees and Costs	2/15/2018	JA0769 – JA0766
I	Notice of Entry of Stipulation and Order to Allow Las Vegas Review Journal to File an Amended Petition	01/03/2017	JA025 – JA028
IV	Notice of Submission of Proposed Order	8/25/2017	JA0709 – JA0712
V	Notice of Submission of Proposed Order	3/28/2018	JA0800 – JA0812
V	Order Denying LVRJ's Motion for Clarification	1/03/2018	JA0757 – JA0758
V	Order on August 10, 2017, Hearing on LVRJ's Motion for Attorney's Fees and Costs	2/15/2018	JA0764 – JA0768
V	Order on City of Henderson's Motion for Stay Pending Resolution of NV Supreme Court Appeal	5/21/2018	JA0973 – JA0974
IV	Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs	6/01/2017	JA0455 – JA0526
V	Petitioner's Opposition to Respondent's Motion for Stay Pending Appeal and Countermotion for Order to Show Cause	4/10/2018	JA0951 – JA0971

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES NUMBER</b>
I	Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus	11/29/2016	JA001 – JA022
III	Register of Actions	01/17/2018	JA0453 – JA0454
IV	Reply to City of Henderson's Opposition to LVRJ's Motion for Attorney's Fees and Costs	7/27/2017	JA0643 – JA0659
V	Reply to City of Henderson's Opposition to Motion for Clarification	12/05/2017	JA0747 – JA0750
III	Reply to Respondent City of Henderson's Response to Amended Public Records Act Application Pursuant To NRS 239.001/ Petition For Writ Of	03/23/2017	JA0296 – JA0418
V	Respondent City of Henderson's Case Appeal Statement	3/16/2018	JA0789 – JA0793
V	Respondent City of Henderson's Notice of Appeal	3/16/2018	JA0777 – JA0788
IV	Stipulation and Order to Modify Briefing Schedule and Move the Hearing on LVRJ's Motion for Attorney's Fees and Costs	6/22/2017	JA0527 – JA0529
IV	Transcript - Decision on August 3, 2017, Hearing	8/10/2017	JA0688 – JA0702
IV	Transcript – Hearing on Motion for Attorney’s Fees and Costs	8/03/2017	JA0661 – JA0686
V	Transcript - Hearing on Plaintiff's Motion for Clarification	12/13/2017	JA0752 – JA0756
III	Transcript of Proceedings Re: Petition for Writ of Mandamus	03/30/2017	JA0420 – JA0444

  
CLERK OF THE COURT

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**CITY OF HENDERSON**

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,  
  
Petitioner,  
  
vs.  
  
CITY OF HENDERSON,  
  
Respondent.

Case No. A-16-747289-W  
Dept. No. XVIII  
  
Date of Hearing: March 30, 2017  
  
Time of Hearing: 9:00 A.M.

**CITY OF HENDERSON'S RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S  
AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS  
239.001/PETITION FOR WRIT OF MANDAMUS/APPLICATION FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Respondent, City of Henderson (the "City"), submits its Response to Las Vegas Review-Journal's ("LVRJ") Amended Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus/Application for Declaratory and Injunctive Relief (the "Petition"). This Response is based on the Memorandum of Points and Authorities below, the exhibits attached hereto and papers and pleadings on file with the Court and any oral argument the Court may entertain.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

9,621 electronic files. 69,979 pages of documents. By the time LVRJ filed its Amended Petition the City had prepared – and LVRJ spent days inspecting – this astronomical compilation of records matching the search criteria LVRJ crafted under the Nevada Public Records Act (“NPRA”). LVRJ has never, including in its Amended Petition, requested a single copy of any of the documents it inspected.

LVRJ’s Amended Petition improperly seeks this Court’s determination of issues that are moot, or worse, manufactured. Moreover, this entire dispute arose because LVRJ deviated from a long history of cooperation with the City. That deviation resulted in the sequester of nearly two weeks of taxpayer funded personnel time and the preparation of the tens of thousands of pages of documents LVRJ apparently now does not want. On multiple occasions, LVRJ, and/or its counsel, refused the City’s invitations to refine its request to avoid this waste of taxpayer, and now this Court’s, resources.

The only real dispute for this Court to decide is whether a handful of documents, withheld by the City under well-established exceptions like the attorney client privilege and the deliberative process privilege, should be produced to LVRJ. However, in a manipulation of the NPRA, LVRJ improperly seeks this Court’s intervention for declaratory or injunctive relief concerning certain provisions of the NPRA and the Henderson Municipal Code.

The relief, remedies, and procedures under the NPRA are exclusive and do not include declaratory or injunctive relief. Moreover, the issues LVRJ raises are moot, and LVRJ has made no attempt to justify an exception to the well-settled principle that this Court decide only live cases and controversies. Even if this Court entertained LVRJ’s improper requests, LVRJ’s arguments fail.

With regard to the limited documents the City redacted or withheld, LVRJ’s arguments are misguided and dangerous to the public. LVRJ’s contention that the City waived its statutory responsibility to withhold or redact documents or information because it did not assert its basis for withholding within five days is absurd. If endorsed by this Court, LVRJ’s position would punish the public by practically ensuring the release of confidential information contained in public records

1 held by public bodies. Likewise, LVRJ's shotgun approach at invalidating the City's bases for  
2 withholding documents fails.

3 LVRJ has cloaked its dispute, if there is any, with the City in the transparency principles  
4 enshrined in the NPRA, but upon examination it is clear that this dispute is not about those  
5 principles. This dispute, for LVRJ, is about abusing the NPRA to secure the ability to commandeer  
6 public servants, free of charge, to respond to broad requests for its business purposes, then partnering  
7 with legal counsel to recover unnecessary legal fees for manufactured violations of the NPRA.<sup>1</sup>  
8 This Court should deny LVRJ's petition in its entirety.

## 9 II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

10 The City receives and fulfills thousands of public records requests. During 2016 alone, the  
11 City Clerk's Office received and fulfilled over 2,300 public records requests. The City Clerk's  
12 Office did not charge any fees to complete a significant majority of these public records requests  
13 and, in most cases, the requests were completed in a matter of days. The City Clerk's Office rarely  
14 charges the "extraordinary use" fee at issue in this case. In fact, according to City records, the City  
15 Clerk's Office assessed the extraordinary use fee *one time* during all of 2016.

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

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

25 See Declaration of Brian R. Reeve attached hereto as **Exhibit A**, at ¶¶ 4-5; LVRJ's Request,  
26 attached hereto as **Exhibit B**. The Request asked the City to provide responsive electronic records

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27 <sup>1</sup> LVRJ is no stranger to such legal schemes. See <https://en.wikipedia.org/wiki/Righthaven>.



1 in their original electronic form attached to an email or downloaded to an electronic medium. *See*  
2 **Exhibit B**. The Request asked the City to waive any applicable fees, but noted: “[i]f you intend to  
3 charge any fees for obtaining copies of these records, please contact us immediately (no later than 5  
4 days from today) if the cost will exceed \$50.” *Id.*

5 On October 11, 2016, five business days after receiving the Request, the City provided its  
6 initial written response as required by NRS 239.0107 (the “Initial Response”). *See* October 11, 2016  
7 correspondence, attached hereto as **Exhibit C**. In its Initial Response, the City informed LVRJ that  
8 it had found approximately 5,566 emails matching the search terms set forth in the expansive  
9 Request. *Id.* These 5,566 emails contained approximately 9621 electronic files and consisted of  
10 approximately 69,979 pages. *See Exhibit A* at ¶ 6. In light of the large universe of documents and  
11 the City’s responsibility to safeguard confidential information, *i.e.* non-public records, the City  
12 explained that the Request would require extraordinary research and use of City personnel to  
13 complete. *See Exhibit C*. The City estimated that it would take approximately 74 hours for City  
14 staff to review the electronic files to determine whether to withhold or redact any confidential  
15 documents or information within the responsive files. *Id.* Under NRS 239.055, the City provided  
16 LVRJ with an estimate of \$5,787.89 to complete the Request and explained how the City arrived at  
17 its estimate. *Id.* In accordance with City policy,<sup>2</sup> the City requested a 50% deposit of the fees and  
18 informed LVRJ that it would take three weeks to complete the review once the deposit was received.  
19 *Id.*

20 ///

21 ///

22 ///

24 \_\_\_\_\_  
25 <sup>2</sup> The City’s policy is consistent with NAC 239.864(1) and (2), which provides, in pertinent part, that if a records  
official of an agency of the Executive Department charges a fee to provide a copy of a public record, the official:

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

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

1 On October 12, 2016,<sup>3</sup> LVRJ’s attorney, Margaret McLetchie, called the City to discuss the  
2 City’s Initial Response. *See Exhibit A* at ¶ 8. Ms. McLetchie disputed the City’s ability to charge  
3 extraordinary fees to complete the Request and wanted to know why the City had so many emails  
4 matching LVRJ’s search terms. *Id.* at ¶ 9. Counsel for the City explained to Ms. McLetchie that the  
5 City was still in the process of removing duplicate emails in its document review system and that the  
6 estimated cost to produce the documents likely would decrease once this process was completed. *Id.*  
7 at ¶ 10. During the call, the parties discussed potentially narrowing the search terms to decrease the  
8 number of email hits and whether the City would be willing to lower its fee estimate. *Id.* at ¶ 11.  
9 Counsel for both parties resolved to go back to their respective clients to work on a solution. *Id.*  
10 Ms. McLetchie represented that she would call back on October 17, 2016, to discuss the matter  
11 further. *Id.*

12 Ms. McLetchie did not call the City on October 17, 2016. *Id.* at ¶ 12. After waiting a week  
13 with no contact from Ms. McLetchie, counsel for the City called Ms. McLetchie’s office on October  
14 25, 2016, to further the parties’ October 12th discussion in an attempt to work out a resolution. *Id.* at  
15 ¶ 13. Counsel for the City was informed by Ms. McLetchie’s office that Ms. McLetchie was out of  
16 town until November 4, 2016. *Id.* Counsel for the City asked for a return call once Ms. McLetchie  
17 returned to the office. *Id.*

18 Ms. McLetchie never returned the City’s phone call and did not otherwise attempt to contact  
19 the City to work on a resolution. *Id.* at ¶ 14.<sup>4</sup> Instead, after more than six weeks had passed since  
20 communicating with the City and without any prior warning, LVRJ filed suit against the City on  
21

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22 <sup>3</sup> On October 12, 2016, the LVRJ reporter who submitted the Request, Natalie Bruzda, announced on Twitter that  
23 she would officially begin the higher education beat the following Monday. *See*  
24 <https://twitter.com/NatalieBruzda/status/786238453931356160>. Based on this announcement, it was unclear whether  
LVRJ was still interested in the requested documents.

25 <sup>4</sup> In its Memorandum in Support of the Petition, LVRJ states: “On November 29, 2016, after an informal effort to  
26 resolve this dispute failed, the Review-Journal filed a Petition for Writ of Mandamus with this Court on November 29,  
27 2016.” *See* Memo in Support at 4:10-12. This characterization is misleading. The “informal effort to resolve this  
28 dispute failed” because LVRJ did not want to resolve it. LVRJ never contacted the City on October 17, 2016, as  
promised, to discuss options to reduce the time and expense associated with completing the Request, and failed to return  
the City’s October 25, 2016 call. Indeed, over six weeks had passed since the parties’ October 12<sup>th</sup> telephone conference  
when LVRJ, without any prior warning, filed suit against the City. This is the equivalent of a party filing a motion to  
compel discovery without participating in the meet and confer process required by the rules of civil procedure.

1 November 29, 2016, claiming that the City had refused to provide LVRJ with the requested records.  
2 *Id.* This is simply not true. The City never refused or denied LVRJ's request. *Id.* As demonstrated  
3 in the October 11, 2016 correspondence and via telephone conversations, the City was prepared to  
4 review and provide copies of all responsive public records. In truth, LVRJ simply did not want to  
5 pay the fee for "extraordinary use of personnel or technological resources" authorized by NRS  
6 239.055. Nor did LVRJ want to modify its search terms to create a more defined universe of  
7 documents.<sup>5</sup>

8 After the City was served with the Petition, the City wrote Ms. McLetchie a letter expressing  
9 surprise at the lawsuit given LVRJ's silence with respect to the Request for over six weeks and the  
10 fact that the City has always worked with LVRJ to modify the scope of records requests by using  
11 agreed upon search terms, or other methods to reduce the time and cost of producing large numbers  
12 of electronic documents. *See Exhibit A* at ¶ 15; December 5, 2016 letter attached hereto as **Exhibit**  
13 **D**. The City's December 5<sup>th</sup> letter also expressed disappointment in the lawsuit since the parties  
14 have also been able to resolve such issues in a way that has resulted in LVRJ paying a minimal  
15 amount for public records over the past two years. **Exhibit D** at 3. According to City records, LVRJ  
16 has made 46 separate public records requests to the City since 2015, and LVRJ has paid the City a  
17 total of **\$241.11** in fees for these records. *Id.* This amounts to approximately \$5.24 per request.

18 The City's December 5<sup>th</sup> letter noted that City employees spent 72 hours processing LVRJ's  
19 Request and provided the actual cost of personnel time to complete the Request (\$5,303.32). *Id.* As  
20 a compromise, however, the City offered to reduce the fee to \$3,226.32. *Id.* The City emphasized  
21 that despite the filing of the lawsuit, it was still amenable to working with LVRJ on a mechanism to  
22 provide LVRJ with the requested documents, and working on a protocol for future requests. *Id.*  
23

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24 <sup>5</sup> The best proof of the breadth (or overbreadth) of LVRJ's original request is the fact that even LVRJ complained  
25 that the universe of documents that resulted from its requested search was overbroad. For example, after the City  
26 permitted LVRJ to inspect the documents free of charge (explained more fully below), LVRJ questioned why it had to  
27 review a number of documents it believed were not responsive to LVRJ's search terms, including an image of the gorilla  
28 Harambe. *See Exhibit A* at ¶ 19; *see also* July 4, 2016 email regarding crisis communications presentation attached  
hereto as **Exhibit E**. In fact, the image of Harambe was responsive to LVRJ's overly broad request because it was a  
JPEG in an email regarding a crisis communications presentation. The email is dated July 4, 2016, was addressed to a  
member of the City's Communication Department, and it contained the words "crisis communications", and therefore  
matched LVRJ's search criteria. *See Exhibit B*.

1 Subsequently, the parties' respective counsel conferred about LVRJ's Request, making the  
2 documents available for inspection, and the City's production of an initial confidentiality/privilege  
3 log. *See Exhibit A* at ¶ 17. The City agreed to allow LVRJ to inspect the documents on a computer  
4 at City Hall. *Id.* at ¶ 18. LVRJ's inspection took place over the span of several days. *Id.* Notably,  
5 after completing its inspection of the documents, LVRJ did not request a single copy of any of the  
6 documents it reviewed. *Id.*

7 On December 20, 2016, the City provided LVRJ with an initial list of documents for which it  
8 was asserting confidentiality or privilege. *Id.* at ¶ 21; *see also* initial withholding log attached hereto  
9 as **Exhibit F**. Approximately two weeks later, Ms. McLetchie asked the City to provide a more  
10 detailed withholding log that would allow her to evaluate the City's confidentiality assertions. *Id.* at  
11 ¶ 23. The City complied with this request and provided an updated log on January 9, 2017. *Id.*;  
12 Second Withholding Log attached hereto as **Exhibit G**. Ms. McLetchie was not satisfied with the  
13 second withholding log because it did not list the actual names of attorneys and paralegals or other  
14 staff members sending or receiving correspondence. **Exhibit A** at ¶ 25. Instead, for example, the  
15 second log would say: "Electronic correspondence containing communication between attorney and  
16 staff made for the purpose of facilitating legal services re Trooper contract terms." *See Exhibit G*.  
17 The log identified the staff person or City employee by name, but did not identify the attorney or  
18 paralegal from the City Attorney's Office by name. *Id.*

19 While it is not clear how knowing the name of the attorney who sent or received an email  
20 helps to evaluate a claim of privilege, the City, once again, accommodated LVRJ's request and  
21 provided the attorneys' and paralegals' names to LVRJ in a third version of the withholding log.  
22 **Exhibit A** at ¶ 26; *see also* Third Withholding Log attached hereto as **Exhibit H**. Around the same  
23 time the City provided LVRJ's counsel with the Third Withholding Log, counsel for the City asked  
24 Ms. McLetchie to contact them if she had any questions or concerns regarding the Withholding Log  
25 so that the parties could discuss them and attempt to resolve them without having to involve the  
26 Court. *See Exhibit A* at ¶ 28. Notwithstanding the City's request to meet and confer about any  
27 questions or issues LVRJ might have with the Third Withholding Log, and consistent with LVRJ's  
28 uncooperative behavior in this dispute, Ms. McLetchie never contacted the City about the issues she

now raises in the Amended Petition. **Exhibit A** at ¶ 29.

The City receives and fulfills thousands of public records requests. During 2016 alone, the City Clerk's Office received and fulfilled over 2,300 public records requests. *See* Declaration of Nathan Hill attached hereto as **Exhibit L** at ¶ 5. The City Clerk's Office did not charge any fees to complete a significant majority of these public records requests and, in most cases, the requests were completed in a matter of days. *Id.* at ¶ 6. The City Clerk's Office rarely charges the "extraordinary use" fee. *Id.* at ¶ 7. In fact, according to City records, the City Clerk's Office assessed the extraordinary use fee *one time* during all of 2016. *Id.* Notwithstanding the thousands of requests the City handles, the City could not identify a single lawsuit filed against it concerning public records in at least the last 7 years.

### III. ARGUMENT

The Court should deny LVRJ's Amended Petition for three reasons. First, the Amended Petition itself is improper with regard to everything except the documents the City redacted or withheld because NRS 239.011 only applies when a government entity denies a public records request. The City never denied LVRJ's Request. Further, LVRJ's requests for declaratory and injunctive relief are not the exclusive remedies set forth in NRS 239.011 and in any event, its claims for such relief are moot. Second, the City's fee for the extraordinary use of its personnel and technological resources is authorized pursuant to NRS 239.055 and, as a result, the Court should enter an order directing LVRJ to pay the City \$34,989.50 for the extraordinary resources necessary to respond to LVRJ's Request. Finally, LVRJ's arguments with respect to the City's Third Withholding Log are misplaced as the City's log more than satisfied the requirements of NRS 239.0107 and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011).<sup>6</sup>

#### A. LVRJ's Petition Exceeds the Scope of NRS 239.011 and In Any Event Its Claims for Declaratory and Injunctive Relief are Moot.

##### 1. **LVRJ's Petition Exceeds the Scope of NRS 239.011 and Seeks Remedies Beyond the Exclusive Remedies Set forth in the NPRA.**

NRS 239.011 establishes by statute, the scope of actions that may be brought under the

<sup>6</sup> Should the Court be inclined, the City is amenable to having the Court conduct an *in camera* review of the withheld documents.

1 NPRA, the expedited procedure for hearing them, and the exclusive remedies that may be obtained:

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

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

8 (b) Requiring the person who has legal custody or control  
9 of the public book or record to provide a copy to the requester, as  
10 applicable.

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

16 Where a proceeding is created by statute and the proceeding otherwise does not exist under  
17 the common law, the proceeding created under statute is presumed to be exclusive and complete as  
18 to the procedure to be followed. *Gibby's Inc. v. Aylett*, 96 Nev. 678, 680–81, 615 P.2d 949, 951  
19 (1980) (reviewing statute creating unlawful detainer action and determining: "It is purely a statutory  
20 proceeding and remedy, unknown to the common law. As such, the statute must be strictly construed  
21 and is presumably exclusive and complete as to the procedure to be followed pursuant to it." (*citing*  
22 *Farnow v. District Court*, 64 Nev. 109, 121, 178 P.2d 371, 377 (1947))); *see also United States v.*  
23 *Babcock*, 250 U.S. 328, 331 (1919) ("That where a statute creates a right and provides a special  
24 remedy, that remedy is exclusive."); *Hoerstman Gen. Contracting, Inc. v. Hahn*, 711 N.W.2d 340,  
25 346 (Mich. 2006) (finding that comprehensive legislative scheme concerning negotiable instruments  
26 abrogated other common law remedies); *Bourque v. Wausau Hosp. Center*, 427 N.W.2d 433 (Wis.  
27 Ct. App. 1988) ("[I]t is a fundamental principle of statutory construction that absent a legislative  
28 indication to the contrary, the legislature is deemed to have intended a comprehensive statutory  
remedy to be exclusive."); *Stevenson v. Superior Court*, 941 P.2d 1157, 1168 (Cal. 1997) ("[W]here  
a statute creates a right that did not exist at common law and provides a comprehensive and detailed  
remedial scheme for its enforcement, the statutory remedy is exclusive." (*quoting Rojo v. Kliger*, 801  
P.2d 373, 381 (Cal. 1990))).

///

1 First, to the extent LVRJ's Petition seeks any relief regarding the overwhelming majority of  
2 the 9,621 documents (69,979 pages) that it has already reviewed, the Amended Petition is improper  
3 because *the City did not deny LVRJ's request*. In fact, not only did the City not deny LVRJ's  
4 request, it bent over backwards to accommodate LVRJ's broad Request despite LVRJ's broken  
5 promises to return phone calls to aid in refining the scope, cost and time related to its Request.<sup>7</sup>  
6 Under NRS 239.011(1), denial of a request is an essential prerequisite for petitioning this Court, and  
7 there is no question the City did not deny LVRJ's Request (with the exception of the documents the  
8 City identified on its Third Withholding Log).

9 LVRJ's Petition seeks the following relief:

10 1. That the court handle this matter on an expedited basis  
11 as mandated by NRS 239.011;

12 2. That this court issue a writ of mandamus requiring that  
13 Defendant City of Henderson immediately make available complete  
14 copies of all records requested but previously withheld and/or redacted  
(other than documents that were redacted to protect personal  
identifiers);

15 3. Injunctive relief prohibiting Defendant City of  
16 Henderson from applying the provisions contained in Henderson  
Municipal Code 2.47.085 and the Policy to demand or charge fees in  
excess of those permitted by the NPRA;

17 4. Declaratory relief stating that Henderson Municipal  
18 Code 2.47.085 and the Policy are invalid to the extent they provide for  
fees in excess of those permitted by the NPRA;

19 5. Declaratory relief limiting Henderson to charging fees  
20 for "extraordinary fees, in those circumstances that permit it, to fifty  
cents per page and limiting Henderson from demanding fees for  
attorney review;

21 6. Reasonable costs and attorney's fees; and

22 7. Any further relief the Court deems appropriate.

23  
24 See Pl's. Amended Petition at pp. 11-12.

25  
26 <sup>7</sup> LVRJ's inconsistent conduct concerning this dispute cannot be understated. First, after failing to return  
27 telephone calls and ignoring the City's attempts at cooperation, LVRJ sued the City complaining that the City was  
28 attempting to hide documents. See **Exhibit A** at ¶¶ 11-14. Then, after the City produced the documents it never  
withheld, LVRJ complained that the City produced too much, and after rejecting another offer by the City to avoid  
burdening this Court, filed the Amended Petition, flipping its position back to the inaccurate contention that the City is  
withholding documents. See *supra* fn. 4.



LVRJ's third through fifth requests are improper and fall outside the scope of the exclusive process and relief set forth under NRS 239.011<sup>8</sup>, which makes clear that LVRJ may petition this Court for an order: (1) permitting inspection (which has already taken place) or (2) compelling the production of a copy to the requester (which LVRJ has not requested in its Amended Petition). That's it.

NRS 239.011(1) does not mention an order for declaratory or injunctive relief in its exclusive remedies, and it would be impermissible to allow requests for such remedies to proceed under the special procedures set forth in NRS 239.011(2). Under NRS 239.011(2), this Court is required to give NPRA petitions priority over all other civil matters to which priority is not given by other statutes and entitles a prevailing requestor to recover costs and attorneys' fees.

Had the legislature intended to allow this Court to issue declaratory or injunctive relief pursuant to NRS 239.011 – both of which may be tried to a jury (*see* NRS 30.110), and neither of which provides for recovery of attorney's fees or priority over other matters – it would have said so in the NPRA, but it did not. As a result, LVRJ's requests for declaratory and injunctive relief requesting interpretations and limitations of NRS 239 and HMC 2.47.085 fall outside the exclusive remedies and procedure provided under NRS 239.011 and are improper.<sup>9</sup>

## **2. LVRJ's Justiciability Arguments Concerning Declaratory and Injunctive Relief Fail.**

According to LVRJ, its claims for declaratory and injunctive relief (which are improper under NRS Ch. 239) are justiciable because: (1) there is a live controversy because the City has not provided copies of the documents it has already reviewed (something LVRJ does not seek in its Amended Petition); and (2) "Henderson has been failing to comply with the NPRA and been acting arbitrarily and capriciously with regard to assessing fees to NPRA requestors" (a baseless assertion unsupported by evidence or the City's history with LVRJ).<sup>10</sup> *See* Amended Petition at pp. 10-11.

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<sup>8</sup> The remaining requests, while potentially procedurally proper are without merit.

<sup>9</sup> The City does not dispute that declaratory or injunctive relief may be proper as part of some other action, but, not under NRS 239.011 as part of a priority petition where the prevailing requestor may recover attorney's fees.

<sup>10</sup> *See Exhibit D; Exhibit L* at ¶¶ 5-7.

1 LVRJ further contends that that even if there were not a live controversy, this court should consider  
2 “the matter” because this issue is “capable of repetition yet evading review.” *See id.* at 10.

3 LVRJ misstates the facts and the law. A “court’s duty is not to render advisory opinions but,  
4 rather, to resolve actual controversies by an enforceable judgment.” *Personhood Nevada v. Bristol*,  
5 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). “[A] controversy must be present through all stages  
6 of the proceeding, and even though a case may present a live controversy at its beginning,  
7 subsequent events may render the case moot.” *Id.* In some instances, where a case is subsequently  
8 rendered moot, a court may still consider it if the party seeking to overcome the mootness establishes  
9 that: (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a  
10 similar issue will arise in the future, and (3) the matter is important.” *Cashman Equip. Co. v. W.*  
11 *Edna Assocs., Ltd.*, 132 Nev. Adv. Op. 69, 380 P.3d 844, 853 (2016) (citing *Bisch v. Las Vegas*  
12 *Metro. Police Dep’t*, 129 Nev. 328, 334–35, 302 P.3d 1108, 1113 (2013)). While there may be an  
13 outstanding dispute under NRS Ch. 239 concerning the City’s claims of privilege or confidentiality,  
14 that does not mean there is a live dispute concerning declaratory or injunctive relief over the  
15 interpretation of NRS Ch. 239, the City’s municipal code or the 69,979 pages of documents LVRJ  
16 has already reviewed and is not asking for in its Amended Petition.

17 LVRJ has made no attempt other than a rote recitation of part of the legal requirements for  
18 continuing a dispute that has become moot. LVRJ does not contend that the duration of the  
19 challenged action here is short, it has not established that there is a likelihood that a similar issue will  
20 arise in the future, and has offered nothing to show that this matter is important beyond LVRJ’s  
21 interests.

22 In fact, all of these factors cut against LVRJ. The duration of the challenged action here –  
23 the request and production of documents pursuant to the NPRA – is not short. *Compare In re*  
24 *Guardianship of L.S. & H.S.*, 120 Nev. 157, 162, 87 P.3d 521, 524 (2004) (applying mootness  
25 exception where temporary guardianships and medical emergencies were at issue, which the court  
26 considered to be emergencies of “short duration”). Most importantly, the fact that the issue LVRJ  
27 now raises will not “evade review” in the future is fatal to its claims for declaratory and injunctive  
28 relief. *Bldg. & Const. Trades Council of N. Nevada v. Carson City Sch. Dist.*, 128 Nev. 883, 381

1 P.3d 595 (2012) (“However, even if the matter is an issue of widespread importance and is capable  
2 of repetition, the issue must also be ‘evading review’”). NRS 239.011 provides LVRJ with a  
3 mechanism to bring future public records disputes if LVRJ makes additional requests in the future.

4 Moreover, even if the duration of the challenged action here were short, the NPRA provides  
5 an expedited mechanism for resolving disputes. *See* NRS 239.011(2). The Nevada Supreme Court  
6 has dealt with such cases and squarely rejected claims for continued determination of a moot issue  
7 where a statutory scheme, such as NRS Ch. 239, provides an expedited procedure for resolution. *See*  
8 *Personhood Nevada*, 126 Nev. at 603, 245 P.3d at 575 (dismissing appeal as non-justiciable and  
9 stating: “As to appellants’ concerns that the initiative-challenge statute does not allow adequate time  
10 for pre-challenge signature gathering or for judicial review, we note that while the initiative  
11 deadlines in general are relatively short, the district court must expedite any challenges to an  
12 initiative, NRS 295.061(1) . . .”).

13 Further, LVRJ has offered no argument or evidence that there is a likelihood that a similar  
14 issue will arise. In reality, the City’s history with LVRJ demonstrates that disputes like this one  
15 have not occurred in the past. *See Exhibit D*. The dispute in this case arose only because LVRJ  
16 chose not to respond to the City’s multiple attempts to avoid it and because LVRJ’s broad request  
17 necessitated the use of extraordinary resources -- this dispute is limited to the specific facts of the  
18 case. *See Personhood Nevada*, 126 Nev. at 603–04, 245 P.3d at 575 (rejecting appeal in part  
19 because specific facts in the case limited likelihood of repetition).

20 Finally, while the NPRA is of great importance, the issue LVRJ raises is not. Other than its  
21 own complaints concerning this particular Request, LVRJ has offered nothing besides its baseless  
22 assertion that other requestors are suffering from the City’s interpretation of NRS Ch. 239 or the  
23 terms of HMC 2.47.085. The City takes its obligations under the NPRA seriously. Not only has the  
24 City invested significant resources in employees and technology to better handle requests, the City  
25 has a long standing history of working with requestors, including LVRJ, to process their requests in  
26 a timely and efficient manner. The City does so thousands of times a year. *See Exhibit D* at 2-3;  
27 *Exhibit L* at ¶¶ 5-8. This matter may be important to LVRJ, but that alone does not make it a matter  
28 of great public significance for purposes of justiciability. *Id.* at 603–04, 245 P.3d at 575 (holding

1 that appeal of ballot initiative was not justiciable and stating: “Further, it is not clear that this matter,  
2 which concerns facts specific to this initiative, is of such public, widespread importance to  
3 necessitate this court’s review regardless of the claimed inability to provide effective relief.”). As a  
4 result, this Court should decline to entertain LVRJ’s request for declaratory or injunctive relief.

5 **B. The Court Should Order LVRJ To Pay For The City’s Extraordinary Use Of**  
6 **Technological Resources And Personnel Under NRS 239.055.**

7 LVRJ challenges the City’s ability to charge – and manner in which the charge is calculated  
8 – a fee for extraordinary use of technological resources and personnel under NRS 239.055. LVRJ  
9 also argues that the City cannot charge this fee to conduct a “privilege review.” Finally, LVRJ  
10 contends – without any evidentiary support – that the City’s “practice of charging impermissible fees  
11 improperly deters NPRA requests from Review-Journal reporters.” *See* Pl.’s Memo. In Support of  
12 Petition at 5:27-28. None of LVRJ’s arguments has merit.

13 **1. The NPRA authorizes the collection of fees to respond to public records**  
14 **requests.**

15 The NPRA allows a governmental entity to charge a fee for providing a copy of a public  
16 record. *See* NRS 230.052; 230.055.<sup>11</sup> Under normal circumstances, the fee “must not exceed the  
17 actual cost to the governmental entity to provide the copy of the public record unless a specific  
18 statute or regulation sets a fee that the governmental entity must charge for the copy.” NRS 239.052.  
19 In addition to being able to charge the actual cost to provide a copy of a public record, NRS 239.055  
20 permits governmental entities to charge an additional fee when extraordinary use of personnel or  
21 resources is required.

22 LVRJ attacks the City’s method for calculating the fee for the extraordinary use of its  
23 personnel, but in doing so purposefully omits the language in NRS 239.055 upon which the City’s  
24 calculation was based. NRS 239.055(1) states, in its entirety:

25 Except as otherwise provided in NRS 239.054 regarding information  
26 provided from a geographic information system, if a request for a copy  
of a public record would require a governmental entity to make

27  
28 <sup>11</sup> LVRJ’s Request acknowledges the City’s ability to charge fees as the Request asks the City to notify LVRJ  
within 5 days if the cost will exceed \$50.

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

(Emphasis added). The City's initial estimate of extraordinary fees set forth in its October 11<sup>th</sup> response (**Exhibit C**) and its subsequent attempt to reach a compromise on the extraordinary fee issue set forth in its December 5<sup>th</sup> letter (**Exhibit D**) were based on the language in NRS 239.055 requiring that "[t]he fee charged by the governmental entity must be reasonable and must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources."

The irony of LVRJ's Amended Petition is that by using the \$0.50 per page maximum to calculate the extraordinary use fee, LVRJ owes the City \$34,989.50 (69,979 x \$0.50 = \$34,989.50) – over *ten times* the amount the City set forth in its December 5<sup>th</sup> letter. *See Exhibit D* (offering to provide the records at the lowest hourly rate of the employees who reviewed the requested documents for \$3,226.32). It is not often that a party advocates for a position that results in that party paying significantly more money, but the City certainly is willing to accept LVRJ's payment of \$34,989.50. Regardless of the calculation, it is undisputed that City personnel spent 72 hours working on LVRJ's extremely broad records request. By any reasonable measure, 72 hours preparing a single public records request constitutes "extraordinary use of personnel." For the City, these requests truly are "extraordinary" and NRS 239.055 expressly authorizes the assessment of a fee to recover some of the costs to fulfill these types of voluminous records requests.

**2. The NPRA does not allow a requestor to dictate which personnel should or should not process a public records request.**

LVRJ argues that the "NPRA does not allow for fees to be charged for a governmental entity's privilege review" and takes issue with the fact that the City used Assistant City Attorneys to

1 review documents for the production. *See* Memo in Support of Petition at 6:3-4; 7:11-13. Plaintiff's  
2 attempt to rewrite the statute to exclude certain types of personnel from participating in public  
3 records requests and certain types of tasks that the statute *requires* governmental entities perform is  
4 entirely without merit.

5 First, LVRJ's argument that a requestor should not have to pay for a governmental entity's  
6 attorneys to review documents is curious given that LVRJ has maintained that the extraordinary use  
7 fee must be calculated by looking at the number of pages, *not* the actual cost incurred by the  
8 governmental entity for the employee's time to process the request. *See* Memo in Support of Petition  
9 at 6:3-12; 7:11-13. In other words, if LVRJ is correct that a governmental entity can only charge  
10 \$0.50 per page for the extraordinary use of personnel, then it should not matter which employees the  
11 governmental entity chooses to process the request or the per hour cost to the entity for those  
12 employees' time because the only thing that matters (according to LVRJ) when it comes to  
13 calculating the extraordinary use fee is the number of pages.

14 Second, nowhere in the NPRA does it allow a requester to dictate which employees may  
15 work on a request. Rather, NRS 239.055 simply says that if a request "would require a  
16 governmental entity to make extraordinary use of its personnel or technological resources," the  
17 governmental entity may charge the extraordinary use fee. There are no exceptions, exclusions or  
18 limitations on which personnel may be used to satisfy a request.

19 Further, when a requestor specifically requests documents that it knows will likely contain  
20 attorney client privileged communications and other confidential information, it should come as no  
21 surprise that attorneys will be involved with the request. In this case, LVRJ, a sophisticated party  
22 who presumably is capable of identifying the precise information it seeks, crafted remarkably broad  
23 search terms that it knew would contain privileged documents. LVRJ asked for "*all emails*  
24 *pertaining to or discussing work performed by Elizabeth Trosper or Trosper Communications on*  
25 *behalf of the City of Henderson*", "*All documents pertaining to or discussing contracts, agreements,*  
26 *or possible contracts, with Elizabeth Trosper or Trosper Communications*", and "*All documents*  
27 *pertaining to or discussing the terms under which Elizabeth Trosper or Trosper Communications*  
28 *///*

1 provided, provide, or will provide services to the City of Henderson.” See **Exhibit A** (emphasis  
2 added).

3 In truth, it’s odd that LVRJ is complaining that it was charged for the extraordinary time  
4 expended by attorneys to satisfy the Request when LVRJ intentionally asked for documents it knew  
5 would contain privileged communications. As the master of its own search terms, LVRJ certainly  
6 could have narrowed its terms to avoid privileged communications and documents, but it refused to  
7 do so. LVRJ should not be heard to complain for receiving exactly what it asked for.

8 Third, LVRJ’s characterization of the work the City performed in response to the Request as  
9 a “privilege review” is not only misleading, but fails to acknowledge the statutory requirements  
10 imposed on governmental entities when responding to public records requests. The NPRA provides  
11 “members of the public with access to inspect and copy *public books and records to the extent*  
12 *permitted by law.*” NRS 239.001(1) (emphasis added). By its own terms, the NPRA only allows  
13 access to “public books and records” and only “to the extent permitted by law.”

14 The NPRA does not define “public books and records”; instead, it provides a list of several  
15 hundred statutes that declare certain types of records confidential and then says “unless otherwise  
16 declared by law to be confidential, all public books and public records of a governmental entity must  
17 be open at all times during office hours to inspection by any person, and may be fully copied or an  
18 abstract or memorandum may be prepared from those public books and public records. NRS  
19 239.010(1). The NPRA provides that if a “public record contains confidential information that can  
20 be redacted, the governmental entity with legal custody or control of the record cannot rely on the  
21 confidentiality of that information to prevent disclosure of the public record[.]” *LVMPD v.*  
22 *Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 611 (2015). Thus, where possible,  
23 governmental entities must “redact, delete, conceal or separate the confidential information from the  
24 information included in the public book or record that is not otherwise confidential.” NRS 239.010  
25 (3). When governmental entities act in “good faith in disclosing or refusing to disclose information  
26 pursuant to a public records request, they are immune from liability or damages, either to the  
27 requester or to the person whom the information concerns.” NRS 239.012.

28 ///



1 When a person asks a governmental entity for a document, the governmental entity must  
2 determine whether the document is in fact a “public book or record.” If the document is not a public  
3 book or record, then the person is not entitled to it under NRS Chapter 239. Certainly, there are  
4 some types or categories of documents that are easy to locate and quintessential public documents  
5 and therefore no personnel time typically is needed to review these documents to verify that they are  
6 public books or records. See **Exhibit L** at ¶ 7. But where, as here, a requestor provides search terms  
7 asking for all documents and emails matching those search terms, a governmental entity must (1)  
8 search for potentially responsive records, (2) undertake a review of the documents and emails to  
9 verify that only public books and records are being produced, (3) redact, as NRS 239.010 requires,  
10 any confidential information contained in the records, and (4) prepare copies of the public books or  
11 records.

12 LVRJ contends that the time it takes to search for, review, and redact documents cannot be  
13 used as a basis for establishing extraordinary use fees – no matter how much time it takes. Again,  
14 there is nothing in the statute supporting this argument. In fact, the opposite is true. NRS 239.055  
15 provides that after receiving a records request involving the extraordinary use of personnel or  
16 technological resources, the governmental entity “shall inform the requester, in writing, of the  
17 amount of the fee before *preparing the requested information*.” NRS 239.055 (*emphasis added*).  
18 Extraordinary personnel time is not limited to standing at a copy machine for hours; instead of  
19 “*copying* the requested information” (LVRJ’s preferred interpretation), the legislature used the  
20 phrase “*preparing* the requested information” (a broader phrase than copying). *Id.*

21 This interpretation is buttressed by the mandate in NRS 239.010 requiring governmental  
22 entities to redact confidential information where feasible instead of withholding an entire document  
23 containing some confidential information.<sup>12</sup> This promotes the openness in government the NPRA  
24 seeks to establish. It makes no sense to tell government entities that they must redact documents, but

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26 <sup>12</sup> It is important to emphasize that when a governmental entity undertakes a review of requested documents, it is  
27 not merely trying to protect its own confidential information (such as attorney-client privileged communications), but it  
28 is also responsible for protecting private, personal information of its citizens. The City takes its responsibility to  
safeguard confidential records seriously. Nonpublic records are not only exempt from disclosure under the NPRA, but  
the inadvertent disclosure of such records could result in significant consequences for individuals and the public at large.

1 prohibit them from charging for extraordinary use of personnel to prepare voluminous redactions  
2 over hundreds or thousands (or more accurately here tens of thousands) of pages. Put simply,  
3 extraordinary use of staff time encompasses all facets of fulfilling public records request, not merely  
4 the task of physically making copies of the documents. *See Blackjack Bonding*, 131 Nev. Adv. Op.  
5 10, 343 P.3d at 614 (Nevada Supreme Court did not disturb a district court’s order requiring  
6 redaction of confidential information and requiring that the requester “to pay the costs associated  
7 with the production of the requested documents”).

8                   **3. LVRJ has not presented any evidence demonstrating that reporters have**  
9                   **been deterred from requesting public records due to the City’s**  
                  **extraordinary use fees.**

10           LVRJ argues that the City’s “practice of charging impermissible fees improperly deters  
11 NPRA requests from Review-Journal reporters.” *See* Memo in Support of Petition at 5:27-28. This  
12 argument is belied by the lack of evidence supporting it.

13           There is simply no evidence before the Court showing that any reporter was deterred from  
14 requesting public records from the City out of fear of being charged an extraordinary use fee. In  
15 fact, the opposite is true. According to City records, LVRJ has made 46 separate public records  
16 requests to the City since 2015, and the LVRJ has paid the City a total of **\$241.11** in fees for these  
17 records. *See Exhibit D*. This amounts to a public records request from LVRJ about every three  
18 weeks for an average cost of \$5.24 per request. The high number of public records requests  
19 submitted by LVRJ juxtaposed with the minimal fees the City has charged over nearly two years  
20 shows that LVRJ’s contention is unfounded.

21           LVRJ makes it seem as though the City always charges an extraordinary use fee to respond  
22 to public records requests. Again, this is false. During 2016, the City Clerk’s Office received and  
23 fulfilled over 2,300 public records requests. *See Exhibit L* at ¶ 5. The City Clerk’s Office did not  
24 charge any fees to complete a significant majority of these public records requests and, in most  
25 cases, the requests were completed in a matter of days. *Id.* at ¶ 6. Moreover, the City Clerk’s Office  
26 assessed the extraordinary use fee *one time* during all of 2016. *Id.* ¶ 7. The parties’ dispute about  
27 the assessment of an “extraordinary use” fee in this case is limited to LVRJ’s “extraordinary”  
28 request for voluminous records.

1           **C.     The City Timely Asserted The Basis For Withholding Documents And Did So In**  
2           **Compliance With Nevada Statutes And Case Law.**

3           The City's October 11, 2016, response to LVRJ's public records request satisfied its initial  
4 obligations under the NPRA. The City provided the Initial Response within five business days of  
5 receiving LVRJ's request (October 4, 2016) and, pursuant to NRS 239.0107(1)(c), notified LVRJ, in  
6 writing, that it had found approximately 5,566 emails matching the search terms set forth in the  
7 Request. **Exhibit B.** As a result of the large universe of documents, the City determined that it  
8 would require extraordinary research and use of City personnel to prepare and fulfill the request.

9           LVRJ's assertion that the City's privilege claims "were waived because Henderson failed to  
10 assert its privilege within the five-day period contemplated by NRS 239.0107" is not supported by  
11 the plain language of the statute, and, in fact, is contrary to both legislative history and common  
12 sense. The City's Initial Response complied with the law.

13                   **1.     The NRS 239.0107 is clear on its face.**

14           When interpreting statutes, the Nevada Supreme Court gives effect to legislative intent.  
15 *McNeil v. State*, 132 Nev. Adv. Op. 54, 375 P.3d 1022, 1025 (2016). "The starting point for  
16 determining legislative intent is the statute's plain meaning; when a statute is clear on its face, a  
17 court cannot go beyond the statute in determining legislative intent." *Id.* (quoting *State v. Lucero*,  
18 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011)). Courts avoid "statutory interpretation that renders  
19 language meaningless or superfluous[.]" *In re George J.*, 128 Nev. Adv. Op. 32, 279 P.3d 187, 190  
20 (2012). When a statute is silent "it is not the business of the court to fill in alleged legislative  
21 omissions based on conjecture as to what the legislature would or should have done." *McKay v. Bd.*  
22 *of Cty. Comm'rs of Douglas Cty*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987).

23           Under NRS 239.0107(1), a governmental entity is required to provide one of the responses  
24 set forth in subsections (a) through (d) of that section, as applicable, within five business days of  
25 receiving a public records request. Specifically, subsection (d) states:

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

28                   (1) Notice of that fact; and

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

3 Noticeably absent from this subsection – and any other section of the NPRA – is any  
4 language requiring that a governmental entity provide its confidentiality or privilege assertions  
5 within the initial five-day response period or else the assertions are waived. LVRJ’s reliance on  
6 subsection (d) to support its waiver argument is simply misplaced. Certainly, had the legislature  
7 intended to punish governmental entities by stripping them of the right to assert a privilege if it was  
8 not asserted within the initial five-day response period, that intent would have been expressly stated  
9 in the statute. It is not, and LVRJ has cited no case law or other authority supporting its contrary  
10 contention. In short, LVRJ’s interpretation of NRS 239.0107 is not based on the plain language of  
11 the statute.

12 **2. Legislative history directly contradicts a waiver of confidentiality.**

13 While the plain language of NRS 239.0107 is clear on its face and does not impose a waiver  
14 of confidentiality as LVRJ contends, to the extent this Court were to find that the statute is  
15 ambiguous and resort to legislative history, the legislative history directly contradicts LVRJ’s  
16 position. NRS 239.0107 was added to Chapter 239 during the 2007 legislative session via Senate  
17 Bill 123. S.B. 123, 2007 Leg., 74<sup>th</sup> Sess. (Nev. 2007). Initially, SB 123 contained a section  
18 providing for the precise waiver of confidentiality for which LVRJ now advocates. *See* SB 123, as  
19 introduced on February 20, 2007, attached hereto as **Exhibit I**. Section 4(2) of the original bill  
20 provided:

21 If a governmental entity must deny a person’s request to inspect or  
22 copy a public book or record because the public book or record, or a  
23 part thereof, has been declared by law to be confidential but the  
24 governmental entity fails to comply with the provisions of paragraph  
25 (d) of subsection 1, ***the governmental entity shall be deemed to have  
waived its right to claim that the public book or record is confidential  
and must allow the person to inspect or copy the public book or  
record***, or a part thereof, unless the governmental entity or the  
26 administrative head of the governmental entity, as applicable,  
determines that:

27 (a) The failure of the governmental entity to comply with the  
28 provisions of paragraph (d) of subsection 1 was due to excusable  
neglect; or

(b) Allowing the person to inspect or copy the public book or record, or a part thereof, would adversely affect personal privacy rights.

*Id.* (emphasis added). The Legislature specifically ***deleted*** this waiver of confidentiality provision from SB 123 in Amendment No. 415, thus unmistakably demonstrating that it did not intend for a waiver of confidentiality to be included in the statute. *See* Amendment No. 415 to SB 123 at 4-5, attached hereto as **Exhibit J**; *see also* Minutes of the Subcommittee of the Senate Committee on Government Affairs, April 9, 2007, at p. 5 attached hereto as **Exhibit K** (Senator Care, the sponsor of SB 123, explaining that “Section 9 is deleted. That was the section about liability. ***There is no waiver of the confidential status of the document if the government fails a timely response.***”) (Emphasis added).

“Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442 (1987) (*quoting Nachman Corp. v. Pension Benefit Guaranty Corporation*, 446 U.S. 359, 392–393 (1980) (Stewart, J., dissenting)). Thus, “[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.” *Russello v. United States*, 464 U.S. 16, 23–24 (1983); *see also Cent. Delta Water Agency v. State Water Res. Control Bd.*, 17 Cal. App. 4<sup>th</sup> 621, 633 (1993) (explaining that the “fact that the Legislature chose to omit a provision from the final version of a statute which was included in an earlier version constitutes strong evidence that the act as adopted should not be construed to incorporate the original provision.”); *Berry v. Am. Exp. Publ’g, Inc.*, 147 Cal. App. 4<sup>th</sup> 224, 230 (2007) (“The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision.”). “The simple reason for this canon [of statutory construction] is that a court ‘should not grant through litigation what could not be achieved through legislation.’” *Berry*, 147 Cal. App. 4<sup>th</sup> at 239. Accordingly, “courts must not interpret a statute to include terms the Legislature deleted from earlier drafts.” *Id.*

Here, the Nevada Legislature’s rejection of a statutory provision providing for a waiver of confidentiality in the original draft of SB 123 demonstrates that no such waiver was intended, and

1 therefore, should not be read into the statute.

2 **3. A waiver of confidentiality argument also defies common sense.**

3 First, NRS 239.010 contains an extensive list of statutes governing certain types of records  
4 that are confidential and therefore not subject to public inspection. Governmental entities are  
5 responsible for protecting this information. It does not make sense for the legislature to tell  
6 governmental entities to protect this information (which is often personal and sensitive) on the one  
7 hand, but then force a governmental entity to make this information open to the public if it does not  
8 assert confidentiality within five business days of receiving the request. Such an interpretation only  
9 serves to harm the individuals to which the information pertains.

10 Second, LVRJ's position fails to take into account the realities of responding to a public  
11 records request. Often, governmental entities receive public records requests involving hundreds, if  
12 not thousands, of records. They also may receive requests for records that are difficult to locate or  
13 may be stored off-site. It is not always possible to review or obtain all of the requested records and  
14 make a confidentiality determination within the initial five business day response period. NRS  
15 239.0107(1)(d) only applies if "the governmental entity *must deny* the person's request because the  
16 public book or record, or a part thereof, is confidential[.]" (Emphasis added). If a governmental  
17 entity does not know whether it "must deny" the person's request within five business days based on  
18 confidentiality, such as, for example, when a request seeks a large number of documents, then  
19 subsection (d) is not the proper mechanism to respond. The Legislature contemplated that  
20 governmental entities may need more time to respond to public records requests when it included  
21 NRS 239.0107(1)(c), which allows them additional time to complete a request as long as they inform  
22 the requestor of the need for additional time within five business days. LVRJ's interpretation of the  
23 statute would effectively render NRS 239.0107(1)(c) meaningless because governmental entities  
24 would be forced to find and review all requested documents within five business days—regardless of  
25 the number, nature or location—to make confidentiality determinations or else waive  
26 confidentiality.<sup>13</sup>

27 <sup>13</sup> LVRJ's interpretation would lead to absurd results. Under LVRJ's interpretation, if a person were to ask for  
28 every public record at the City, the City would have to review every document and make every determination concerning  
redaction or withholding within 5 business days or risk waiving such assertions, and in all likelihood ensuring the

1        Finally, if the City had to complete a review of all documents requested within five business  
2 days, there would be a greater probability that confidential documents would accidentally get  
3 disclosed, which could severely affect City operations, police investigations, and the public's  
4 privacy. Here, the City properly responded to LVRJ's request within five business days pursuant to  
5 NRS 239.0107(1)(c), and then provided its privilege assertions after completing a review of the  
6 requested emails. The timing of the City's responses, record productions and privilege claims were  
7 entirely proper under the NPRA.

8            **D.     The City's Third Withholding Log Index Goes Above And Beyond What Is**  
9            **Required By Nevada Law.**

10        Contrary to Plaintiff's assertion, the City's Third Withholding Log identifying withheld  
11 emails satisfied its obligations under NRS 239.0107(1)(d) and *Reno Newspapers, Inc. v. Gibbons*,  
12 *supra*. Each time LVRJ's counsel requested a more detailed log, the City complied. *See Exhibits F,*  
13 **G, and H.** As a result, the City (though not required to) provided LVRJ three separate logs. After  
14 providing the Third Withholding Log, the City did not hear from LVRJ again until this Amended  
15 Petition was filed.

16        The City's Third Withholding Log provided the following information for each withheld or  
17 redacted document: identity of email senders and recipients, a comprehensive description of the  
18 document, an explanation for the redaction or non-production, and the legal authority for  
19 withholding or redacting the document. A *Vaughn* index typically contains "detailed public  
20 affidavits identifying the documents withheld, the FOIA exemptions claimed, and a particularized  
21 explanation of why each document falls within the claimed exemption." *Gibbons*, 127 Nev. at 881,  
22 266 P.3d at 628, (*quoting Lion Raisins v. U.S. Dept. of Agriculture*, 354 F.3d 1072, 1082 (9th  
23 Cir.2004)). Essentially, the Third Withholding Log the City provided contained the same  
24 information required in a *Vaughn* index. And in any case, the Third Withholding Log provided a  
25 "general factual description of each record withheld and a specific explanation for nondisclosure"  
26 which is all that is required by law per *Gibbons*. *Id.* at 883, 266 P.3d at 629.

27  
28 disclosure of confidential information. This cannot be the intent of the NPRA.



Moreover, the City asked LVRJ's attorney to contact the City regarding any questions or concerns she may have about the documents listed on the Third Withholding Log. *See Exhibit A* at ¶ 28. This request was ignored. *Id.* at ¶ 29. The City never knew that LVRJ took issue with any of the documents in the Log until it filed this Amended Petition. Set forth below, the City addresses each of LVRJ's concerns with the documents noted in its Amended Petition. Had LVRJ inquired about those documents, the parties may have been able to resolve LVRJ's concerns. However, instead of attempting to resolve this matter professionally outside of court, LVRJ created a "dispute" in this litigation in an effort to be able to claim that the City improperly withheld documents and therefore, seek attorneys' fees.

**1. The City properly designated documents under the Attorney Client Privilege.**

Pursuant to NRS 49.095, "a client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications" that are "[m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest. A communication is considered confidential if "it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." NRS 49.055. The purpose of the attorney-client privilege is to protect confidential communications between a party and its attorney for the purposes of encouraging "full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Premiere Digital Access, Inc. v. Cent. Tel. Co.*, 360 F. Supp. 2d 1168, 1172 (D. Nev. 2005) (quoting *Upjohn Co. v. U.S.*, 449 U.S. 383 (1981)).

LVRJ takes issue with the City's description of certain documents that are being withheld based upon the attorney client privilege. Specifically, LVRJ states that the descriptions are "too conclusory for the Review Journal to determine if the attorney client or work product privilege applies." *See* Pl.'s Memo in Support of Petition at 15:28-16:1. Specifically, LVRJ alleges it does not have sufficient information for the following documents: 181, 184, 191, 193, 5249, 13425 and

1 13428. For the reasons set forth below, the Third Withholding Log provides the necessary  
2 information for analyzing the attorney client privilege assertions.

- 3 • The Third Withholding Log describes Documents 181, 184 and 191 as  
4 “Electronic correspondence containing communication between  
5 attorney and staff made for the purpose of facilitating the rendition of  
6 professional legal services re Trosper contract terms.” This language  
7 is straight from NRS 49.095; the description tells LVRJ the subject of  
8 the legal advice – the Trosper contract terms. Further, the Third  
9 Withholding Log provides the name of the attorney rendering the legal  
10 advice and includes all recipients of the communication. The City  
11 cannot provide any additional detail regarding the description without  
12 disclosing privileged information.
- 13 • Document 184 is an email where Bud Cranor (PIO/Council Support  
14 Services) forwards the attorney’s email containing the legal advice to  
15 Tim Dsouza. Tim Dsouza also works in the PIO/Council Support  
16 Services department, and is involved in decisions related to the  
17 Trosper contract. The City only redacted the attorney’s legal advice in  
18 this email communication. Courts have held that the privilege is not  
19 lost merely because an employee in a corporation forwards a  
20 communication containing legal advice to another employee who is  
21 also involved in the matter. In *Premiere Digital Access, Inc. v. Cent.  
22 Tel. Co.*, the plaintiff argued that a forwarded email containing in-  
23 house counsel’s legal advice was not privileged because the  
24 communication was between two non-attorneys. The court found  
25 plaintiff’s argument unpersuasive and held that, under Nevada law, the  
26 forwarded email containing in-house counsel’s advice remained  
27 privileged. 360 F. Supp. 2d 1168, 1174-76 (D. Nev. 2005).
- 28 • Document 193 is described as a “draft [of the] Trosper contract  
containing communication between attorney and staff made for the  
purpose of facilitating the rendition of professional legal services re  
Trosper contract terms.” In the event the amended log was not clear,  
the attorney, Ms. Kristina Gilmore, assisted in preparing and reviewing  
the draft contract request form, which included draft language for  
certain terms to be used in the contract. For these reasons, the City  
designated this document as attorney client privileged and withheld it.
- Document 5249 is described as an “Internal report containing  
communication between attorney and staff made for the purpose of  
facilitating the rendition of professional legal services.” The document  
is the Public Information/Marketing department’s internal report only  
for executive management. Within the report it included the legal  
advice it received from various attorneys in the City Attorney’s office  
on a variety of matters. Accordingly, the sections summarizing the  
legal advice have been redacted based on the attorney client privilege.
- Documents 13425 and 13428 are described as “Electronic  
correspondence containing communication between attorney and staff  
made for the purpose of facilitating the rendition of professional legal  
services re presentation on fuel indexing.” In these emails Kim Becker  
is communicating with other staff in her department about the advice  
she received from the City Attorney’s Office regarding a presentation

on fuel indexing. The legal advice is marked as attorney client privileged. Only the advice Ms. Becker received from counsel is redacted.

**2. The City properly designated documents under the Deliberative Process Privilege.**

The City also withheld documents based on the deliberative process privilege because the documents contained information that was predecisional and deliberative and therefore confidential. Nevada recognizes several common law privileges, including the “deliberative process privilege.” The deliberative process privilege provides for protection to the deliberative and decision-making processes of the executive branch of government, and is meant to “shield[] from mandatory disclosure ‘inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency[.]’” *DR Partners v. Board of County Comm’rs*, 116 Nev. 616, 622-23, 6 P.3d 465, 469 (2000) (*quoting Paisley v. C.I.A.*, 712 F.2d 686, 697 (D.C.Cir.1983)). This privilege is meant to allow a governmental agency to “engage in that frank exchange of opinions and recommendations necessary to the formulation of policy without being inhibited by fear of later public disclosure.” *Id.* at 623, 6 P.3d at 469 (*quoting Paisley*, 712 F.2d at 698); *see also, Nevada v. United States DOE*, 517 F. Supp. 2d 1245, 1262 (D. Nev. 2007) (“The purpose of [the deliberative process] privilege is ‘to allow agencies freely to explore possibilities, engage in internal debates, or play devil’s advocate without fear of public scrutiny.’”) (*quoting Carter v. United States DOC*, 307 F.3d 1084, 1089 (9th Cir. 2002)). However, the privilege does not protect “purely factual matters” unless such factual matters are “‘inextricably intertwined’ with the policy-making process.” *DR Partners*, 116 Nev. at 623, 6 P.3d at 469.

To show that the deliberative process privilege is applicable, a governmental agency must first “pinpoint an agency decision or policy” to which the documents contributed. *Id.* Once the governmental agency demonstrates that the documents contributed to an agency decision or policy, the agency must then show that the documents were both (1) predecisional and (2) deliberative. *Id.*

In the City’s Third Withholding Log, when it designated a document confidential pursuant to the deliberative process privilege, the City provided a description demonstrating that the materials involved the City’s mental impressions and decision making thought process prior to any final

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

6 LVRJ takes issue with several of the City’s deliberative process designations. In fact,  
7 without providing any explanation for its position, LVRJ claims that documents 3862, 3864, 3866,  
8 7717, and 7718 are not covered under the deliberative process privilege at all. Contrary to LVRJ’s  
9 position, these documents contain precisely the type of information that is meant to fall within the  
10 deliberative process privilege. Documents 3862, 3864, and 3866 are all drafts of a joint op-editorial  
11 by the City Manager and the Chief of Police regarding the Henderson Police Department. The Ninth  
12 Circuit has held that the deliberative process privilege “cover[s] all ‘recommendations, draft  
13 documents, proposals, suggestions and other subjective documents which reflect the personal  
14 opinions of the writer rather than the policy of the agency,’ as well as documents which would  
15 ‘inaccurately reflect or prematurely disclose the views of the agency.’” *Id.* at 1263 (*quoting National*  
16 *Wildlife Federation v. U.S. Forest Service*, 861 F.2d 1114 (9th Cir. 1988). Here, the draft is not yet  
17 final; it exposes the City’s decision-making process and if the City had to disclose the draft it would  
18 discourage the City from candid discussion and hinder its ability to perform its job. Comments to  
19 the draft were included within the email communications and such comments reflected the personal  
20 opinions of the responding party – not necessarily the City. Finally, if the draft was released, it  
21 would prematurely disclose the views of the City.

22 Documents 7717 and 7718 contain the City’s “mental impressions and strategy of City  
23 management regarding changes to organizational structure within the City Manager's Office.” The  
24 City was in the process of making certain organizational changes and the email and attachment  
25 concerned discussions about the changes and what would be best for the department. These  
26 documents contain suggestions reflecting the “personal opinions of the writer” rather than a final  
27 decision made by the City. As with the above documents, if the documents were released, it would  
28 prematurely disclose the views of the City, and likely create unnecessary confusion and concern

1 among employees that could be affected by the changes suggested in the draft.

2 Moreover, LVRJ has not made any showing for any of the disputed documents that “its need  
3 for the information outweighs the regulatory interest in preventing disclosure.” *DR Partners*, 116  
4 Nev. at 626, 6 P.3d at 471 (finding that after the deliberative process is established, the burden shifts  
5 to the party seeking disclosure); *see also Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d  
6 144 (1990) (discussing the balancing test). In its Third Withholding Log the City cited to the proper  
7 legal authority discussing the deliberative process privilege. This response more than satisfied the  
8 City’s obligations under NRS 239.0107(1)(d).

9 **IV. CONCLUSION**

10 Based on the foregoing, the City respectfully requests that the Court deny LVRJ’s Petition in  
11 its entirety.

12 DATED this 8<sup>th</sup> day of March, 2017.

13 BAILEY ♦ KENNEDY

14  
15 By: /s/ Dennis L. Kennedy  
16 DENNIS L. KENNEDY

17 and

18 JOSH M. REID, City Attorney  
Nevada Bar No. 7497  
19 **CITY OF HENDERSON**  
20 240 Water Street, MSC 144  
Henderson, NV 89015

21 *Attorneys for Respondent*  
22 **CITY OF HENDERSON**  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 8<sup>th</sup> day of March, 2017, service of the foregoing CITY OF HENDERSON'S RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS 239.001/PETITION FOR WRIT OF MANDAMUS/APPLICATION FOR DECLARATORY AND INJUNCTIVE RELIEF was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

MARGARET A. MCLETCHE  
ALINA M. SHELL  
**MCLETCHE SHELL LLC**  
701 East Bridger Avenue, Suite 520  
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com  
Maggie@nvlitigation.com  
*Attorneys for Petitioner*  
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

**EXHIBIT “A”**



1 DECLARATION OF BRIAN R. REEVE IN SUPPORT OF CITY OF HENDERSON'S  
2 RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S AMENDED PUBLIC  
3 RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/PETITION FOR  
4 WRIT OF MANDAMUS/APPLICATION FOR DECLARATORY  
5 AND INJUNCTIVE RELIEF

6 BRIAN R. REEVE, Assistant City Attorney for Respondent City of Henderson (the  
7 "City"), hereby declares that the following is true and correct under the penalties of perjury:

8 1. I make this Declaration in support of the City's Response to Las Vegas Review-  
9 Journal's Amended Public Records Request Act Application Pursuant to NRS §  
10 239.001/Petition for Writ of Mandamus/Application for Declaratory and Injunctive Relief  
(the "Response").

11 2. I have personal knowledge of the facts set forth herein.

12 3. I am over the age of eighteen years and am mentally competent.

13 4. On October 4, 2016, the City received a public records request from the Las Vegas  
14 Review-Journal ("LVRJ") asking for certain documents related to Trosper Communications,  
15 Elizabeth Trosper, and crisis communications from January 1, 2016 to October 4, 2016.

16 5. Exhibit B to the Response is a true and correct copy of the Las Vegas Review-  
17 Journal's ("LVRJ") October 4, 2016 public records request to the City (the "Request").

18 6. On October 11, 2016, five business days after receiving the Request, the City  
19 provided its initial written response as required by NRS 239.0107 (the "Initial Response").  
20 In its Initial Response, the City informed LVRJ that it had found approximately 5,566 emails  
21 matching the search terms set forth in the expansive Request. These 5,566 emails contained  
22 nearly 10,000 individual electronic files and consisted of approximately 69,979 pages.

23 7. Exhibit C to the Response is a true and correct copy of the City's October 11, 2016,  
24 Initial Response to LVRJ's October 4, 2016 Request.  
25  
26  
27

1       8. On October 12, 2016, LVRJ's attorney, Margaret McLetchie, called me to discuss the  
2 City's Initial Response.

3       9. Ms. McLetchie disputed the City's ability to charge extraordinary fees to complete  
4 the Request and wanted to know why the City had so many emails matching LVRJ's search  
5 terms.  
6

7       10. I explained to Ms. McLetchie that the City was still in the process of removing  
8 duplicate emails in its document review system and that the estimated cost to produce the  
9 documents likely would decrease once this process was completed.

10       11. During the call, Ms. McLetchie and I discussed potentially narrowing the search  
11 terms to decrease the number of email hits and whether the City would be willing to lower its  
12 fee estimate. Ms. McLetchie and I both resolved to go back to our respective clients to work  
13 on a solution. Ms. McLetchie represented that she would call back on October 17, 2016, to  
14 discuss the matter further.  
15

16       12. Ms. McLetchie did not call the City on October 17, 2016.

17       13. After waiting a week with no contact from Ms. McLetchie, I called Ms. McLetchie's  
18 office on October 25, 2016, to further our October 12th discussion in an attempt to work out  
19 a resolution. I was informed by Ms. McLetchie's office that Ms. McLetchie was out of town  
20 until November 4, 2016. I asked for a return call once Ms. McLetchie returned to the office.  
21

22       14. Ms. McLetchie never returned the City's phone call and did not otherwise attempt to  
23 contact the City to work on a resolution. Instead, after more than six weeks had passed since  
24 communicating with the City and without any prior warning, LVRJ filed suit against the City  
25 on November 29, 2016, claiming that the City had refused to provide LVRJ with the  
26 requested records. This is not true. The City never refused or denied LVRJ's request.  
27

1       15. After the City was served with the Petition, on December 5, 2016, the City wrote Ms.  
2       McLetchie a letter expressing surprise at the lawsuit given LVRJ's silence with respect to the  
3       Request for over six weeks and the fact that the City has always worked with LVRJ to  
4       modify the scope of records requests by using agreed upon search terms, or other methods to  
5       reduce the time and cost of producing large numbers of electronic documents.  
6

7       16. Exhibit D to the Response is a true and correct copy of the December 5, 2016, letter  
8       to Ms. McLetchie.

9       17. After the City sent the December 5, 2016 letter to Ms. McLetchie, I conferred with  
10      her about LVRJ's Request, making the documents available for inspection, and the City's  
11      production of an initial confidentiality/privilege log.

12      18. The City agreed to allow LVRJ to inspect the documents on a computer at City Hall.  
13      LVRJ's inspection took place over the span of several days. After completing its inspection  
14      of the documents, LVRJ did not request a copy of any of the documents it reviewed.  
15

16      19. After the City permitted LVRJ to inspect the documents free of charge, I received an  
17      email from Ms. McLetchie questioning why LVRJ reviewed a number of documents it  
18      believed were not responsive to LVRJ's search terms, including an image of the gorilla  
19      Harambe.

20      20. Exhibit E to the Response is a true and correct copy of an email chain and  
21      attachments between Ms. McLetchie, myself, Josh Reid, and Brandon Kemble.  
22

23      21. On December 20, 2016, the City provided LVRJ with an initial list of documents for  
24      which it was asserting confidentiality or privilege.

25      22. Exhibit F is a true and correct copy of the initial withholding log.  
26  
27

1       23. Approximately two weeks later, Ms. McLetchie asked the City to provide a more  
2 detailed withholding log that would allow her to evaluate the City's confidentiality  
3 assertions. The City complied with this request and provided an updated log on January 9,  
4 2017 ("Second Withholding Log").

5       24. Exhibit G is a true and correct copy of the Second Withholding Log.

6       25. Ms. McLetchie was not satisfied with the Second Withholding Log because it did not  
7 list the actual names of attorneys and paralegals or other staff members sending or receiving  
8 correspondence and requested another revised log.

9       26. The City, once again, accommodated LVRJ's request and provided the attorneys' and  
10 paralegals' names to LVRJ in a third version of the withholding log ("Third Withholding  
11 Log").

12       27. Exhibit H to the Response is a true and correct copy of the Third Withholding Log.

13       28. Around the same time the City provided LVRJ's counsel with the Third Withholding  
14 Log, I asked Ms. McLetchie to contact me if she had any questions or concerns regarding the  
15 log so that the parties could discuss them and attempt to resolve them without having to  
16 involve the Court.

17       29. Notwithstanding my request to meet and confer about any questions or issues LVRJ  
18 might have with the Third Withholding Log, Ms. McLetchie did not contact me about the  
19 issues she now raises in the Amended Petition.

20       30. Exhibit I to the Response is a true and correct copy of S.B. 123, 2007 Leg., 74<sup>th</sup> Sess.  
21 (Nev. 2007).

22       31. Exhibit J to the Response is a true and correct copy of Amendment 415 to S.B. 123.  
23  
24  
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1 32. Exhibit K to the Response is a true and correct copy of the Minutes of the  
2 Subcommittee of the Senate Committee on Government Affairs dated April 9, 2007.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 DATED this 7 day of March, 2017.

5  
6  
7 By 

8 BRIAN R. REEVE

9 Assistant City Attorney

10 Nevada Bar No. 10197

11 240 Water Street, MSC 144

12 Henderson, NV 89015  
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**EXHIBIT “B”**

Via Email

Oct. 4, 2016

Laura Fucci, Chief Information Officer  
Henderson City Hall  
240 Water St. MSC 123  
P.O. Box 95050  
Henderson, NV 89009-5050  
Office Fax: 702-267-4301  
E-Mail: [Laura.Fucci@cityofhenderson.com](mailto:Laura.Fucci@cityofhenderson.com)

Javier Trujillo, Director of Intergovernmental Relations  
Henderson City Hall  
P.O. Box 95050  
Henderson, NV 89009-5050  
Office Fax: 702-267-2081  
E-Mail: [Javier.Trujillo@cityofhenderson.com](mailto:Javier.Trujillo@cityofhenderson.com)

Dear Ms. Fucci and Mr. Trujillo,

Pursuant to Nevada's Public Records Act (Nevada Revised Statutes § 239.010 et. seq.) and on behalf of the Las Vegas Review-Journal, we hereby request the Communications Department documents listed below.

*Documents requested:*

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

*Date limitations:*

For all documents requested, please limit your searches for responsive documents from January 1, 2016 to the present.

///  
///  
///



Further instructions:

Please provide copies of all responsive records. For electronic records, please provide the records in their original electronic form attached to an email, or downloaded to an electronic medium. We are happy to provide the electronic medium and to pick up the records. For hard copy records, please feel free to attach copies to an email as a .pdf, or we are happy to pick up copies. We will also gladly take information as it becomes available; please do not wait to fill the entire request, but send each part or contact us as it becomes available.

If you intend to charge any fees for obtaining copies of these records, please contact us immediately (no later than 5 days from today) if the cost will exceed \$50. In any case, we would like to request a waiver of any fees for copies because this is a media request, and the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the operation of the Communications Department and Intergovernmental Relations.

If you deny access to any of the records requested in whole or in part, please explain your basis for doing so in writing within five (5) days, citing the specific statutory provision or other legal authority you rely upon to deny access. NRS § 239.011(1)(d). Please err on the side of fully providing records. Nevada's Public Records Act requires that its terms be construed liberally and mandates that any exception be construed narrowly. NRS § 239.001(2), (3). Please also redact or separate out the information that you contend is confidential rather than withholding records in their entirety, as required by Nev. Rev. Stat. § 239.010(3).

Again, please cite the statutory provision you rely upon to redact or withhold part of a record. Please also keep in mind that the responding governmental entity has the burden of showing that the record is confidential. NRS § 239.0113; *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) ("The public official or agency bears the burden of establishing the existence of privilege based upon confidentiality. It is well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly.")

Please provide the records or a response within five (5) business days pursuant to Nev. Rev. Stat. §239.0107. Again, please email your response to [nbruzda@reviewjournal.com](mailto:nbruzda@reviewjournal.com) and [tspousta@reviewjournal.com](mailto:tspousta@reviewjournal.com) rather than U.S. Mail so we can review as quickly as possible.

Thank you in advance for your cooperation with my request. Please contact us with any questions whatsoever. In addition to email, you can reach Natalie by phone at 702-477-3897.

Sincerely,

Natalie Bruzda  
Reporter

Tom Spousta  
Assistant City Editor

**EXHIBIT “C”**

**Brian Reeve**

---

**From:** Brian Reeve  
**Sent:** Tuesday, October 11, 2016 5:11 PM  
**To:** nbruzda@reviewjournal.com; tspousta@reviewjournal.com  
**Cc:** Javier Trujillo; David Cherry; Kristina Gilmore  
**Subject:** Public Records Request regarding Trosper Communications

Dear Ms. Bruzda and Mr. Spousta,

I'm writing in response to your public records request to the City of Henderson dated October 4, 2016 regarding Elizabeth Trosper and Trosper Communications. We are in the process of searching for and gathering responsive e-mails and other documents. Due to the high number of potentially responsive documents that meet your search criteria (we have approximately 5,566 emails alone) and the time required to review them for privilege and confidentiality, we estimate that your request will be completed in three weeks from the date we commence our review.

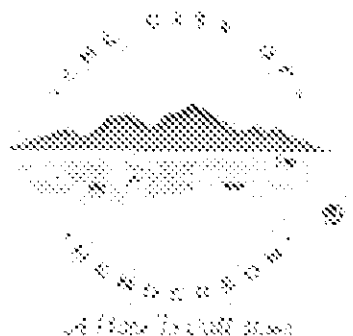
The documents you have requested will require extraordinary research and use of City personnel. Accordingly, pursuant to NRS 239.052, NRS 239.055, and Henderson Municipal Code 2.47.085, we estimate that the total fee to complete your request will be \$5,787.89. This is calculated by averaging the actual hourly rate of the two Assistant City Attorneys who will be undertaking the review of potentially responsive documents (\$77.99) and multiplying that rate by the total number of hours it is estimated it will take to review the emails and other documents (approximately 5,566 emails divided by 75 emails per hour equals 74.21 hours). Under the City's Public Records Policy, a fifty percent deposit of fees is required before we can start our review. Therefore, please submit a check payable to the City of Henderson in the amount of \$2,893.94. Once the City receives the deposit, we will begin processing your request. When your request is completed, we will notify you and, once the remainder of the fee is received, the records and any privilege log will be released to you.

Please let me know if you have any questions or would like to discuss your request further.

Regards,

Brian R. Reeve  
Assistant City Attorney  
702.267.1385

**EXHIBIT “D”**



CITY ATTORNEY'S OFFICE  
CITY OF HENDERSON  
240 Water Street  
P.O. Box 95050 MSC 144  
Henderson, NV 89009-5050  
Tel. 702-267-1200  
Fax 702-267-1201

JOSH M. REID, CITY ATTORNEY

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**VIA U.S. Mail and Email**

December 5, 2016

Maggie McLetchie  
McLetchie Shell LLC  
701 East Bridger Avenue, Suite 520  
Las Vegas, Nevada 80101

**Re: Las Vegas Review-Journal's October 4, 2016 Records Request**

Dear Maggie:

I hope that you had a great Thanksgiving holiday. This letter relates to a public records request made by your client, Las Vegas Review-Journal ("LVRJ"), on October 4, 2016, regarding Trospen Communications and Elizabeth Trospen. The City of Henderson ("City") provided its initial response to LVRJ's request in writing within the five-day time-frame required by NRS 239.0107 on October 11, 2016. In its initial response, the City informed LVRJ that it had found approximately 5,566 emails matching the search terms set forth in LVRJ's request. These 5,566 emails contained nearly 10,000 individual electronic files. In light of the large universe of documents created by LVRJ's search terms and the City's responsibility to safeguard confidential information, the City determined that it would take approximately 80 hours for City staff to review the electronic files to remove or redact any confidential files or information. Accordingly, pursuant to NRS 239.055, the City's October 11 response contained an estimate of the cost for the "extraordinary use" of City personnel in the amount of \$5,787.89 to prepare LVRJ's record request.

On October 12, 2016, you contacted Assistant City Attorney Brian Reeve ("Mr. Reeve") to discuss the City's response. As you know, when there is a records request for electronic files the initial cost estimate that must be provided within five days can often be larger than the City's actual cost incurred due a number of factors common with collecting large numbers of electronic documents (e.g. duplicate emails, imprecise search terms). In the past, the City has always worked with LVRJ to modify the scope of an electronic document search by using agreed-upon search terms, or other methods, to reduce the time and cost of producing large numbers of electronic documents.

During your October 12 discussion with Mr. Reeve, you were informed that the City was in the process of removing duplicate emails from the universe of documents using its document

December 5, 2016

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management system and that the estimated cost to produce the documents would likely decrease once this process was complete. The conversation concluded with you stating that you would speak with your client and get back to the City by October 17, 2016. After your call, the City looked at various ways to reduce the time and expense of producing the requested documents. Mr. Reeve was prepared to discuss these options with you, but you never called back. Therefore, I requested that Mr. Reeve call your law office to continue the dialogue with you. Mr. Reeve contacted your office on October 25, 2016 and he was informed by your assistant that you were out of town until November 4, 2016. Mr. Reeve left a message with your assistant asking for a return call once you returned to the office. As of the date of this letter, we have still not heard back from you.

Accordingly, I was surprised to find out through a news article on Wednesday November 29, 2016, that you had filed suit against the City stating that we had refused to provide LVRJ with the requested records. This is simply not true. The lawsuit is also disappointing given our past history of working together to resolve these types of requests and your (or LVRJ's) decision not to do so in this instance. The records responsive to LVRJ's October 4, 2016 records request have already been reviewed and are ready to be transmitted to LVRJ upon payment of the required fees. Had you simply called the City on October 17, or returned Mr. Reeve's October 25 phone call, you could have saved your client, and now the court, both time and resources. This type of dialogue is contemplated under NRS 239.0107(c)(1), which sets forth that the requestor may inquire regarding the request if a public book or record has not been provided.

Over the past two years, the City Attorney's Office has invested significant time and money on acquiring new electronic document review software and has hired IT staff to make the production of electronic records for public records requests and electronic discovery in litigation less costly and more efficient. As you know, LVRJ made another public records request at the same time as the one now in dispute, and those records were provided to your client quickly and without complaint. The issue with this particular request is that it resulted in an estimated 69,979 pages (if printed) and 9,621 individual electronic files. Even with our new document review software, which can remove duplicate emails (of which we only found roughly 300), it still required over 70 hours for employees to review the responsive documents pursuant to your request.

While it is LVRJ's right to request and obtain public records from the City, I am fairly certain that the overwhelming majority of the estimated 69,979 pages of responsive documents are not of any interest to LVRJ (at least to the question of Trospen Communication's contract and public relations work for the City). Had you communicated with the City, you would have learned that many of the responsive documents relate to Liz Trospen's service on the Henderson Development Authority Board and the Henderson Strong Advisory Committee. I suspect these emails are not of interest to LVRJ. As we have done in the past, we could have allowed your client to inspect some of these types of documents in order to remove certain categories of documents, thus reducing the time and expense of the records request for both the City and LVRJ.

Based upon LVRJ's account of this public records request in its news articles, and your Complaint served upon the City yesterday, there does seem to be a genuine dispute between

the City and LVRJ with regard to the definition and application of the “extraordinary use of personnel” fee provisions in NRS 239.055. The City and LVRJ have been able to resolve issues relating to the cost of producing public records in the past, which has resulted in the LVRJ paying a minimal amount for public records over the past two years. The City has always been cautious in charging fees for the “extraordinary use of personnel” relating to public records requests. Our City records indicate that LVRJ has made 46 separate public records requests to the City since 2015, and LVRJ has paid the City a total of \$241.11 in fees for these record requests.

City employees spent 72 hours processing LVRJ’s public records request. The breakdown of the employee time spent on this request is outlined below.

Attorney Review of 9,621 electronic files for confidentiality:	68 hours
---	----------

Senior Legal Information Systems Analyst review of electronic files (preparation of documents for review and production and the de-duplication of documents):	4 hours
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Pursuant to Henderson Municipal Code 2.47.085 and NRS 239.055, the City’s fee for the “Extraordinary Use of Personnel or Technology” is comprised of the employee(s)’ actual hourly rate to review and produce the requested documents or \$0.50 page, whichever is less. The average hourly rate for the attorneys who performed the review was \$77.99 per hour, and the hourly rate for the Senior Legal Information Systems Analyst is \$44.81. Accordingly, the City’s actual cost for your client’s records request is \$5,482.56  $(\$77.99 \times 68 = \$5,303.32) + (\$44.81 \times 4 = \$179.24)$ , and per our City-wide fee schedule for public records this is the amount that your client would have to pay to receive the records in electronic format.<sup>1</sup>

The City understands that the fees authorized by NRS 239.055, which allows local governments to charge the costs that they actually incur for the extraordinary use of their personnel or technological resources, “must be reasonable.” While it may not resolve the difference of opinion between the City and your client regarding the meaning of NRS 239.055, the City is willing (and was willing back in October) to provide the requested records at the lowest hourly rate of the employees who reviewed the requested documents. This would put the fee for production of your client’s records request at \$3,226.32.

Please let me know how LVRJ wishes to proceed with the records that have been prepared for it. If LVRJ would rather resolve the matter through your recently filed litigation, then the City will respond appropriately. The City is interested in having the courts provide clarity to the meaning and application of NRS 239.055, as clear and concise guidance on these provisions would greatly benefit both local governments and the public. With that said, the City is not

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<sup>1</sup> The requested records comprise approximately 69,979 printed pages (this is an estimate from the document management software), which at \$.50 per page would cost your client roughly \$34,989.50. While I am fairly certain that your client is not interested in printed copies of these records, the City will comply with that request if made.



Letter to McLetchie Re: Records Request

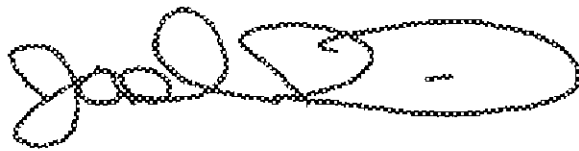
December 5, 2016

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interested in litigation as a method of preventing the disclosure of the requested documents. In fact, the City is amenable to working with you and the court on a mechanism to provide LVRJ the requested documents while the court entertains our arguments on the fee issue.

In addition to working through litigation to get the courts to provide clear guidance on the issue of public records fees, the City would also like to offer to work with LVRJ on a legislative solution in the upcoming 2017 Legislative Session. While attorneys may benefit by the lack of clarity in the statute, I believe that a legislative solution presented jointly by media organizations and local governments would be welcomed by the Legislature, and would benefit both our clients and the public.

Best wishes,

A handwritten signature in black ink, appearing to read "Josh M. Reid", with a stylized flourish at the end.

Josh M. Reid  
City Attorney

Cc: Robert Murnane, City Manager

# EXHIBIT “E”

**Brian Reeve**

---

**From:** Brian Reeve  
**Sent:** Tuesday, December 20, 2016 5:23 PM  
**To:** 'maggie'  
**Cc:** Josh Reid; Brandon Kemble; pharan@nvlitigation.com; David Cherry; Michael Naseem  
**Subject:** RE: LVRJ - Henderson (Trosper)  
**Attachments:** DOCSLGL-#284959-v1-Initial\_Trosper\_Withholding\_Log.pdf; RE: Nevada Bar in Hawaii and Crisis Communications for Attorneys

Maggie,

Attached is the withholding log that we previously prepared.

Also attached is the email that contained the "Harambe" photo that you mentioned. As we discussed in our telephone conversation today, this was an email in which a crisis communications presentation announcement was sent to David Cherry and the announcement had a number of pictures attached to it. This email is responsive to LVRJ's request because it is addressed to a member of the City's Communication Department and it contains the words "crisis communications", which was one of the search terms in LVRJ's public records request. This one email contained 18 separate electronic files. Our IT systems analyst removed 14 "portable network graphic images" from the email (e.g. the twitter, facebook, and linked in logos that are commonly in a signature block) but did not remove the JPEG files. The Harambe photo was a JPEG attached to the email. It appears that the other doc numbers identified below are also JPEG files.

You also mentioned during our call today that perhaps we can provide native images for the inspection. That presents some logistical concerns on our end because we cannot assign document numbers/bates labels to pst files (without these numbers it makes it difficult to locate a specific document in the future) and we cannot redact pst files. I will work with our systems analyst to see what other options are available to assist with your client's review.

We can discuss further at our meeting on Thursday morning.

Regards,

Brian

---

**From:** maggie [mailto:maggie@nvlitigation.com]  
**Sent:** Tuesday, December 20, 2016 12:28 PM  
**To:** Brian Reeve  
**Cc:** Josh Reid; Brandon Kemble; pharan@nvlitigation.com; David Cherry; Michael Naseem  
**Subject:** RE: LVRJ - Henderson (Trosper)

Brian -- Please send the log you have so far and we will see what we need next. It was my understanding that the City Attorney's office reviewed all the "hits" and the documents that were being made constitute the documents reviewed and okayed for disclosure to the reporter for review. Is this correct? There are a lot of documents that don't appear to be responsive at all, including an image of Harambe (Doc. # 1353). The below documents also do not appear to be

responsive at all and are instead logos and the like (and duplicates at that). Please advise. In any case, we will need to have the reporter there tomorrow. Thanks in advance.

2421, 2422, 2559, 2431, 2432, 2458, 2484, 2500, 2501, 2518, 2560, 2631, 2636, 2657, 2662, 2710, 2715, 2717, 2718, 3003, 3010, 3079, 3085, 3086, 5460 – Henderson Chamber of Commerce logo, in varying sizes and clarity

2503, 2515, 2519, 2562, 2606, 2633, 2659, 2712, 2720, 3005, 3076, 3088, 5620 – Henderson Chamber of Commerce foundation logo

2502, 2514, 2561, 2605, 2632, 2658, 2711, 2719, 3004, 3075, 3087, 5619 – HDA logo

2505, 2517, 2521, 2564, 2608, 2635, 2661, 2714, 2722, 3007, 3078, 3080, 3090, 5622 – HBRC logo

2504, 2516, 2520, 2563, 2607, 2634, 2660, 2713, 2721, 3006, 3077, 3089, 5621 – leadership Henderson logo

2804, 2805, 2808 – IMPAC logo

5108, 5110 – Imagine Communications logo

3399, 5184 – duplicate photo of mayor and council giving certificate to someone

3400, 5185 – duplicate photo of arbor day recognition



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From: maggie  
Sent: Monday, December 19, 2016 6:08 PM  
To: Brian Reeve <[Brian.Reeve@cityofhenderson.com](mailto:Brian.Reeve@cityofhenderson.com)>  
Cc: Josh Reid <[Josh.Reid@cityofhenderson.com](mailto:Josh.Reid@cityofhenderson.com)>; Brandon Kemble <[Brandon.Kemble@cityofhenderson.com](mailto:Brandon.Kemble@cityofhenderson.com)>; pharan@nvlitigation.com; David Cherry <[David.Cherry@cityofhenderson.com](mailto:David.Cherry@cityofhenderson.com)>; Michael Naseem <[Michael.Naseem@cityofhenderson.com](mailto:Michael.Naseem@cityofhenderson.com)>  
Subject: Re: LVRJ - Henderson (Trosper)

Natalie Bruzda - thanks

Maggie McLetchie  
McLetchie Shell, LLC

701 E. Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702) 728-5300

On Dec 19, 2016, at 5:46 PM, Brian Reeve <[Brian.Reeve@cityofhenderson.com](mailto:Brian.Reeve@cityofhenderson.com)> wrote:

Maggie,

We can have a room and laptop available at 9 a.m. tomorrow morning for your client to inspect the documents. Please have your client go to the reception area on the fourth floor of City Hall and ask for David Cherry. Can you please tell me the name of the reporter that will be coming?

As for the log of withheld documents, we prepared a pre-litigation log consistent with NRS 239.0107 -- i.e. notice that we are withholding and a citation to legal authority justifying the nondisclosure. I am happy to send that to you. If you want a Vaughn Index, then that will take a day or so for us to complete. Please let me know.

Thanks,

Brian

---

**From:** maggie [<mailto:maggie@nvlitigation.com>]  
**Sent:** Monday, December 19, 2016 4:05 PM  
**To:** Brian Reeve  
**Cc:** Josh Reid; Brandon Kemble; [pharan@nvlitigation.com](mailto:pharan@nvlitigation.com)  
**Subject:** RE: LVRJ - Henderson (Trosper)

Brian -- Is it too late to ask that they be available tomorrow morning? Also, will a log of the documents withheld be made available / provided to me?

Thanks!

Maggie

<image002.jpg>

ATTORNEYS AT LAW  
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(702) 728-5300 (T) / (702) 825-5430 (F)  
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**From:** Brian Reeve [<mailto:Brian.Reeve@cityofhenderson.com>]  
**Sent:** Monday, December 19, 2016 1:42 PM  
**To:** maggie <[maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)>  
**Cc:** Josh Reid <[Josh.Reid@cityofhenderson.com](mailto:Josh.Reid@cityofhenderson.com)>; Brandon Kemble <[Brandon.Kemble@cityofhenderson.com](mailto:Brandon.Kemble@cityofhenderson.com)>  
**Subject:** RE: LVRJ - Henderson (Trosper)

Hello Maggie,

The documents are ready for inspection. Please give let me know when you client would like to inspect them and we will set up a room with a laptop. Feel free to contact me if you have any questions.

Regards,

Brian

---

**From:** maggie [mailto:maggie@nvlitigation.com]  
**Sent:** Wednesday, December 14, 2016 12:38 PM  
**To:** Josh Reid; Brian Reeve; Brandon Kemble  
**Cc:** Cheryl Navitskis; pharan@nvlitigation.com  
**Subject:** LVRJ - Henderson (Trosper)

Josh, Brian, and Brandon --

Thanks for meeting with me by phone to discuss the litigation. Thank you for agreeing that Henderson is willing to make the documents available for inspection (at no charge) starting next week some time. I will check in with my client once you know when the documents are ready for inspection about setting a time.

I look forward to speaking with you more next week about the remaining issues in the case and how we proceed.

Thanks,  
Maggie

<image004.jpg>

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(702) 725-5300 (F) / (702) 425-0220 (F)  
brian@brian-d-80.com

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Doc #	Basis for Redaction/Non-Production	Authority	Redaction
3	Attorney Client Privilege	NRS 49.095	Redaction
181	Attorney Client Privilege	NRS 49.095	
184	Attorney Client Privilege	NRS 49.095	Redaction
191	Attorney Client Privilege	NRS 49.095	
193	Attorney Client Privilege	NRS 49.095	
195	Attorney Client Privilege	NRS 49.095	Redaction
199	Attorney Client Privilege	NRS 49.095	
226	Attorney Client Privilege	NRS 49.095	
227	Attorney Client Privilege	NRS 49.095	
233	Attorney Client Privilege	NRS 49.095	
234	Attorney Client Privilege	NRS 49.095	
237	Attorney Client Privilege	NRS 49.095	
238	Attorney Client Privilege	NRS 49.095	
244	Attorney Client Privilege	NRS 49.095	
245	Attorney Client Privilege	NRS 49.095	
246	Attorney Client Privilege	NRS 49.095	
249	Attorney Client Privilege	NRS 49.095	
251	Attorney Client Privilege	NRS 49.095	
252	Attorney Client Privilege	NRS 49.095	
267	Attorney Client Privilege	NRS 49.095	
647	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
669	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
1362	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1363	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1364	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1365	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1366	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1367	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
1807	Attorney Client Privilege	NRS 49.095	Redaction
1808	Attorney Client Privilege	NRS 49.095	Redaction
1809	Attorney Client Privilege	NRS 49.095	Redaction
2485	Attorney Client Privilege	NRS 49.095	Redaction
2487	Attorney Client Privilege	NRS 49.095	Redaction
2491	Attorney Client Privilege	NRS 49.095	Redaction
3352	Attorney Client Privilege	NRS 49.095	Redaction
3862	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
3864	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
3866	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
4016	Attorney Client Privilege	NRS 49.095	
4056	Attorney Client Privilege	NRS 49.095	
4057	Attorney Client Privilege	NRS 49.095	
4058	Attorney Client Privilege	NRS 49.095	
4078	Attorney Client Privilege	NRS 49.095	



Doc #	Basis for Redaction/Non-Production	Authority	Redaction
4083	Attorney Client Privilege	NRS 49.095	
4084	Attorney Client Privilege	NRS 49.095	
4090	Attorney Client Privilege	NRS 49.095	
4091	Attorney Client Privilege	NRS 49.095	
4092	Attorney Client Privilege	NRS 49.095	
4093	Attorney Client Privilege	NRS 49.095	
4094	Attorney Client Privilege	NRS 49.095	
4095	Attorney Client Privilege	NRS 49.095	
4944	Attorney Client Privilege	NRS 49.095	Redaction
4954	Attorney Client Privilege	NRS 49.095	Redaction
4955	Attorney Client Privilege	NRS 49.095	Redaction
5249	Attorney Client Privilege	NRS 49.095	Redaction
5253	Attorney Client Privilege	NRS 49.095	Redaction
5695	Attorney Client Privilege	NRS 49.095	Redaction
6535	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	
6759	Attorney Client Privilege	NRS 49.095	
6882	Attorney Client Privilege	NRS 49.095	
6883	Attorney Client Privilege	NRS 49.095	
6958	Attorney Client Privilege	NRS 49.095	
6959	Attorney Client Privilege	NRS 49.095	
6978	Attorney Client Privilege	NRS 49.095	
7009	Attorney Client Privilege	NRS 49.095	Redaction
7019	Attorney Client Privilege	NRS 49.095	
7059	Attorney Client Privilege	NRS 49.095	
7127	Attorney Client Privilege	NRS 49.095	
7199	Attorney Client Privilege	NRS 49.095	
7406	Attorney Client Privilege	NRS 49.095	
7496	Attorney Client Privilege	NRS 49.095	
7507	Attorney Client Privilege	NRS 49.095	
7509	Attorney Client Privilege	NRS 49.095	
7631	Attorney Client Privilege	NRS 49.095	
7636	Attorney Client Privilege	NRS 49.095	
7676	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	
7678	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
7698	Attorney Client Privilege	NRS 49.095	
7703	Attorney Client Privilege	NRS 49.095	
7717	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
7718	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	

Doc #	Basis for Redaction/Non-Production	Authority	Redaction
9218	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
12153	Attorney Client Privilege	NRS 49.095	
12154	Attorney Client Privilege	NRS 49.095	
12156	Attorney Client Privilege	NRS 49.095	
12184	Attorney Client Privilege	NRS 49.095	
12185	Attorney Client Privilege	NRS 49.095	
12189	Attorney Client Privilege	NRS 49.095	
12328	Attorney Client Privilege	NRS 49.095	Redaction
13422	Attorney Client Privilege	NRS 49.095	Redaction
13423	Attorney Client Privilege	NRS 49.095	Redaction
13425	Attorney Client Privilege	NRS 49.095	Redaction
13428	Attorney Client Privilege	NRS 49.095	Redaction

**Brian Reeve**

---

**From:** David Cherry  
**Sent:** Thursday, July 07, 2016 6:36 PM  
**To:** Brandon Kemble  
**Subject:** RE: Nevada Bar in Hawaii and Crisis Communications for Attorneys

Hey Brandon,

Thanks for forwarding this newsletter and for our discussion the other evening re: crisis communications. Was quite the foreshadowing of my week given some of the news about COH since Tuesday.

If you do happen to get the presentation, I would appreciate you sending my way

Have a great weekend!

Best,

David

---

**From:** Brandon Kemble  
**Sent:** Thursday, July 07, 2016 9:24 AM  
**To:** David Cherry  
**Subject:** FW: Nevada Bar in Hawaii and Crisis Communications for Attorneys

David,

Here is the consultant I referenced. They send this newsletter, which I can forward you if you are interested. I'll also try to get the materials form the presentation.

Cheers,  
Brandon

---

**From:** Bruce Hennes [ ]  
**Sent:** Monday, July 04, 2016 7:24 PM  
**Subject:** Re: Nevada Bar in Hawaii and Crisis Communications for Attorneys



July 4, 2016

Thanks so much for attending the Nevada Bar conference in Hawaii last week and for attending my "Crisis Communications for Attorneys & Their Clients" CLE on Thursday morning.

As you requested, you'll find a copy below of the Crisis Management Today newsletter we send twice a month to over 7000 of our friends and past/present clients. That list includes nearly 1500 attorneys. You'll get the new issue in a few weeks.

I hope that every issues gives you more insight into how you can help your clients navigate treacherous, bet-the-farm situations.

If I, or anyone on our Crisis Management SWAT Team can be of assistance to you, I hope you'll call upon us.

All the best,

Bruce Hennes

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Crisis Management Today  
2016

CRISIS COMMUNICATIONS | CRISIS MANAGEMENT | LITIGATION COMMUNICATIONS | MEDIA TRAINING

The Headlines



## Getting Over Stage Fright With the Help of Your Smartphone

For some people, public speaking comes naturally. But if you're one of the too many scared by the word, but never really settle out of you, here are a few apps that will help.



## 8 Lessons From General Mills During a Product Recall

Today's high-stakes world of social media has forced you brand's message and how you interact with your brand and what you do.



## The Social Media Uproar Over Harambe's Death

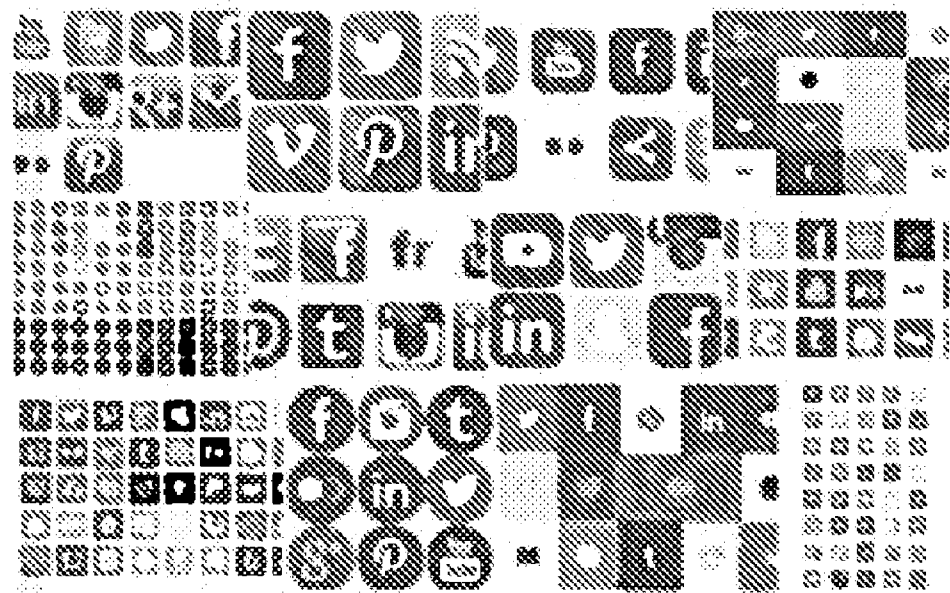
A child fell into the gorilla exhibit at the Cincinnati Zoo. Soon, The gorilla, Harambe, was dead. The story of what and how it happened and how the world reacted was just getting started.



## Our Perspective

Images for social media

Images for social media



Images for social media

## Serious About Crisis Management? Get Serious About Social Media!

Follow the money. The web is where eyeballs are going. Your brand – and your messages – need to be there, too.



"I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts."

Abraham Lincoln

## Events

State Bar of Nevada

Bruce Hennes

June 30, 2016

International Bridge, Tunnel & Toll Association

Bruce Hennes & Thom Fladung

July 24, 2016

Ohio Dept. of Public Safety - Public  
Information Officers

Bruce Hennes

September 16, 2016

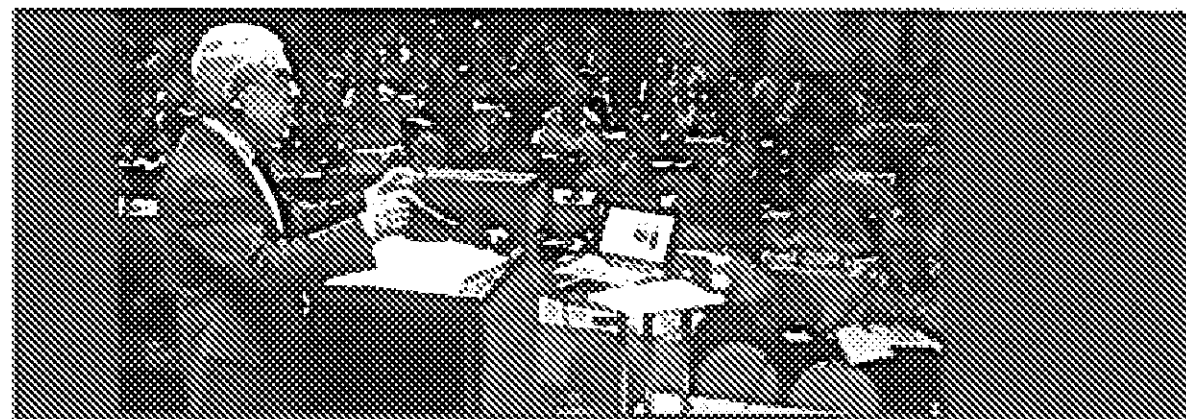
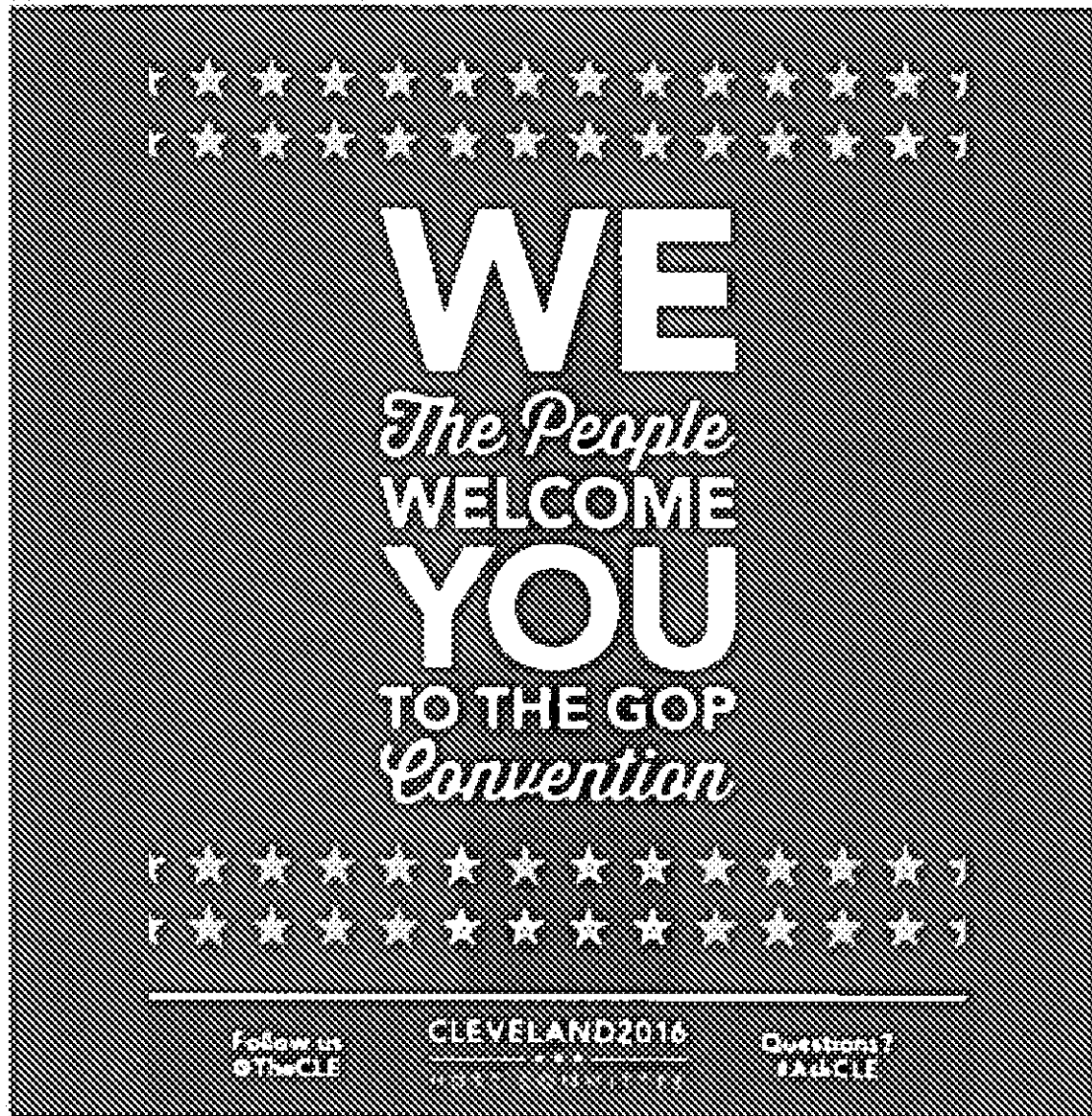
International Municipal Lawyers Association

Bruce Hennes

September 30, 2016

[View More Events →](#)





### Crisis Communications for First Responders & Government Officials

With nearly 400 police, fire, government officials and others in the audience, we helped Northeastern Ohio prepare for a wide variety of crisis situations earlier this week. Many thanks to the Cuyahoga County Office of Emergency Management, American Red Cross, Cuyahoga County Board of Health, Cuyahoga County Police Chiefs Assoc., Cuyahoga County Fire Chiefs Assoc., Cuyahoga Community College and Cuyahoga County Mayors & Managers Association for co-sponsoring. Special thank to Harlan Diamond and Charles Klass at Executive Caterers at Landerhaven for the donation of the meeting venue, food and audio-visual equipment

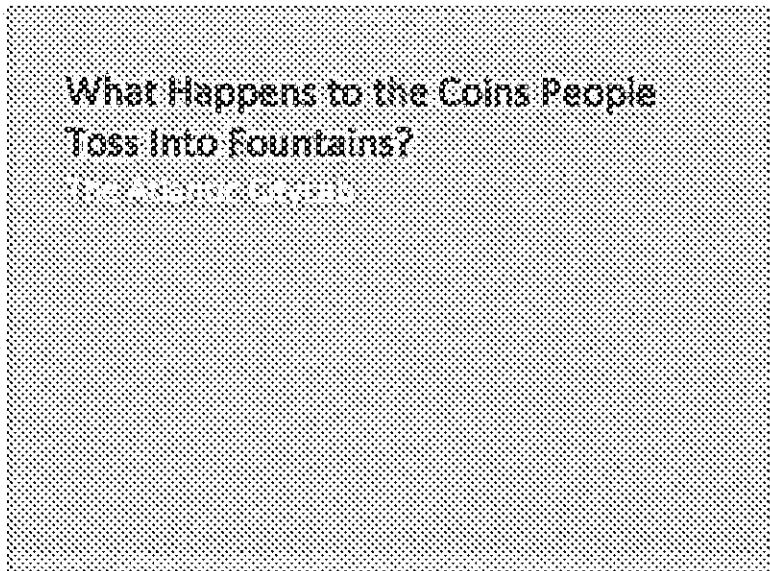
The Republican National Convention comes to Cleveland July 18-21. Hennes Communications is honored to be helping a number of local organizations prepare for this national event.

[View More Capabilities →](#)

### Short Takes



Misremembering Kitty Genovese  
By [author name]

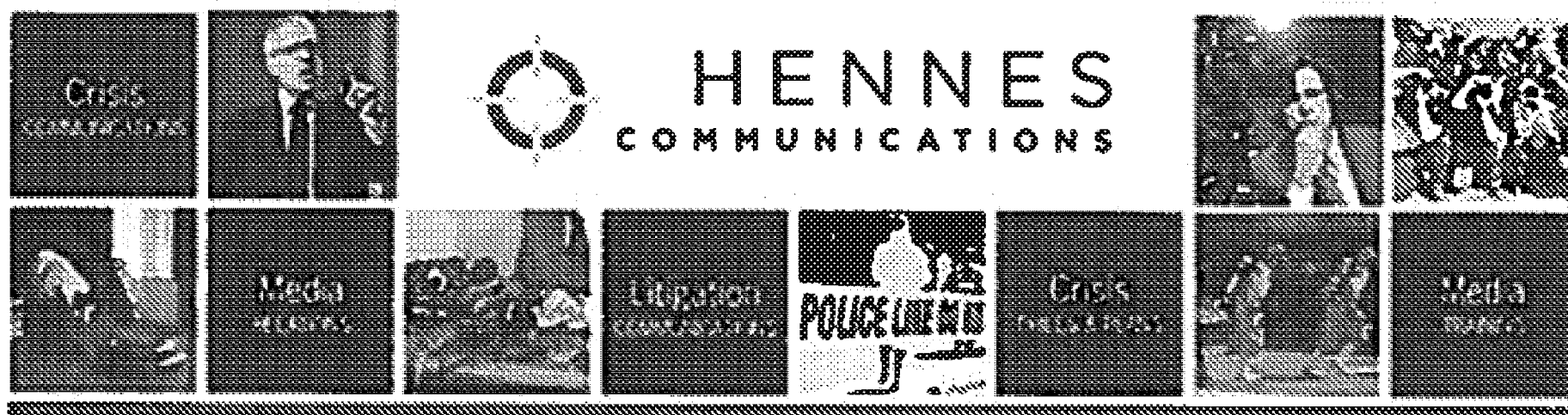


What Happens to the Coins People  
Toss Into Fountains?  
By [author name]



Dispute Over An Iconic Sports Photo  
of Babe Ruth Quietly Ends  
By [author name]





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