Case No. 75407

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON,
Appellant/Cross-Respondent,

vs.

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

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

APPELLANT/CROSS-RESPONDENT'S REPLY BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL

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CITY OF HENDERSON, Appellant/Cross-Respondent, vs. LAS VEGAS REVIEW-JOURNAL, Respondent/Cross-Appellant.	Supreme Court No. 75407 District Court No. A-16-747289-W **APPELLANT/CROSS-RESPONDENT CITY OF HENDERSON'S NRAP 26.1 DISCLOSURE**

NRAP 26.1 DISCLOSURE

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

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

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

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

DATED this 11th day of February, 2019.

BAILEY❖KENNEDY

By: */s/ Dennis L. Kennedy*
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This is an appeal from an order granting in part Las Vegas Review-Journal's ("LVRJ") Motion for Attorney's Fees and Costs ("Fee Order"). The District Court's Fee Order, entered on February 15, 2018, is a special order made after final judgment, and, therefore, is substantively appealable. NRAP 3A(b)(8); *Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006). The City of Henderson (the "City") timely filed a notice of appeal on March 16, 2018. (V JA 777-788.)[1] LVRJ filed a notice of cross appeal on March 26, 2018. (V JA794-795.)

[1] Citations to the Joint Appendix ("JA") cite to both volume and page number(s). For example, "V JA777-788" refers to Volume 5 of the Joint Appendix at pages 777 through 788. Citations to Respondent/Cross-Appellant's Appendix ("RA") follow the same citations style. The defined terms in the City's Opening Brief have the same meaning in this brief.

IV. STATEMENT OF THE CASE

LVRJ's Answering Brief on Appeal and Opening Brief on Cross Appeal ("Answering Brief") presents this appeal as one involving its "success" in obtaining access to wrongfully denied records, but simply repeating an incorrect statement over and over does not make it true. This case[1] has never legitimately been about access to records.

LVRJ sued the City because it did not want to pay the City's estimated *fees* to fulfill a public records request consisting of nearly 70,000 pages of documents. LVRJ contends that the fees were a "roadblock" to access, but that is tantamount to saying an express provision of the NPRA itself is a "roadblock" to access. The estimated fees were authorized under NRS 239.055 and were commensurate with the enormity of LVRJ's request. LVRJ trumpets the NPRA and urges this Court to follow its plain language when it suits its purposes (like when it is trying to recover attorney's fees), but it wants the Court to ignore the plain language of the NPRA

[1] *See also* Case No. 73287 currently pending in this Court, which involves the District Court's resolution of the underlying substantive issues giving rise to the Fee Order. Case No. 73287 was argued on February 5, 2018, and this Court's decision in that case may affect this case. In the event that it does, the City will seek leave to supplement its briefing.

provisions it does not like and accuses governmental entities of interposing "roadblocks" for invoking those provisions.

The crux of this appeal is whether Judge Bailus — who did not decide the underlying claims in LVRJ's Amended Public Records Act Petition ("Amended Petition") — erred in awarding LVRJ a portion of its attorney's fees and costs when: (1) LVRJ did not prevail on any significant issue in the case, (2) did not succeed on any of its claims for relief, (3) filed an unauthorized petition under the NPRA, and (4) failed to demonstrate that the City acted in bad faith. The answer is a resounding "yes" — Judge Bailus erred. LVRJ did not prevail in this case, and, therefore, the District Court was wrong to award LVRJ any attorney's fees or costs. The City should not be penalized by having to pay attorney's fees and costs when it complied with its obligations under the NPRA, made efforts to resolve the parties' dispute both before and during litigation, and ultimately defeated LVRJ's public records lawsuit on the merits. (II JA221-25; III JA448-50.) Accordingly, this Court should reverse the Fee Order and determine that LVRJ should not be awarded any fees or costs.

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V. SUMMARY OF THE ARGUMENT

There are two principal reasons why this Court should reverse the Fee Order awarding LVRJ $9,010.00 in fees and $902.84 in costs.

First, LVRJ did not prevail, and, therefore, is not entitled to attorney's fees and costs. It is indisputable that the District Court's Substantive Order denied each of LVRJ's claims for relief in its Amended Petition. (III JA448-450.) Under *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d 103, 107 (2016), LVRJ cannot be deemed a prevailing party because it did not succeed on at least one of its claims in this action.

Faced with the plain language of the Substantive Order, LVRJ tries to argue that it nonetheless succeeded on a "significant issue" in the case by obtaining copies of the records it had already inspected. This argument is without merit. The City's voluntary agreement to provide LVRJ copies of the documents it already spent days reviewing was not a judicially sanctioned, material alteration in the parties' legal relationship, and, therefore, LVRJ did not "prevail" on that issue.

Further, LVRJ's request for electronic copies of the already-inspected documents was not a significant issue in the case because, after LVRJ conducted

its inspection, it amended its NPRA Petition. Instead of asking for *all* of the documents, the Amended Petition sought to compel the City to provide access only to the documents contained on the *City's Withholding Log*. (I JA040.) LVRJ's amendment, and the fact that it never asked the City for copies of any of the records after the inspection was completed, shows that obtaining copies of the already-inspected documents was not a significant issue in the litigation.

In addition, LVRJ should not be deemed a prevailing party because LVRJ did not comply with the NPRA. The plain language of the NPRA provides: "[i]f a request for inspection, copying or copies of a public book or record open to inspection and copying ***is denied***, the requester may apply to the district court" for an order granting access to the records. NRS 239.011 (emphasis added). The City never denied LVRJ's Request. LVRJ filed suit because it did not want to pay the fees associated with fulfilling the request. Charging a fee that is expressly authorized under the NPRA is not a denial of records. Only a denial of records triggers the right to initiate an NPRA petition under NRS 239.011. Because the City never denied LVRJ's Request, LVRJ should bear the financial burden of filing an unauthorized and unnecessary lawsuit.

Second, this Court should reverse the Fee Order because the City is immune from having to pay attorney's fees and costs under NRS 239.012. Under NRS 239.012, "[a] public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns." This provision must be read together with NRS 239.011, which furnishes a prevailing requester with grounds to seek attorney's fees and costs. Reading NRS 239.011 together with NRS 239.012 demonstrates that NRS 239.012 limits a prevailing party's claim on attorney's fees, and before attorney's fees are awarded an immunity analysis must be conducted.

If a requester prevails and the government entity is shown to have withheld a public record in bad faith, then attorney's fees and costs are appropriate. But if a requester prevails and the government entity is shown to have withheld a public record in good faith, then an award of attorney's fees and costs is not appropriate because the government agency is immunized from having to pay any damages. LVRJ argues that the term "damages" does not include attorney's fees, but nothing in the NPRA supports its contention. At a minimum, the term "damages" is

ambiguous since it is susceptible to more than one reasonable meaning, and, accordingly, the Court should refer to legislative history, reason, and public policy. These tools of statutory construction all support the City's interpretation of the NPRA, *i.e.* a prevailing requester has grounds to claim attorney's fees, but an analysis of NRS 239.012 is required to determine whether the agency acted in good faith before fees and costs may be awarded.

To the extent the Court concludes that LVRJ is a prevailing party and that the City is not immune from having to pay attorney's fees and costs (which the City does not concede), it should affirm the District Court's attorney's fee award in the amount of $9,010.00 and costs in the amount of $902.84. (V JA767-68.) LVRJ maintains the District Court abused its discretion because it did not sufficiently consider the *Brunzell* factors. LVRJ's argument is misplaced because a review of the Fee Order, hearing transcripts, the parties' legal briefs, and the evidence in the record shows that the District Court did consider the *Brunzell* factors, and its award is supported by substantial evidence.

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VI. ARGUMENT

LVRJ is not entitled to attorney's fees and costs because (1) it was not a prevailing party in the litigation; and (2) the City is immune from having to pay attorney's fees. To the extent the Court determines otherwise (which it should not), the Court should not disturb the amount awarded by the District Court.

A. The District Court Erred in Awarding LVRJ Attorney's Fees and Costs Because It Was Not a Prevailing Party.

LVRJ was not a prevailing party in this case. It did not succeed on any significant issue in the litigation, did not prevail on any of its claims for relief, and should not be rewarded for filing an improper NPRA action.

1. LVRJ did not succeed on any significant issue in the litigation.

To be a prevailing party, a party must "succeed[] on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015). As discussed in the City's Opening Brief, the prevailing party analysis is rooted in federal case law and federal courts have clarified what is required to demonstrate prevailing party status. (*See* Opening Brief at 24.) Specifically, "[a] fee-seeking

party must show that (1) there has been a material alteration in the legal relationship of the parties and (2) it was judicially sanctioned." *Wood v. Burwell*, 837 F.3d 969, 973 (9th Cir. 2016). A litigant whose "success on a legal claim can be characterized as purely technical or de minimis" is not entitled to attorney's fees. *Irvine Unified Sch. Dist. v. K.G.*, 853 F.3d 1087, 1093 (9th Cir. 2017).

a. The parties' agreement to allow LVRJ to inspect the records does not make LVRJ a prevailing party.

LVRJ argues that it should be deemed a prevailing party because the City "agreed to allow the newspaper to inspect the records" after it filed suit. (Answering Brief at 26.) This argument fails for several reasons. First, reaching an out-of-court resolution does not make LVRJ a prevailing party because it was not a *judicially sanctioned* material alteration of the parties' legal relationship. Because the Court did not order or otherwise approve of the parties' agreement to allow LVRJ to inspect the records free of charge, that arrangement does not make LVRJ a prevailing party.

Second, as a policy matter, LVRJ's argument leads to undesirable consequences because it would incentivize every requester to claim prevailing party status — and thus seek attorney's fees — for simply resolving issues without

the court's involvement while litigation is pending. Rather than trying to resolve issues on their own, parties will avoid making out-of-court agreements because doing so would result in the requester claiming prevailing party status over what would undoubtedly be framed as a "significant issue" in the case. In the broader context of civil litigation generally, this would result in less compromise and more unnecessary litigation, and would frustrate the dispute resolution process. Parties (including requesters) should be *encouraged* to reach out-of-court compromises throughout the litigation process, not disincentivized from doing so by the prospect of having to pay attorney's fees at the conclusion of the case.

Finally, LVRJ should not be rewarded for refusing to work with the City to reach a resolution before it filed suit. While the NPRA does not require parties to meet and confer, it is nonsensical for a party to rebuff or ignore efforts to resolve an issue *before* filing suit, but then welcome those same efforts *after* filing suit so that it can tout the out-of-court resolution as a "success" and claim attorney's fees and costs. Again, requiring that a court judicially sanction a material alteration in the parties' legal relationship is necessary to eliminate this type of tactic.

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b. Obtaining copies of already-inspected records was not a significant issue in the case.

LVRJ argues that "although the Review-Journal did not obtain all the information or relief it sought in this litigation, it prevailed on a significant and central issue: it obtained copies of the requested records." (Answering Brief at 27.) LVRJ is trying to use the City's voluntary agreement to provide copies of the documents LVRJ had already inspected (and did not want) to show it succeeded on a significant issue in the case. This argument also fails. As discussed in the City's Opening Brief, obtaining copies of the already-inspected records was not a significant issue in the case; rather, it was a token issue.[2] (*See* Opening Brief at 29-30.)

LVRJ's Original Petition asked the Court to order the City "to immediately make available complete copies of all records requested[.]" (I JA009.) One of the main issues in the Original Petition was whether LVRJ had to pay the City's fees associated with fulfilling the almost 70,000-page Request. (I JA001-09.) After LVRJ filed the Original Petition, the parties agreed that LVRJ could inspect the

[2] LVRJ misconstrues the City's argument on this point. The City never argued that obtaining ***access*** to public records is a token issue; rather, the City contends that obtaining ***copies*** of records to which LVRJ had already been granted access, and had not requested any copies of, was a token issue in light of LVRJ's own conduct after the inspection.

records on a computer at the City. (II JA223.) The inspection took place over several days. (*Id.*)

Having reviewed all of the requested records (except the records the City withheld and/or redacted as described on its Withholding Log), LVRJ voluntarily filed an Amended Petition in which it *changed the relief it sought*. (*See* I JA026-28; I JA029-167.) Notably, LVRJ does not even address this argument in its Answering Brief.

Where the Original Petition sought "complete copies of all records requested," the Amended Petition sought to compel the City to provide access to the records "previously withheld and/or redacted (other than the documents that were redacted to protect personal identifiers)." (I JA009; JA040.) In other words, LVRJ amended its Original Petition, after the inspection, to obtain access to the documents identified on the City's Withholding Log. (*Id.*) By the terms of its own pleading, it no longer sought copies of all the records. Thus, LVRJ's own actions rendered obtaining copies of the already-inspected records a non-issue in the case.[3]

[3] LVRJ's Statement of Facts and Procedural History in its Answering Brief is misleading because it selectively quotes a critical section of its Amended Petition, omitting the most important part. (Answering Brief at 12; *see also Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446-47, 726 P.2d 335, 337 (1986)

LVRJ asserts that its public records Request asked for copies of all the records and that it always wanted copies. (Answering Brief at 13.) But this argument is belied by its own conduct in filing an Amended Petition that removed its request for copies of all the records and instead sought access to the records the City had redacted or withheld. It is well-settled that an amended pleading is a distinct pleading that supersedes the original. *Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984); *see also Ramirez v. City of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (explaining that an "amended complaint supersedes the original, the latter being treated thereafter as non-existent.");

(holding that all appeals must be "pursued in a manner meeting high standards of diligence, professionalism, and competence," and sanctioning counsel who misled the Court by misrepresenting a quotation in its brief).) Specifically, LVRJ's Answering Brief contains the following sentence: "In its February 28, 2017 Amended Petition, the Review-Journal again asked the district court to order Henderson to 'immediately make available complete copies of all records requested.'" (*Id.*) LVRJ cites to I JA040 to support this assertion. (*Id.*) A review of I JA040 shows that LVRJ intentionally omitted the most important part of the quoted sentence. The full sentence reads: "That this court issue a writ of mandamus requiring that Defendant City of Henderson immediately make available complete copies of all records requested ***but previously withheld and/or redacted (other than documents that were redacted to protect personal identifiers).***" (I JA040 (emphasis added).) LVRJ's selective quotation is misleading because it attempts to show that the Original Petition and Amended Petition both sought copies of all the records. Not true. As the emphasized language above demonstrates, LVRJ's Amended Petition only sought access to the records that the City had withheld and/or redacted, *i.e.* the documents contained on its Withholding Log.

Associated Aviation Underwriters, Inc. v. Vegas Jet, LLC, 106 F. Supp. 2d 1051, 1054 (D. Nev. 2000) ("In Nevada, an amended complaint generally supersedes the original complaint and renders it nugatory."). Thus, by filing an Amended Petition that changed the relief sought, LVRJ's original Petition ceased to exist and its request for copies of all the records was no longer an issue in the case.[4]

Further, LVRJ's silence post inspection speaks volumes.[5] The District Court specifically found that "[f]ollowing its inspection, LVRJ made *no request for copies of the Prepared Documents*; however, following LVRJ's counsel's representations *at the hearing* that it also wanted electronic copies of the Prepared Documents, *the City agreed* to provide electronic copies of the Prepared Documents."[6] (III JA449 (emphasis added).) Certainly, if obtaining copies of the

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[4] Judge Thompson commented during the hearing that "I was – I was led to believe that our hearing today was to argue over the redacted documents that you have in – that you attached to your petition." (III JA429.)

[5] At the hearing for the Amended Petition, counsel for LVRJ admitted that LVRJ did not request copies of any documents after completing its inspection of the records at the City. (III JA424:19-425:6.)

[6] LVRJ suggests that it did request copies of the inspected documents after the inspection was complete and cites to III JA364 as support. (*See* Answering Brief at 13.) This argument fails for two reasons. First, the District Court specifically found otherwise, and, therefore, LVRJ's argument contradicts the findings in the Substantive Order. (III JA449). Second, LVRJ's citation to the Joint Appendix does not support its argument. The emails in the Joint Appendix were exchanged

records was still a significant issue in the case post-inspection, LVRJ would have asked for them before the hearing. It did not.

Finally, obtaining *copies* of the records was a token issue because LVRJ had already been given *access* to the records without the District Court's involvement. LVRJ tries to make a distinction between having access to public records and obtaining copies of public records (*see e.g.,* Answering Brief at 26.), but this distinction falls flat as LVRJ's own Answering Brief says that "the purpose of the NPRA is to facilitate access to public records." (Answering Brief at 25.) In compliance with NRS 239.010, which requires that public records be made available for inspection, the City facilitated access to the requested records by reaching a mutual agreement with LVRJ to inspect the records over a period of several days, free of charge. The inspection gave LVRJ the opportunity to identify

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during LVRJ's multi-day inspection and address LVRJ's concern that some of the documents in the production were not responsive to its search terms and the complaint that the City's computer on which LVRJ's reporter was reviewing the records was slow. (III JA364-368.) While the parties were discussing the perceived computer issues, LVRJ's counsel suggested "*If it is easier*, Natalie could also just pick up a CD and review from the RJ offices. Let me know. Either way she will be there at 9 a.m." (III JA364 (emphasis added).) Asking whether "it is easier" to put documents on a CD for a reporter to review on her own computer during the inspection process is a lot different than demanding copies of records after the inspection was completed. As the District Court found, LVRJ never did the latter. (III JA349.)

the documents it truly wanted and thus reduce the volume and cost associated with a production of copies. LVRJ, however, never identified or asked for copies of any of the documents. (III JA449.) Asking for electronic copies of the already-inspected records for the first time at a court hearing that was supposed to be focused on the adequacy of the City's Withholding Log does not constitute success on a significant issue.

c. Agreeing to give LVRJ copies of the already-inspected records was not a judicially sanctioned, material alteration in the parties' legal relationship.

Notwithstanding the foregoing, LVRJ argues that it is a prevailing party because the District Court "specifically directed" the City to provide a USB drive with the records to LVRJ. (Answering Brief at 27.) This argument ignores the plain language of the Substantive Order. Judge Thompson found that except for the items identified on the City's Withholding Log, all requested files and documents were prepared by the City, and "LVRJ had access to and inspected the Prepared Documents prior to the hearing." (III JA449.)

Once LVRJ's counsel revealed at the hearing, for the first time, that LVRJ wanted electronic copies of the already-inspected documents, the City ***agreed*** to

provide the documents on a USB drive. The Substantive Order specifically states: "following LVRJ's counsel's representations at the hearing that it also wanted electronic copies of the Prepared Documents, *the City agreed to provide electronic copies of the Prepared Documents*." (III JA449 (emphasis added).) There was no court order directing the City to provide copies of the inspected records. Instead, the District Court simply asked the City if it was willing to provide copies of the inspected documents on a USB drive and the City responded affirmatively. (III JA427.) The Substantive Order simply memorialized the City's voluntary agreement to provide copies of the records.[7] Because there was no judicially sanctioned material alteration of the parties' legal relationship, LVRJ did not "succeed" and is not entitled to attorney's fees and costs.

LVRJ's Answering Brief relies on case law interpreting the Freedom of Information Act (FOIA) to support its request for fees. (Answering Brief at 33-34.) Notwithstanding the fact that FOIA and the NPRA are vastly different, and

[7] LVRJ cites to a snippet from the hearing transcript where Judge Thompson says "they're going to give you a . . . USB drive with the 69,000 pages on it and I'm going to deny the rest of the petition" as somehow supporting the proposition that the District Court specifically directed the City to provide electronic copies of the records. (Answering Brief at 27.) Judge Thompson's statement does no such thing. Rather, it simply reiterates the City's agreement to provide the records.

therefore LVRJ's reliance on federal case law interpreting FOIA is questionable at best,[8] the cases cited in LVRJ's Answering Brief are of no help to LVRJ. Specifically, LVRJ cannot meet the "substantially prevailed" test set forth in *First Amendment Coal. v. U.S. Dep't of Justice*, 878 F.3d 1119, 1128 (9th Cir. 2017), which requires a requester to present "convincing evidence that the filing of the action had a substantial causative effect on the delivery of the information." LVRJ has presented no such "convincing evidence" because it does not exist. LVRJ's speculation does not satisfy the convincing evidence standard. The City was always willing to provide — and did provide — access to the records, LVRJ just did not want to pay the fee associated with preparing them. The City attempted to work with LVRJ to reach a resolution regarding the fees before it filed suit, but LVRJ rebuffed and ignored those efforts. LVRJ's filing of the lawsuit did not result in LVRJ obtaining access to the records, LVRJ's eventual *willingness to*

[8] If the Court is inclined to consider FOIA case law in interpreting the NPRA, then it should likewise consider the fact that attorney's fee awards under FOIA ***are discretionary.*** *First Amendment Coal. v. United States Dep't of Justice*, 878 F.3d 1119, 1126 (9th Cir. 2017). Under FOIA, "[a] determination of eligibility 'does not automatically entitle the plaintiff to attorney's fees'"; rather, "[e]ntitlement to attorney's fees is left to the discretion of the district court." *Id.* at 1122 n.2. Using FOIA for guidance dismantles LVRJ's contention that attorney's fee awards are mandatory in public records cases, and it supports the City's interpretation of the NPRA. (Answering Brief at 39.)

work with the City to reach a solution — something LVRJ was willing to do only after it filed suit — is what led to the agreement allowing LVRJ to inspect the records.

2. LVRJ did not succeed on any of its claims for relief.

In *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d 103, 107 (2016), this Court explained that "***a prevailing party must win on at least one of its claims***." *Id.* (emphasis added). LVRJ does not dispute that a party must win on at least one of its claims to be considered a prevailing party. (*See* Answering Brief at 30.) Instead, LVRJ attempts to distinguish *Golightly* by arguing that LVRJ prevailed on its "central claim" — its "request for the withheld documents." (*Id.*) Again, this is demonstrably incorrect.

LVRJ's Amended Petition contained four claims for relief: "(1) that the Court issue a writ of mandamus requiring Henderson to immediately make available all records the Review-Journal had previously requested but had been withheld and/or redacted; (2) injunctive relief prohibiting Henderson from applying the provisions of Henderson Municipal Code § 2.47.085 and the Henderson Public Records Policy to demand fees in excess of those permitted by

the NPRA; (3) declaratory relief stating that Henderson Municipal Code § 2.47.085 and the City of Henderson's Public Records Policy invalid to the extent they provide for fees in excess of those permitted by the NPRA; and (4) declaratory relief limiting Henderson to charging fees for extraordinary use of personnel to fifty cents per page and limiting Henderson from demanding fees for attorney review." (IV JA461.) The District Court ***denied*** each of these claims for relief. (III JA450 ("Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition is hereby DENIED.").)

The only issue the District Court decided was LVRJ's request for mandamus relief seeking to compel the City to make available the records the City had withheld and/or redacted, as identified on the Withholding Log. (III JA449.) Judge Thompson found the City's Withholding Log was "timely, sufficient and in compliance with the requirements of the NPRA" and, therefore, denied LVRJ's request for a writ of mandamus to force the City to turn over the documents identified on the Withholding Log. (*Id.*) Judge Thompson concluded that LVRJ's

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remaining claims for relief were moot and denied them on that basis. (III JA449-450.)

LVRJ cannot be a prevailing party — it cannot show it succeeded on any issue, let alone a significant issue in the case — when it lost on the "***sole issue*** decided by the Court." (III JA449 (emphasis added).) In sum, because LVRJ did not succeed on any of its claims for relief, it cannot be a prevailing party. *Golightly*, 373 P.3d at 107. Consequently, it is not entitled to attorney's fees and costs.

3. The filing of the action was premature and unnecessary to receive access to the inspected documents.

A continuing theme throughout LVRJ's Answering Brief is the notion that the City "refused" to provide the requested records and so LVRJ was "forced" to file suit. (*See e.g.*, Answering Brief at 31.) This is simply not true.

As an initial matter, this Court should overturn Judge Bailus's decision to award LVRJ a portion of its fees and costs because there was no basis for LVRJ to file suit under the NPRA in the first place. This is because the City ***never denied*** LVRJ's public records request or failed to respond in a timely manner. (II JA230.) Under NRS 239.011, "[i]f a request for inspection, copying or copies of a public

book or record open to inspection and copying ***is denied***, the requester may apply to the district court . . . .".

The City's Initial Response notified LVRJ that the City had received the Request and was in the process of searching for and gathering responsive documents, provided an estimated date of completion given the number of responsive documents, notified LVRJ (as required under NRS 239.055) there was a fee required for the extraordinary use of its personnel to complete the request and explained the manner in which it calculated the estimated fee, and asked for a deposit to confirm that LVRJ wanted to proceed with the Request. (II JA230.) There was never a denial of the records, which is a prerequisite to filing suit under the NPRA. NRS 239.011.

LVRJ contends that the City "was in essence refusing to provide the records" by charging the fees outlined in its Initial Response. (Answering Brief at 35.) This argument is problematic because it leads to an absurd result, *i.e.* ***complying with the requirements of the NPRA constitutes a denial of records***. NRS 239.055 provides in pertinent part:

> If a request for a copy of a public record would require a governmental entity to make extraordinary use of its personnel or

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

(Emphasis added.) This provision allows governmental entities to charge an additional fee, not to exceed 50 cents per page, if the fulfillment of a public records request would require the extraordinary use of the government's personnel. Here, the City reasonably concluded that the fulfillment of LVRJ's Request consisting of nearly 70,000 pages of documents, including over 5,500 emails, would require the extraordinary use of its personnel. Accordingly, ***as required by NRS 239.055***, the City's Initial Response notified LVRJ, in writing, of the amount of the fee before preparing the requested information. (II JA230.) The City simply followed the statute.

LVRJ argues that the amount of the fee was "usurious," (Answering Brief at 32), but fails to recognize that the amount of the fee is commensurate with the size of the request — and the size of the request was created by LVRJ's overbroad search terms. Indeed, NRS 239.055 directly links the amounts that may be charged

for the extraordinary use of personnel with the ***time*** it takes the personnel to prepare the requested information and the ***number of pages*** contained in the production. NRS 239.055. Voluminous requests consisting of tens of thousands of pages, such as LVRJ's Request, require a substantial amount of time to prepare. As the number of pages and amount of time required increases, so does the fee. The City did not make up a fee hoping it would be high enough to deter LVRJ from pursuing its request. Rather, the fee was calculated in accordance with NRS 239.055 based on the enormity of LVRJ's Request.

Charging a fee that is expressly authorized under the NPRA cannot be deemed a denial of records. LVRJ did not sue the City because the City denied its Request — it sued the City because it did not want to pay the fee. There is a significant difference between denying a public records request due to confidentiality or privacy interests, and informing a requestor about a fee associated with preparing a request. The former triggers the right to initiate an NPRA petition under NRS 239.011, the latter does not.[9] Because the City never

[9] A party may certainly seek declaratory relief about the meaning of a fee provision in the NPRA if there is a dispute about a fee. But a party may not initiate an NPRA proceeding — and seek attorney's fees and costs — unless there is a clear denial of a public records request.

denied LVRJ's Request, LVRJ should be required to bear the financial burden resulting from filing an unauthorized and unnecessary lawsuit.

LVRJ also argues that it was forced to file suit and that the City never would have provided access to the records had it not initiated legal action. The record, however, contradicts LVRJ's speculation. The record shows that the parties had worked together in the past to provide LVRJ access to records for little or no cost. (II JA232-235.) LVRJ tries to downplay the parties' past compromises as "irrelevant," but the parties' history of working together on public records requests is highly relevant to rebut the false notion that LVRJ had to file suit to get access to records. The fact that LVRJ did not have to file suit over any of the 46 public records requests it made to the City in 2015 and 2016 refutes the contention that it was forced to do so in this case. (*Id.*)

Moreover, LVRJ's argument that it was forced to file the lawsuit to gain access to the records is entirely self-serving and speculative. The parties clearly disagree about what transpired after LVRJ submitted its Request and before it filed suit, but at least two things are clear: (1) the City was willing and tried to engage in a "meet and confer" process with LVRJ to provide access to the records; and (2)

LVRJ filed suit without responding to the City's last communication and without ever receiving a denial of the records. (II JA221-225.) While the NPRA may not expressly require parties to meet and confer before filing an NPRA petition, a requester who rushes to court without engaging in a meet and confer process cannot argue that it would not have received the records but for the filing of a lawsuit. Such an argument is pure speculation: How could a requester possibly know it would not have received the records without reaching an impasse?

Here, the parties' dispute centered on the fees set forth in the City's Initial Response, not on whether LVRJ should have access to the records. Filing suit about the fees instead of working with the City was LVRJ's choice, not a "forced" course of action.

B. The City Is Immune From Having to Pay Attorney's Fees Pursuant to NRS 239.012 Because It Acted in Good Faith.

LVRJ's Answering Brief tried to attack the City's interpretation of NRS 239.012 from different angles, but each of its attempts falls short. It touts the plain language of NRS 239.011 (what it refers to as the "Fee Provision"), but in doing so neglects to read the NPRA as a whole — as required in statutory interpretation — by disregarding NRS 239.012 (what it refers to as the "Immunity Provision"). The

Court should reject LVRJ's attempt to render the Immunity Provision nugatory, and instead should interpret the provisions in a manner that gives meaning and effect to both.

1. The Court must go beyond the plain language of the NPRA because an ambiguity exists.

"When a statute is clear and unambiguous, this court gives effect to the plain and ordinary meaning of the words and does not resort to the rules of construction." *Orion Portfolio Servs. 2 LLC v. Clark County*, 126 Nev. 397, 402, 245 P.3d 527, 531 (2010). "Where a statute's language is ambiguous, however, the court must look to legislative history and rules of statutory interpretation to determine its meaning." *Id.*

"A statute's language is ambiguous when it is capable of more than one reasonable interpretation." *Id.* "Internal conflict can also render a statute ambiguous." *Id.*

When interpreting an ambiguous statute, the legislature's intent is the primary consideration. *Id.* at 403. "When construing an ambiguous statutory provision, 'this court determines the meaning of the words used in a statute by

examining the context and the spirit of the law or the causes which induced the [L]egislature to enact it.'" *Id.* "In conducting this analysis, '[t]he entire subject matter and policy may be involved as an interpretive aid.'" *Id.* This Court will consider "the statute's multiple legislative provisions as a whole." *Id.*

"This court has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized." *Id.* Moreover, "the court will not render any part of the statute meaningless, and will not read the statute's language so as to produce absurd or unreasonable results." *Id.*

The "Fees Provision" actually contains much more than the sentence on fees and costs in subsection 2. NRS 239.011. Other portions of NRS 239.011 discuss the circumstances under which a requester may bring an NPRA action,[10] the remedies available to a requester, and the priority the district court must give to

[10] LVRJ repeatedly emphasizes that the Court must follow the plain language of the NPRA — when it suits its purposes — but wants the Court to disregard the plain language of the statute when it does not. The plain language of NRS 239.011(1) provides that "[i]f a request for inspection, copying or copies of a public book or record open to inspection and copying *is denied*, the requester may apply to the district court" for an order permitting an inspection or requiring the governmental entity to provide a copy. Because the City never denied LVRJ's public records request, LVRJ's NPRA petition was improper from the start.

NPRA matters. *Id.* The sentence on fees provides "[i]f the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." *Id.*

LVRJ argues that the plain language of the Fees Provision means that "awarding fees and costs to a prevailing requester is mandatory, not optional — and there are no exceptions."[11] (Answering Brief at 39-40.) Aside from the fact that LVRJ's plain language reading of the Fees Provision ignores the equally important plain language of the Immunity Provision, LVRJ's interpretation does not consider the ordinary meaning of the word "entitle." According to *Merriam-Webster's* online dictionary, the word "entitle" means "to give a title to"; "to furnish with proper grounds for seeking or claiming something."[12] These ordinary definitions of the word "entitle" suggest that a prevailing party in an NPRA action

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[11] LVRJ cites to *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), as support for its interpretation of the Fees Provision. *Blackjack*, however, is inapposite because the Court's opinion does not address the Immunity Provision.

[12] https://www.merriam-webster.com/dictionary/entitle; *see also* https://www.dictionary.com/browse/entitled ("to give (a person or thing) a title, right, or claim to something; furnish with grounds for laying claim.").

is furnished with grounds to lay claim or seek a recovery of attorney's fees and costs, but being furnished with grounds to lay claim on attorney's fees does not mean an award of attorney's fees is automatic, and non-discretionary, as LVRJ contends.

The Fees Provision provides a prevailing requester with the ability to recover attorney's fees. However, the ability to recover fees is limited by the Immunity Provision, which provides that so long as a public officer or employee acts in good faith in determining whether to withhold or disclose information, they (and their employer) are immune from damages to requestors or other parties whom the information concerns. This plain language reading of the Fees Provision makes clear that attorney's fees in an NPRA action are not mandatory. A prevailing requester has grounds to claim attorney's fees, but further analysis, *i.e.* consideration of the Immunity Provision, is required.

Reading the Fees Provision as a whole with the Immunity Provision shows that the Immunity Provision limits a prevailing party's claim on attorney's fees, and *before attorney's fees are awarded* an immunity analysis must be conducted. If a requester prevails and the government entity is shown to have withheld a

public record in bad faith, then attorney's fees and costs are appropriate. On the other hand, if a requester prevails but the government entity is shown to have withheld a public record in good faith, then an award of attorney's fees and costs is not appropriate because the government agency is immunized from having to pay any damages.

LVRJ argues that while the Immunity Provision protects government entities from having to pay damages when they act in good faith, the term "damages" does not include attorney's fees. (Answering Brief at 43.) There is nothing in the NPRA, however, supporting that interpretation.

LVRJ does not dispute that the term "damages" is not defined in the NPRA, nor does it dispute that the term can be used broadly to cover a range of losses and injuries. Further, courts have determined that the term "damages" can include attorney's fees in certain situations. *See e.g., Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957-58, 35 P.3d 964, 970 (2001), clarified by *Horgan v. Felton*, 123 Nev. 577, 584, 170 P.3d 982, 986 (2007). At a minimum, the term "damages" in the Immunity Provision is ambiguous, as it is unclear from the ordinary meaning of the term whether the legislature intended it to cover all

forms of monetary liability, including attorney's fees, or not. Accordingly, the Court must look to legislative history and rules of statutory interpretation to determine the legislature's intent. *Orion Portfolio Servs.*, 126 Nev. at 402.

2. Legislative history supports the City's interpretation of the NPRA.

The legislative history regarding the Fees Provision and Immunity Provision supports the City's interpretation that a court must consider the Immunity Provision when deciding a motion for attorney's fees and costs. As explained in the City's Opening Brief, the Legislative Commission's subcommittee to study the laws governing public books and records ("Subcommittee") published a comprehensive study of Nevada Laws Governing Public Books and Records before the Sixty-Seventh legislative session. The Subcommittee made various recommendations to the legislature to change the NPRA. (IV JA623-633.) One such recommendation from the Subcommittee was to:

> Enact legislation which provides that where access is denied, the complaining party may directly appeal to a court of competent jurisdiction seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide that court costs and attorneys' fees are awardable if the requester prevails.

(IV JA631 (emphasis added).)[13] The Subcommittee also recommended a grant of governmental immunity related to public records requests:

> Enact legislation providing that governmental entities and employees are ***immune from suit and liability*** if they act in good faith in disclosing or refusing to disclose information.

(IV JA633.) Thus, the recommendation from the Subcommittee was to immunize governmental entities from *suits* and any *liability* if they acted in good faith. The Subcommittee's recommendation is consistent with the City's interpretation of the Immunity Provision, *i.e.* that the legislature intended the word "damages" to mean monetary liability, which necessarily includes attorney's fees. In its Opening Brief, the City argued that this interpretation makes sense because: (1) attorney's fees are the only likely damages available to a party who has been denied a public record by a governmental entity; and (2) in the context of public records requests, the cost of hiring an attorney to obtain a court order mandating the production of a public

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[13] LVRJ argues that because this recommendation was not in the same section of the report as the recommendation regarding governmental immunity, the two provisions are "conceptually distinct." (Answering Brief at 60.) LVRJ's argument, however, misses the mark. The Fee Provision recommendation appears in *two places* in the report, one of which is right next to the Immunity Provision recommendation. (IV JA633 – *see* recommendations 21 and 22.) Further, the Fees Provision and Immunity Provision were put right next to each other in A.B. 365 (1993), in sections 2 and 3, respectively. (I RA105.) If anything, this shows the two provisions were meant to be read together.

record that has been withheld in bad faith is the "damage" or loss for which a prevailing party should be compensated. (Opening Brief at 40.)

LVRJ's Answering Brief goes to great lengths to conjure up hypothetical scenarios and find cases from other jurisdictions to show it could be possible for a person to be damaged by a governmental entity's disclosure or non-disclosure of a public record, aside from incurring attorney's fees. (Answering Brief at 50-56.) The City never argued that such damages were impossible; rather, it simply argued that the most "likely" damages a requester or other person would incur is attorney's fees. The City's argument is supported by the fact that LVRJ cannot point to a single Nevada case (and the City is unaware of any) where a government entity was sued for damages not related to attorney's fees in connection with its disclosure or withholding of a public record.

Other portions of the legislative history provide further support for the City's position. For example, Ande Engleman from the Nevada Press Association testified at the Assembly Subcommittee on Government Affairs as follows:

> Taxpayers were also paying the fees for the agency Mr. Bennett observed. The question was, should the taxpayers, in general, have to cover those costs when the suit might be rather frivolous. Ms. Engleman noted the bill did not grant court costs and attorneys' fees if

> a suit was over a record everyone had though [sic] to be confidential. **Court costs and attorneys' fees were granted only when it was a denial of what was clearly a public record**. Therefore, she did not think there would be frivolous lawsuits.

(IV JA639.) LVRJ tries to explain away this testimony, but it plainly shows that the intent was to only award attorney's fees and costs when a government entity is engaging in *bad faith* conduct, *i.e.* denying access to what is clearly a public record.

The minutes of the Assembly Subcommittee also reflect this exchange between the Subcommittee chairman, Rick Bennett, and Ms. Engleman:

> Mr. Bennett questioned the aspect of the judge's discretion in determining who should be awarded costs. Ms. Engleman opined the courts were generally very conservative. If an agency had truly withheld a record which should have been public, Mr. Bennett said he hoped the court <u>would</u> penalize the agency in some way by making them pay the costs.

(I RA81 (emphasis in original).) Again, this shows that the intent was to award "costs" in those situations where "an agency had truly withheld a record which should have been public." (*Id.*) But where an agency acts in good faith, such as the City in this matter, attorney's fees and costs should not be awarded.

The City's interpretation of NRS 239.012 was adopted by the district court in *Las Vegas Review Journal v. Steven Wolfson*, Case No. A-14-711233-W. (IV

JA637-642.) While a district court decision is not binding on this Court, the district court's rationale in *Wolfson* is persuasive, and correct. Having analyzed the legislative history of A.B. 365 (the bill proposing the Fees Provision and the Immunity Provision), the district court noted that the discussion about the Fees Provision and the Immunity Provision continually overlapped. (IV JA639.) The district court concluded that "based on a review of the legislative minutes, fees and costs were intended to be linked with the 'good faith' immunity exception of what is now NRS 239.012." (IV JA640.) This Court should reach the same result as the district court in *Wolfson* and reverse Judge Bailus's Fee Order.

3. The City's position is consistent with reason and public policy.

When interpreting an ambiguous statute, in addition to looking to legislative history, the Court also construes the statute in a manner that is consistent with reason and public policy. *State v. Lucero,* 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011).

LVRJ insists that the Court must award attorney's fees to a prevailing party because such an interpretation furthers the NPRA's purpose of providing access to public records. (Answering Brief at 37-38; 40-41.) According to LVRJ, awarding

attorney's fees "furthers the NPRA's overarching mandate of transparency by incentivizing governmental entities to comply with requests in a timely manner that does not necessitate the district court's intervention." (Answering Brief at 38.) LVRJ argues that "[w]ithout this provision, intransigent government agencies could easily defeat the purpose of the NPRA by forcing members of the public to incur the costs associated with court actions." (*Id.*)

LVRJ's policy argument is flawed for at least two reasons. First, the notion that "intransigent government agencies" could easily defeat the purpose of the NPRA by withholding public records with impunity is plain wrong. Under the City's interpretation of the NPRA, government agencies who are clearly not following the NPRA will be liable to a prevailing party for attorney's fees and costs because they are not acting in good faith. Thus, any "bad actors" would still be penalized for not complying with the NPRA.

Second, while awarding attorney's fees may incentivize government entities *acting in bad faith* to comply with the NPRA, it does nothing to incentivize those entities — like the City — who are *acting in good faith* believing they already are complying with the NPRA. Thus, an award of attorney's fees against an entity

already acting in good faith provides no incentive to change its behavior at all, nor should it because the entity is acting in good faith.

LVRJ's interpretation of the Fees Provision and Immunity Provision encourages lawsuits and discourages collaboration. As set forth above, requesters will be less inclined to work with an agency to resolve disputes and will rush to file unnecessary lawsuits as a tactic to obtain attorney's fees. Awarding attorney's fees only in those situations where a government entity has acted in bad faith achieves a proper balance. Taxpayers will not be required to pay attorney's fees for unnecessary lawsuits involving good faith conduct, but will be on the hook for bad faith behavior in violation of the NPRA.

C. To the Extent the Court Determines LVRJ Is Entitled to Attorney's Fees and Costs, It Should Affirm the Amount Awarded by the District Court.

To the extent the Court concludes that LVRJ is a prevailing party and that the City is not immune from having to pay attorney's fees and costs under NRS 239.012 (which the City does not concede), it should affirm the District Court's attorney's fee award in the amount of $9,010.00 and costs in the amount of $902.84. (V JA767-68.)

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"In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by reason and fairness.'" *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.* At 549. "[W]hichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors enumerated by this court in *Brunzell v. Golden Gate National Bank*, namely, the advocate's professional qualities, the nature of the litigation, the work performed, and the result." *Id.*

Express findings on each *Brunzell* factor "are not necessary for a district court to properly exercise its discretion." *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1143 (2015). "Instead, the district court need only demonstrate that it considered the required factors, and the award must be supported by substantial evidence." *Id.* "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012). "A district court's award of attorney fees and costs will not be disturbed on appeal unless the district court abused its discretion in making the award." *U.S. Design & Constr. Corp. v. Int'l Bd. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002).

In *Logan v. Abe*, the district court awarded the defendants attorney's fees in the amount of $71,907.50 because the plaintiff rejected the defendants' offer of judgment and subsequently lost at trial. 350 P.3d at 1141. On appeal, the plaintiff argued that the defendants were not entitled to recover attorney's fees because they did not demonstrate that the award satisfied the *Brunzell* factors. *Id.* at 1143. This Court rejected the plaintiff's argument and affirmed the attorney's fee award. *Id.*

In reaching its decision, this Court explained that "[s]ince the district court demonstrated that it considered the *Brunzell* factors, its award of attorney fees will be upheld if it is supported by substantial evidence." *Id.* This Court determined that substantial evidence existed to uphold the attorney's fee award because the district court "comment[ed] favorably on the quality of the work performed by" the defendants' attorneys and "considered the attorneys' invoices[.]" *Id.* Based on this evidence, the Court concluded that "the district court did not abuse its discretion in awarding attorney fees." *Id.*

The recent case *Mei-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, is also instructive. 134 Nev. Adv. Op. 31, 416 P.3d 249 (2018). In *Peppermill*, this Court concluded that the district court's award of attorney's fees was supported by substantial evidence. *Id.* at 259. Specifically, the Court found that:

> the district court's order awarding attorney fees to Peppermill commented favorably on the quality of the work by the attorneys for both parties, recognized that the case involved complex issues regarding the NTSA, and provided that it has considered the necessary documents and enumerated factors under *Beattie* and *Brunzell*. The

> parties also extensively argued the factors below. Finally, Peppermill submitted documentation of its attorneys' invoices. Accordingly, we conclude that the district court demonstrated that it considered the required factors.

Id. The plaintiff argued that the district court erred in refusing to discount Peppermill's attorney's fees based on inadequate consideration of the *Brunzell* factors. *Id.* But this Court rejected the plaintiff's argument because "the district court's familiarity with the work quality of the parties' attorneys and the submitted invoices permitted the district court to properly consider the *Brunzell* factors." *Id.* n.7.

Here, LVRJ contends that the District Court abused its discretion in awarding LVRJ only a portion of its attorney's fees because it did not sufficiently consider the *Brunzell* factors. (Answering Brief at 64.) LVRJ's argument is misplaced because the District Court expressly stated that it considered the *Brunzell* factors, and there is substantial evidence in the record supporting the amount awarded. (V JA767.)

The parties' legal briefs concerning LVRJ's request for attorney's fees discussed the *Brunzell* factors, and LVRJ's brief attached a declaration from its attorney and copies of the attorneys' billing statements for the District Court's

consideration. (IV JA466-526; IV JA545-49.) The City's Opposition to LVRJ's Fee Motion highlighted that: (1) LVRJ did not prevail on any of its claims for relief, (2) the District Court found that the City complied with its obligations under the NPRA, (3) the District Court ruled in the City's favor with respect to its Withholding Log, and (4) that the work LVRJ performed with respect to its Original Petition was separate and distinct from the work LVRJ performed in connection with its Amended Petition (and therefore any attorney's fee award should exclude fees for work related to the Amended Petition.). (IV JA530-49.)

At the hearing on LVRJ's Fee Motion, Judge Bailus told the parties: "I thought the briefing was excellent. I mean, obviously, you both are excellent attorneys in making argument." (IV JA680; *see also* IV JA684 (Judge Bailus stating: "You made my decision-making hard — you both did an excellent job — so I am going to take it under advisement.") Later, during the hearing, Judge Bailus told LVRJ: "And just so you know, I did review your bill. I went through it and, again, I will note what you're waiving." (IV JA682.)

Judge Bailus took the Fee Motion under advisement and directed the parties to return one week later for his decision. (IV JA684-85.) At the follow-up

hearing, Judge Bailus stated: "*I took this under review, went back and reviewed everything*, including some supplemental briefing on the case law." (IV JA692 (emphasis added).) Judge Bailus ruled that LVRJ was "the prevailing party as to obtaining the records" but that it was "not the prevailing party under your amended petition on the other aspects, pursuant to the [Substantive Order]." (IV JA693-94.) In other words, Judge Bailus concluded that LVRJ only prevailed on a very limited issue, and did not succeed on any of its claims for relief in the Amended Petition.[14]

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[14] LVRJ contends that all of its claims were interrelated and therefore it should have been awarded all of its attorney's fees because the work its attorneys performed, even on the unsuccessful claims, could not reasonably be separated. (Answering Brief at 27-29.) Wrong. First, as explained above, the relief sought in the Original Petition differed materially from the relief sought in the Amended Petition and the work related to each petition is easily distinguishable in LVRJ's attorneys' invoices. Second, the claims raised in the Amended Petition are not interrelated at all. The analysis regarding whether the City's Withholding Log was accurate and complete (the City prevailed on this issue) is separate and distinct from whether LVRJ is entitled to declaratory and injunctive relief invalidating the City's Municipal Code regarding the assessment of fees for extraordinary use of personnel (these claims were found to be moot). Because LVRJ's claims were unrelated, the District Court's fee award correctly excluded time expended on unsuccessful claims. *See Hensley v. Eckerhart*, 461 U.S. 424, 434–35 (1983) ("In some cases a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories. In such a suit, even where the claims are brought against the same defendants . . . counsel's work on one claim will be unrelated to his work on another claim. Accordingly, work on an unsuccessful claim cannot be deemed to have been "expended in pursuit of the ultimate result achieved.")

With respect to the amount, Judge Bailus was persuaded by the City's argument in its Opposition to the Fee Motion that any fees awarded to LVRJ should be limited to the work it performed on the Original Petition (even though it had been superseded and was null), which was $8,500. (IV JA694.) Judge Bailus stated: "In reviewing this, the briefing, and applying the *Brunzell* factors, I am going to award the Las Vegas Review-Journal, as reasonable attorneys' fees, $9,010 in attorneys' fees, and $902.84 in costs." (IV JA694-95.) Judge Bailus told the parties that he gave LVRJ a "little bit more" than the $8,500 proposed by the City "for having to come to court and argue and things of that nature." (IV JA695.) Judge Bailus stated multiple times during the hearing that he applied the *Brunzell* factors. (IV JA694-95.)

The District Court's Fee Order expressly states that it "*reviewed the papers and pleadings filed herein, including the documentation provided by the Review-Journal regarding the work performed by its counsel and support staff*" and that it "*considered the Brunzell factors*." (V JA767 (emphasis added).) The Fee Order included a chart identifying the billing rates, number of hours worked, and total

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billed for each attorney/biller. (V JA765.) The Fee Order also noted that the City did not dispute the billing rates for LVRJ's attorneys or support staff. (*Id.*)

Judge Bailus's statements at the hearings on the Fee Motion and in the Fee Order, coupled with the substantial evidence in the record and the parties' legal briefs pertaining to the *Brunzell* factors, demonstrates that Judge Bailus did not abuse his discretion in awarding LVRJ only a portion of its attorney's fees. While the City maintains that LVRJ did not prevail on any significant issue in this case (and should have received nothing), the District Court found that it prevailed on a limited issue, but did not prevail under any aspect of its Amended Petition. (IV JA693-94.) Such statements show that Judge Bailus considered the fourth *Brunzell* factor, *i.e.* the result achieved.

The overall success in a case is one of the most critical factors in awarding attorney's fees. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (where a "plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount. This will be true even where the plaintiff's claims

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were interrelated, nonfrivolous, and raised in good faith."). Because LVRJ achieved only limited "success," the District Court correctly awarded limited fees.

Judge Bailus's comments relating to the quality of the briefing and advocacy of the parties' attorneys show that he considered the first *Brunzell* factor, *i.e.*, the qualities of the advocate. (IV JA680; IV JA684.) Judge Bailus's Fee Order states that he reviewed the papers and pleadings and the documentation provided by LVRJ regarding the work its attorneys and support staff performed. (V JA767.) This shows that he considered the third *Brunzell* factor, *i.e.*, the work performed by the lawyer. Finally, in light of the briefing and arguments of counsel related to the NPRA, Judge Bailus decided to take the Fee Motion under advisement for a week. (IV JA684-85.) During this time, he reviewed everything again, including some supplemental briefing on the case law. (IV JA692.) This shows that Judge Bailus considered the character of the work performed, the second *Brunzell* factor.

The record amply shows that — as Judge Bailus expressly stated in the Fee Order — he considered the *Brunzell* factors in making his decision. The record also shows that substantial evidence exists to support the award. In *Logan*, this Court determined that substantial evidence existed to uphold a fee award because

the district court "comment[ed] favorably on the quality of the work performed by" the defendants' attorneys and "considered the attorneys' invoices[.]" 350 P.3d at 1143. Like the district court judge in *Logan*, Judge Bailus also commented favorably on the quality of the work performed and stated that he considered LVRJ's attorneys' invoices. (IV JA680; V JA767).

This Court also found that substantial evidence existed in *Peppermill* where the district court commented favorably on the quality of the work by the attorneys, recognized the complexity of the issues, and considered the necessary documents and factors under *Brunzell*. 416 P.3d at 259. The fact that the parties argued the factors to the district court and submitted documentation of attorney invoices was also considered in upholding the fee award. *Id.* Here, Judge Bailus likewise commented on the quality of the work by the attorneys, took the Fee Motion under advisement for a week, stated that he considered the *Brunzell* factors, reviewed the parties' legal briefs in which they argued the *Brunzell* factors, and reviewed LVRJ's attorneys' invoices. (IV JA 680; IV JA684-85; V JA767.) Accordingly, consistent with *Peppermill*, the Court should uphold the amount Judge Bailus awarded in this case.

VII. CONCLUSION

Based on the foregoing, this Court should reverse the District Court's decision to grant LVRJ a portion of its attorney's fees and costs. LVRJ is not entitled to any attorney's fees because it was not a prevailing party and the City is immune from having to pay attorney's fees and costs under NRS 239.012. If the Court concludes that LVRJ should be awarded attorney's fees and costs, the Court should not disturb the amount awarded by the District Court.

DATED this 11th day of February, 2019.

CITY OF HENDERSON

/s/ Dennis L. Kennedy
DENNIS L. KENNEDY
SARAH E. HARMON

-And-

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CITY OF HENDERSON

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Appellant/Cross-Respondent's Reply Brief on Appeal and Answering Brief on Cross-Appeal complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, in Times New Roman, 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations or NRAP 32(a)(7)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionally spaced, has a typeface of 14 points or more, and contains 10547 words.

3. Finally, I hereby certify that I have read this Appellant/Cross-Respondent's Reply Brief on Appeal and Answering Brief on Cross-Appeal, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all

applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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

DATED this 11th day of February, 2019.

BAILEY❖KENNEDY

By: */s/ Dennis L. Kennedy*
DENNIS L. KENNEDY
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CERTIFICATE OF SERVICE

I certify that I am an employee of Bailey❖Kennedy, and on the 11th day of February, 2019, service of the foregoing Appellant/Cross-Respondent's Reply Brief on Appeal and Answering Brief on Cross-Appeal was made by electronic service through the Nevada Supreme 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:

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ADDENDUM

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.010

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

Effective: July 1, 2018
Currentness

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

1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.558, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.16925, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.035, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449A.112, 450.140, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536,

483.340, 483.363, 483.575, 483.800, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.583, 584.655, 587.877, 598.0964, 598.098, 598A.110, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159, 711.600, and sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

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

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

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

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

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

Credits

Added by Laws 1911, c. 149, § 1. NRS amended by Laws 1963, p. 26; Laws 1965, p. 69; Laws 1993, pp. 1230, 2307, 2623; Laws 1995, pp. 503, 716; Laws 1997, c. 497, § 7; Laws 1999, c. 291, § 6, eff. May 26, 1999; Laws 2007, c. 435, § 8; Laws

2013, c. 98, § 1; Laws 2013, c. 414, § 3; Laws 2013, c. 414, § 3.5, eff. July 1, 2015; Laws 2015, c. 32, § 2, eff. May 6, 2015; Laws 2015, c. 123, § 8, eff. May 20, 2015; Laws 2015, c. 147, § 2.5, eff. Jan. 1, 2016; Laws 2015, c. 183, § 2, eff. May 25, 2015; Laws 2015, c. 201, § 7, eff. July 1, 2015; Laws 2015, c. 203, § 2, eff. May 27, 2015; Laws 2015, c. 226, § 1, eff. May 27, 2015; Laws 2015, c. 262, § 10, eff. July 1, 2015; Laws 2015, c. 279, § 2.5, eff. May 29, 2015; Laws 2015, c. 293, § 3, eff. Oct. 1, 2015; Laws 2015, c. 378, § 9.5, eff. Jan. 1, 2016; Laws 2015, c. 404, § 63, eff. Oct. 1, 2015; Laws 2015, c. 409, § 52, eff. Oct. 1, 2015; Laws 2015, c. 430, § 14.5, eff. Jan. 1, 2016; Laws 2015, c. 457, § 8, eff. July 1, 2015; Laws 2015, c. 494, § 3.7, eff. June 9, 2015; Laws 2015, c. 503, § 7, eff. Jan. 1, 2016; Laws 2015, c. 511, § 4, eff. June 10, 2015; Laws 2015, c. 521, § 6, eff. July 1, 2015; Laws 2015, c. 522, § 314, eff. July 1, 2015; Laws 2015, c. 533, § 2.5, eff. Jan 1, 2017; Laws 2015 (29th ss), c. 1, § 15, eff. Dec. 19, 2015; Laws 2017, c. 12, § 28, eff. Jan. 1, 2018; Laws 2017, c. 92, § 5, eff. July 1, 2017; Laws 2017, c. 99, § 7, eff. Oct. 1, 2017; Laws 2017, c. 114, § 2.7, eff. Oct. 1, 2017; Laws 2017, c. 119, § 10, eff. May 24, 2017; Laws 2017, c. 129, § 1.7, eff. July 1, 2018; Laws 2017, c. 157, § 6, eff. July 1, 2017; Laws 2017, c. 164, § 9, eff. Jan. 1, 2018; Laws 2017, c. 166, § 8, eff. Oct. 1, 2017; Laws 2017, c. 172, § 198, eff. July 1, 2017; Laws 2017, c. 183, § 10, eff. July 1, 2017; Laws 2017, c. 190, § 3, eff. May 27, 2017; Laws 2017, c. 212, § 4, eff. Oct. 1, 2017; Laws 2017, c. 275, § 41, eff. July 1, 2017; Laws 2017, c. 294, § 16, eff. Oct. 1, 2017; Laws 2017, c. 307, § 19, eff. July 1, 2017; Laws 2017, c. 314, § 42, eff. July 1, 2017; Laws 2017, c. 327, § 137, eff. June 3, 2017; Laws 2017, c. 338, § 23, eff. July 1, 2017; Laws 2017, c. 341, § 32, eff. July 1, 2017; Laws 2017, c. 363, § 33, eff. Jan. 1, 2018; Laws 2017, c. 376, § 163, eff. July 1, 2017; Laws 2017, c. 384, § 28, eff. July 1, 2017; Laws 2017, c. 401, § 17, eff. Jan. 1, 2018; Laws 2017, c. 461, § 18, eff. July 1, 2017; Laws 2017, c. 500, § 25, eff. July 1, 2017; Laws 2017, c. 506, § 29, eff. July 1, 2017; Laws 2017, c. 548, § 97, eff. Jan. 1, 2018; Laws 2017, c. 556, § 34, eff. July 1, 2017; Laws 2017, c. 568, § 11, eff. Jan. 1, 2018.

N. R. S. 239.010, NV ST 239.010
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature

End of Document

3

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.011

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

Effective: October 1, 2013
Currentness

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

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

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

as applicable.

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

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

Notes of Decisions (4)

N. R. S. 239.011, NV ST 239.011
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature

End of Document

4

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.012

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

Currentness

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

Credits
Added by Laws 1993, p. 1230.

N. R. S. 239.012, NV ST 239.012
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature

End of Document

6

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
Reproduction of Records

N.R.S. 239.055

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

Effective: October 1, 2013
Currentness

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

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

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

Notes of Decisions (3)

N. R. S. 239.055, NV ST 239.055
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature

End of Document

6

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

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

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

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

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

(Ord. No. 3450, § 1, 10-17-2017)