

CLERK OF THE COURT

1 **SAO**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

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6 Las Vegas, NV 89101

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9 *Counsel for Petitioner, Las Vegas Review-Journal*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

13 Petitioner,

14 vs.

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

STIPULATION AND ORDER

STIPULATION AND ORDER

17 COME NOW Plaintiff Las Vegas Review Journal ("LVRJ") and Defendant Clark
18 County School District ("CCSD") by and through their respective counsel, and hereby
19 stipulate and agree as follows:

20 1. Plaintiff may file one singular application for attorneys' fees regarding the above-
21 captioned case.

22 2. On January 26, 2017, Plaintiff filed its Public Records Act Application Pursuant
23 to Nev. Rev. Stat. § 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to
24 Nev. Rev. Stat. § 239.011 ("Original Application").

25 3. On February 22, 2017, this Court issued an order requiring CCSD to produce
26 certain documents.

27 4. Pursuant to Nev. R. Civ. P. Rule 54, the current deadline for the application for
28 attorneys' fees in connection with this Court's February 22, 2017 order is March 15, 2017.

5. On March 1, 2017, Plaintiff filed its Amended Public Records Act

1 Application/Petition for Writ of Mandamus ("Amended Application").

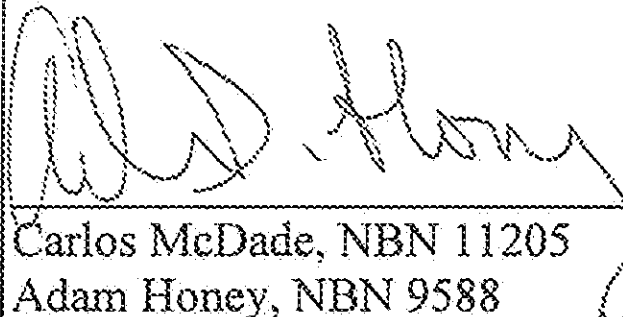
2 6. On March 14, 2017, this honorable Court has scheduled a status check regarding
3 outstanding issues pertinent to the Amended Application.


4 7. In the interests of efficiency, the parties stipulate and agree that Plaintiff may file
5 a singular application for fees within: (1) twenty (20) days after the March 14 status check
6 hearing, if no further briefing is ordered, or (2) twenty (20) days after a final order has been
7 entered in this Matter, whichever comes first.

8
9 IT IS SO STIPULATED.

10 DATED this 10th day of March, 2017. DATED this 6th day of March, 2017.

11
12 **CLARK COUNTY SCHOOL DISTRICT MCLETCHIE SHELL, LLC**

13
14 
15 Carlos McDade, NBN 11205
16 Adam Honey, NBN 9588
17 5100 W. Sahara Ave.
18 Las Vegas, NV 89146
19 Counsel for Respondent,
20 Clark County School District

21
22 
23 Margaret A. McLetchie, NBN 10931
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28 Las Vegas Review-Journal

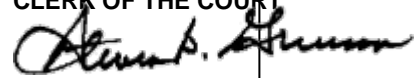
20
21 **ORDER**

22 IT IS SO ORDERED that Plaintiff may file a singular application for fees within:
23 (1) twenty (20) days after the March 14 status check hearing, if no further briefing
24 is ordered, or

25 (2) twenty (20) days after a final order has been entered in this Matter, whichever
26 comes first.

27 March 13, 2017
28 Date

27 
28 The Honorable Judge Timothy C. Williams



1 **NEOJ**
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9 *Counsel for Petitioner*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,
10
11

11 Petitioner,

12 vs.

Case No.: A-17-750151-W

Dept. No.: XVI

12 **NOTICE OF ENTRY OF ORDER**

13 CLARK COUNTY SCHOOL DISTRICT,
14
15

14 Respondent.

16 **NOTICE OF ENTRY OF ORDER**

17 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
18 PLEASE TAKE NOTICE that on the 11th day of July, 2017, an Order Granting
19 Writ of Mandamus as to Withheld Records and Requiring Depositions was entered in the
20 above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

21 DATED this 12th day of July, 2017.

22
23 /s/ Margaret A. McLetchie

24 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

25 ALINA M. SHELL, Nevada Bar No. 11711

26 **MCLEATCHIE SHELL LLC**

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Counsel for Petitioner

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CERTIFICATE OF SERVICE

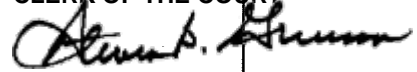
Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 12th day of July, 2017, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 12th day of July, 2017, I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Carlos McDade, General Counsel
Adam Honey, Asst. General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Counsel for Respondent, Clark County School District

/s/ Pharan Burchfield
An Employee of MCLETSCHIE SHELL LLC

EXHIBIT 1



ORDR

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

Petitioner,

Dept. No.: XVI

vs.

**ORDER GRANTING WRIT OF
MANDAMUS AS TO WITHHELD
RECORDS AND REQUIRING
DEPOSITIONS**

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

The Las Vegas Review-Journal's Amended Petition for Writ of Mandamus having come on for an additional hearing on June 27, 2017, the Honorable Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorneys, MARGARET A. MCLEATCHIE and ALINA M. SHELL, and Respondent CLARK COUNTY SCHOOL DISTRICT ("CCSD"), appearing by and through its attorneys, CARLOS M. MCDADE and ADAM HONEY, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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06:23898P57-68-PMI

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Original NPRA Request and Petition

1. On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the “Reporter”) sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”). The request sought certain documents pertaining to CCSD Trustee Kevin Child (the “Request”). The Reporter supplemented the Request on December 9, 2016 (“Supplemental Request”).

2. After CCSD failed to provide documents or assert any claim of confidentiality pursuant to Nev. Rev. Stat. § 239.0107, the Review-Journal initiated this action on January 26, 2017, requesting expedited consideration pursuant to Nev. Rev. Stat. § 239.011.

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing.

Reacted Records, Withheld Records, and Order on Redactions

4. CCSD did not produce the records in unredacted form. Instead, on February 8, 2017, CCSD produced the redacted records (“Redacted Records”)—as well as an unredacted corresponding set of records—to the Court and, later that day, provided a copy of the Redacted Records to the Review-Journal. It provided other versions of the Redacted Records (with fewer redactions) on February 10 and 13, 2017 and produced additional pages not previously identified (the “Additional Redacted Records”) on February 13, 2017.

5. CCSD also withheld records responsive to the December Requests.

6. On February 13, 2017, CCSD provided the Court and the Review-Journal an initial log listing the following bases for the redactions: Nev. Rev. Stat. § 386.230 and CCSD Regulations 1212 and 4110.

7. On February 13, 2017, CCSD also provided a revised version of the log including the Additional Redacted Records and asserting additional based for redactions.

8. The Court conducted an *in camera* review of the Redacted Records, the Additional Redacted Records, and the unredacted versions of both sets of records.

9. On February 14, 2017, the Court heard oral argument on the Review-Journal's Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal's Petition. (*See* February 22, 2017 Order, *see also* February 23, 2017 Notice of Entry of Order.)

10. The Court ordered CCSD to provide the Review-Journal with new versions of the Redacted Records and Additional Redacted Records with only "the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff" redacted. (*Id.* at ¶ 34.) The Court further specified that "CCSD may not make any other redactions" and must unredact the names of schools, teachers, and all administrative-level employees. (*Id.* at ¶ 35.)

11. The Court directed CCSD to comply with the Order within two days. (*Id.* at ¶ 36.) On February 24, 2017, CCSD produced new versions of the Redacted Records and Additional Redacted Records to the Review-Journal; these new versions of the Redacted Records totaled thirty-three (33) pages.

February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search Information

12. On February 10, 2017, the Review-Journal submitted a new records request to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-Journal also offered to work with CCSD to develop searches.

13. On February 15, 2017, counsel for the Review-Journal contacted CCSD to discuss the February request.

14. On February 17, 2017, CCSD notified the Review-Journal via email that it was unable to provide the records listed in the February Request within the five days mandated by Nev. Rev. Stat. § 239.0107(d).

15. In that same correspondence, CCSD set forth objections to the February Request.

1 16. On March 3, 2017, CCSD provided some documents in response to the
2 February Request.

3 17. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted
4 information pertaining to the names of individuals who reported a complaint or concern
5 about Trustee Child, information including potentially identifying information about
6 students, and personal phone numbers.

7 18. That same day, the Review-Journal requested CCSD provide a log of
8 withheld documents that were responsive to the February Request. The Review-Journal also
9 asked CCSD to provide it with search information.

10 19. CCSD responded to these requests via letter on March 13, 2017. In its letter,
11 CCSD indicated it had searched for the terms “Kevin Child” and “Trustee Child” in the
12 Interact email boxes of Superintendent Patrick Skorkowsky, Chief Academic Officer Mike
13 Barton, each School Associate Superintendent and each of the school principals in Trustee
14 Child’s district. Despite previous requests from the Review-Journal, that was the first time
15 CCSD provided any search term information.

16 20. CCSD did not inform the Review-Journal that it had limited the sources or
17 custodians it had searched. Instead, in response to the Review-Journal’s inquiry regarding
18 what documents were being withheld, CCSD asserted that “the only information that has not
19 been provided is internal information received or gathered by the District in the court of its
20 investigation of an alleged practice of unlawful practice of discrimination, harassment, or
21 hostile work environment which is confidential and not required to be disclosed under the
22 public records law.”

23 21. By email on March 13, 2017, CCSD also stated it was withholding one
24 document—a report prepared by Cedric Cole, CCSD’s Executive Manager of Diversity and
25 Affirmative Action, regarding an investigation his office had conducted into hostile work
26 environment allegations against Trustee Child (the “Cole Report”). The Review-Journal
27 responded to CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested
28 CCSD conduct additional email searches for responsive records from additional custodians.

22. The Review-Journal requested that CCSD search those records for documents pertaining to the topics outlined in the December and February Requests.

23. The Review-Journal also requested CCSD produce hard copy records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any other hard copy file CCSD maintains on Trustee Child that were responsive to the December and February Requests.

24. CCSD declined to produce the Cole Report and other documents created by the Office of Diversity and Affirmative Action Programs; on March 24, 2017, CCSD supplemented its privilege log to reflect that it was withholding records in addition to the records it had previously identified ("3/24/2017 Log"). This 3/24/2017 Log reflected that, in total, CCSD withheld only the following from documents produced in response to the December Requests and the February Request:

Investigative memoranda prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report") and Mr. Cole's investigative notes.

(See Exhibit E to March 29, 2017 Opening Brief in support of Amended Petition for Writ of Mandamus.)

25. By email on March 27, 2017, CCSD agreed to search school board trustees' email addresses. In its Answering Brief, CCSD also agreed to search emails of persons who sent or received, or were copies on, emails already produced, including cc's.

26. CCSD produced some emails of persons who sent or received prior responsive documents it indicated were responsive to the February Request on April 28, 2017, and produced some trustee emails it indicated were responsive to the February Request on May 3, 2017.

Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters

27. On May 9, 2017, the Court heard oral arguments on the Review-Journal's Amended Petition for Writ of Mandamus.

28. On June 6, 2017, the Court entered an Order finding that it has jurisdiction

1 over the Review-Journal's Amended Petition.

2 29. The Court also granted the Review-Journal's Amended Petition as to the
3 request that CCSD conduct email searches responsive to the December Requests and the
4 February Requests for the additional custodians requested by the Review-Journal.
5 Specifically, the Court ordered CCSD to conduct email searches responsive to the Review-
6 Journal's December and February Requests of the additional custodians. (June 6, 2017 Order
7 at ¶ 45.)

8 32. The Court directed CCSD to complete this search and produce all
9 responsive records it does not contend are confidential to the Las Vegas Review-Journal by
10 June 6, 2017. (June 6, 2017 Order at ¶ 46.)

11 33. Further, the Court ordered that with regard to any documents CCSD had
12 withheld and/or redacted to date and any additional responsive documents it identifies in
13 response to the additional email and hard copy searches it is required to perform but contends
14 are confidential and/or privileged, CCSD was to create a single log numbering and
15 identifying each document withheld or redacted (in response to either the December Requests
16 or the February Request) by providing a factual description of each record withheld (by
17 listing to, from, date, and general subject) as well as a specific explanation for non-disclosure
18 for each document withheld or redacted (including confidentiality being claimed, and basis
19 for claim). The Court further ordered that the log must provide sufficient information to the
20 Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted.
21 The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017,
22 along with all redacted documents and documents being withheld for an *in camera* review.
23 The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas
24 Review-Journal. (June 6, 2017 Order at ¶ 47.)

25 34. Additionally, the Court ordered CCSD to provide the Court with a
26 certification by June 6, 2017 attesting to the accuracy of the searches conducted and
27 evidencing that CCSD had fully searched the sources set forth in Paragraph 45 for records
28 responsive to the December Requests and February Request by detailing the sources

1 searched, date searches were conducted, and the search terms used to locate responsive
2 documents. The Court ordered CCSD to provide a copy of the updated privilege log and the
3 certification to the Las Vegas Review-Journal by June 6, 2017. (June 6, 2017 Order at ¶ 48.)

4 ***Further Facts Pertinent to CCSD's Certifications and Withheld Records***

5 35. On May 30, 2017, CCSD submitted the redacted and withheld documents
6 to the Court for *in camera* review. It additionally provided the Court with two certifications
7 to meet the certification requirement and a privilege log. ("Final Log")

8 36. Unbeknownst to the Court, and despite its representation to the undersigned,
9 CCSD counsel did not provide a copy of either of these documents to the Review-Journal at
10 that time.

11 37. On June 5, 2017 CCSD provided an additional thirty-eight pages of
12 documents that it located after conducting the additional searches ordered by this Court.

13 38. At a hearing held on June 6, 2017 the Court made clear it has expected
14 CCSD to engage in the routine practice of providing privilege logs and certifications to
15 opposing counsel in conjunction with *in camera* submissions. At the hearing, CCSD counsel
16 did finally provide a copy of the Final Log and, later that day, provided copies of the
17 certifications it had provided to the Court a week earlier.

18 39. One certification submitted by CCSD was from Dan Wray, CCSD's Chief
19 Technology Officer. Mr. Wray's certification states that he conducted several searches "of
20 email boxes" between December 9, 2016 and May 15, 2017.

21 40. CCSD also provided a second certification from Public Information Officer
22 Cynthia Smith-Johnson. It explains that "I have personally reviewed 11,907 emails provided
23 by Dan Wray."

24 ///

25 ///

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41. In the Final Log, CCSD stated it is withholding the following documents in their entirety on the basis of the privileges it describes as “Office of Diversity and Affirmative Action Privileges:”

- CCSD 034-060; and
- CCSD 0159-0233.

In the Final Log, CCSD has summarized these documents as follows:

To the best of CCSD’s knowledge, the only information that has not been provided to Petitioner is internal information received or gathered by Cedric Cole, Executive Director, Office of Diversity and Affirmative Action, in the course of his investigation regarding Trustee Child ...

(Exh. GG to June 13, 2017 Review-Journal Memorandum at LVRJ007.)

49. The Final Log also cites CCSD Regulation 4110(X) to justify non-disclosure of the 102 pages of documents it is withholding. That Regulation states that

All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law.

(*Id.* at LVRJ022.)

50. CCSD also claims that the NPRA does not require the release of confidential employee personnel information. (*Id.* at LVRJ023.)

51. In addition, CCSD claims in its Final Log that the records of its investigation of Trustee Child should be kept confidential pursuant to Title VII and guidance from the Equal Opportunity Employment Commission (“EEOC”). (*Id.* at LVRJ019-LVRJ021.)

52. CCSD also claims that withheld internal information it obtained during its investigation of allegations of discrimination or harassment by Trustee Child is subject to the deliberative process privilege because the information “was used as part of the deliberative and decision-making process of District executives” in crafting the Cole Memorandum. (*Id.* at LVRJ023.)

53. CCSD asserts that any withheld information which might constitute “worksheets, drafts, informal notes, or ad hoc reports,” it qualifies as “nonrecord material”

under NAC 239.051. (*Id.*)

54. The Review-Journal submitted a Memorandum responding to CCSD's Final Log on June 13, 2017.

55. Subsequently, on June 19, 2017 CCSD provided a two-page letter dated May 31, 2017 from Superintendent Skorkowsky to Trustee Child.

56. Additionally, on June 26, 2017, CCSD provided an additional three pages of documents responsive to the Review-Journal's December and February Requests.

57. This Court held a hearing on CCSD's Final Log and May 30, 2017 *in camera* submission on June 27, 2017.

58. At that hearing, CCSD asserted for the first time that in addition to the privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which provides for the creation and regulation of the Nevada Equal Rights Commission—applied to investigations conducted by CCSD's Office of Diversity and Affirmative Action. Specifically, CCSD asserted at the hearing that information pertaining to investigation of allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. § 233.190.

59. To date, CCSD has disclosed 174 pages of documents to the Review-Journal, some of which have been redacted, and has withheld 102 pages.

II.

ORDER

60. The purpose of the NPRA is to “foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]” Nev. Rev. Stat. § 239.001(1). Thus, the NPRA reflects and embodies the public's right to know and scrutinize the conduct of governmental entities and officials,

61. To fulfill these purposes, the NPRA must be construed liberally, and any limitation on the public's access to public records must be construed narrowly. Nev. Rev. Stat. § 239.001(2) and § 239.001(3).

62. The Nevada Legislature has made it clear that—unless they are explicitly

1 confidential—public records must be made available to the public for inspection or copying.
2 Nev. Rev. Stat. § 239.010(1); *see also* *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,
3 266 P.3d 623, 627 (2011).

4 63. The term “record” as used in the NPRA is to be interpreted broadly. *See*
5 Nev. Rev. Stat. § 239.001(2); *see also* *Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting
6 that the Nevada legislature intended the provisions of the NPRA to be “liberally construed
7 to maximize the public’s right of access”).

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

12 65. If a statute explicitly makes a record confidential or privileged, the public
13 entity need not produce it. *Id.*

14 66. If a public record contains confidential or privileged information only in
15 part, in response to a request for access to the record, a governmental entity shall redact the
16 confidential information and produce the record in redacted form. Nev. Rev. Stat. §
17 239.010(3)

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

24 68. In balancing those interests, “the scales must reflect the fundamental right
25 of a citizen to have access to the public records as contrasted with the incidental right of the
26 agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of*
27 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.
28 27, 359 P.2d 413, 421–22 (1961)).

1 69. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court
2 hereby finds that the privileges cited by CCSD do not justify withholding the requested
3 records from the Review-Journal. CCSD has not proven by a preponderance of the evidence
4 that the withheld records are confidential or privileged such that withholding the records in
5 their entirety is justified, nor has it proven by a preponderance of the evidence that any
6 interest in nondisclosure outweighs the strong presumption in favor public access.

7 70. In addition, rather than explain how each document on its Final Log was
8 privileged, CCSD instead analyzed them all together. (Exh. GG to June 13, 2017 Review-
9 Journal Memorandum at LVRJ001-LVRJ005.) Accordingly, CCSD did not meet its burden
10 of showing how each document it was withholding was confidential or privileged.

11 ***CCSD Regulation 4110(X)***

12 71. Turning first to CCSD's reliance on CCSD Regulation 4110(X), the Court
13 finds that CCSD's internal regulations do not carry the force of law such that they could
14 render a public record confidential. Rather, as set forth in CCSD Policy 0101, CCSD
15 Regulations are meant to provide "details and procedures" for CCSD operations.

16 72. The Court additionally finds that CCSD Regulation 4110(X) only provides
17 for the confidentiality of "information gathered by the District in the course of an
18 investigation of an alleged unlawful discriminatory practice." Thus, it does not apply to
19 investigations of harassment or sexual harassment.

20 73. Even if CCSD Regulation 4110(X) applied to the withheld documents and
21 could be relied on in an NPRA matter, the disclosure of documents regarding CCSD's
22 investigation of harassment allegations against Trustee Child is necessary to "serve other
23 significant needs" as contemplated by the Regulation. Specifically, the disclosure of withheld
24 documents serves the significant need of providing the public information about the alleged
25 misconduct of an elected official and CCSD's handling of the related investigation.

26 74. Moreover, disclosure of the documents is necessary to "comply with law"
27 as contemplated by CCSD Regulation 4110(X). Specifically, disclosure is necessary to
28 comply with the NPRA.

1 75. Finally, even if CCSD Regulation 4110(X) did not contain the
2 aforementioned exceptions, the Court cannot apply the Regulation in a manner that conflicts
3 with the NPRA's mandates that the NPRA must be "construed liberally," Nev. Rev. Stat. §
4 239.001(2), and that "[a]ny exemption, exception or balancing of interests which limits or
5 restricts access to public books and records by members of the public must be construed
6 narrowly." Nev. Rev. Stat. § 239.001(3); *see also Lamb v. Mirin*, 90 Nev. 329, 332, 526 P.2d
7 80, 82 (1974) ("Whenever a legislature sees fit to adopt a general scheme for the regulation
8 of particular subject, local control over the same subject, through legislation, ceases.").

9 ***Deliberative Process Privilege***

10 76. The Court further finds that the deliberative process privilege does not
11 justify withholding the requested documents. The deliberative process privilege protects
12 high-level decision-making—not the information relied on in the decision-making process.
13 *DR Partners v. Board of County Com'rs of Clark County*, 116 Nev. 616, 623, 6 P.3d 465,
14 469 (2000).

15 77. As the Nevada Supreme Court explained in *DR Partners*, "[t]o qualify as
16 part of 'deliberative' process, the materials requested must consist of *opinions*,
17 *recommendations, or advice about agency policies.*" *Id.* (emphasis added). To qualify as part
18 of the deliberative process, "the documents must be 'pre-decisional,' *i.e.*, they must be
19 generated antecedent to the adoption of agency policy." *Paisley v. C.I.A.*, 712 F.2d 686, 698
20 (D.C. Cir. 1983), *vacated in part on other grounds by* 724 F.2d 201 (D.C. Cir. 1984) (citation
21 and quotation omitted). Additionally, "the documents must be 'deliberative' in nature,
22 reflecting the 'give-and-take' of the deliberative process and containing opinions,
23 recommendations, or advice about agency policies." *Id.* (citations omitted).

24 78. The Nevada Supreme Court has also explained that the deliberative process
25 privilege is conditional. *DR Partners*, 116 Nev. at 626, 6 P.3d at 471. Once a governmental
26 entity establishes that a document is privileged, the burden shifts to the party seeking
27 disclosure to "demonstrate that its need for the information outweighs the regulatory interest
28 in preventing disclosure." *Id.*

1 79. Further, in a case involving the NPRA, after the party seeking disclosure
2 has made that showing, a court must still “engag[e] in the weighing process mandated by
3 *Bradshaw*.” *Id.*

4 80. CCSD has not met its burden of proving that this privilege applies, let alone
5 that it outweighs disclosure. In contrast, the Review-Journal has established that its need for
6 the information outweighs any interest in preventing disclosure, sufficient to overcome any
7 deliberative process privilege. Even if CCSD had established that the deliberative process
8 privilege applies to any of the withheld documents, it has not established that its interest in
9 secrecy outweighs the public’s compelling interest in knowing about the alleged actions of
10 an elected official.

11 ***Chapter 233 of the Nevada Revised Statutes***

12 81. The Court further finds that Chapter 233 of the Nevada Revised Statutes
13 does not apply to CCSD’s Office of Diversity and Affirmative Action, as that office is not a
14 federal governmental entity, nor is it a state agency. Even if it did, Nev. Rev. Stat. § 233.190
15 does not pertain to closed investigations.

16 ***Nonrecords***

17 82. The Court also finds the withheld documents are not “non-records” under
18 NAC 239.051. Contrary to CCSD’s assertions, drafts and informal notes pertaining to its
19 investigation plainly serves as the record of an official action by CCSD—to wit, enacting a
20 policy to protect members of the CCSD community from the alleged misbehavior of Trustee
21 Child.

22 83. CCSD’s argument that the documents may be withheld pursuant NAC
23 239.705 is likewise unavailing. NAC 239.705 is an administrative regulation defining official
24 state records subject to retention (and nonrecords exempt from retention) that couples with
25 Nev. Rev. Stat. § 239.080, a statute pertaining to the retention and disposition of state records.
26 (*See Op. Br.*, pp. 21:24-22:11.) Moreover, NAC 239.705 applies only to records maintained
27 by a governmental entity “as evidence of the organization’s functions, policies, decisions,
28 procedures, operation or other activities.” NAC 239.705. Accordingly, none of the records

1 withheld by CCSD qualify as “non-records” under this section of the Nevada Administrative
2 Code.

3 *Title VII*

4 84. The Court finds that CCSD’s duties under Title VII to promptly investigate
5 sexual harassment claims and provide appropriate relief does not establish that it is entitled
6 to withhold documents pertaining to Kevin Child from the public.

7 85. There is no absolute confidentiality or privilege regarding sexual
8 harassment investigations conducted by a non-employer. While the Nevada Supreme Court
9 has not addressed this specific issue, other courts have found that records pertaining to school
10 districts’ investigations and findings of sexual harassment are public records. *See, e.g.,*
11 *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 136 Cal. Rptr.
12 3d 395 (Cal.2012) (finding that release of an investigation report and disciplinary record of
13 a sexually harassing teacher was warranted under California’s public records act due to the
14 public’s right to know, even where an explicit privacy statute was also implicated); *see also*
15 *Deseret News Pub. Co. v. Salt Lake County*, 182 P.3d 372, 27 IER Cases 1099 (Utah 2008)
16 (holding that a sexual harassment investigation report should be produced because the report
17 “provides a window ... into the conduct of public officials.”). Moreover, any concern
18 regarding confidentiality can be addressed through redaction, consistent with Nev. Rev. Stat.
19 § 239.010(3).

20 86. In addition to the general presumption of access to public records, there are
21 three reasons why—even if a valid claim of confidentiality applied that was not met by
22 redaction—the interest in disclosure would outweigh the interest in confidentiality. First, the
23 records pertain to the conduct of a government official. Second, the interest in access to such
24 information is especially great in this case because the government official is an elected
25 school board trustee. Third, the information sought pertains to the conduct of a governmental
26 entity. In this case, the records provide a window into the government’s investigation of
27 allegations of sexual and other misconduct of a government official. *Deseret News*, 182 P.3d
28 at 383 (“the investigative report provides a window, opaque as that window may be, into the

1 conduct of public officials that is not available by other means”). Each of these reasons weigh
2 strongly in favor of disclosure.

3 *Other Privileges*

4 87. With regard to the other privileges asserted by CCSD, including the
5 attorney-client privilege asserted as to the document Bates labeled 0189-0195, the Court
6 finds CCSD has not met its burden of establishing these privileges apply to the withheld
7 documents, nor has it established that any of those privileges outweigh the public’s right of
8 access to those records.

9 88. Accordingly, the Court hereby orders CCSD to produce withheld
10 documents to the Court by June 30, 2017. Pursuant to the Court’s February 23, 2017 Order,
11 CCSD may redact the names of direct victims of sexual harassment or alleged sexual
12 harassment, students, and support staff. The Court will then provide the documents to the
13 Review-Journal.

14 *CCSD’s Certifications*

15 89. As to CCSD’s certifications regarding its searches for responsive
16 documents, the Review-Journal raises valid concerns regarding CCSD’s searches for and
17 production of the requested records. The Review-Journal also raises valid concerns that the
18 certifications do not establish the accuracy or completeness of CCSD’s searches for
19 responsive documents. For example, neither the Wray Certification nor the Smith-Johnson
20 Certification address the hard copy searches CCSD was required to conduct pursuant to
21 Paragraph 45 of this Court’s June 6, 2017 Order.

22 90. The Wray Certification does not make clear what was done with the results
23 of the searches. Mr. Wray further stated that “[t]o the best of my knowledge, between May
24 12th and May 15, 2017, I conducted 530 searches resulting in 11,907 emails being identified.”
25 Mr. Wray explains that the results of the searches conducted between May 12 and 15, 2017—
26 the 11,907 emails—were provided to CCSD Public Information Officer Cynthia Smith-
27 Johnson for her review. Nothing in the Wray Certification explains what happened to the
28 searches conducted before May 12.

1 91. Further, while Mr. Wray states that he searched “email boxes,” his
2 Certification fails to explain what “email boxes” means—or to explain whether all emails
3 sent or received (including via cc or bcc) were searched, let alone whether CCSD counsel’s
4 assertion to this Court that it is not possible to search for emails other than via individual
5 custodians is accurate. Mr. Wray’s Certification also fails to identify the date ranges he used
6 when searching the identified email boxes.

7 92. As with the Wray Certification, the Smith-Johnson Certification does not
8 make clear what occurred with prior searches, including those conducted on Pat
9 Skorkowsky’s inbox.

10 93. Ms. Smith-Johnson’s certification states that she “identified 43 pages that
11 [she] believed may be responsive to the record requests...” It is unclear what protocol Ms.
12 Smith-Johnson used to decide if a record should be produced. Similarly, it is unclear what
13 Ms. Smith-Johnson did despite her attestation that she reviewed the emails diligently.
14 Further, while there is no certification from CCSD counsel, Ms. Smith-Johnson’s
15 certification states that CCSD counsel made the final determination about what to produce.

16 94. Neither the Wray or Smith-Johnson Certifications indicate whether CCSD
17 conducted searches of hard copy records it was required to conduct pursuant to Paragraph 45
18 of the Court’s June 6, 2017 Order.

19 95. At best, taken together, the Certifications only “link up” and properly certify
20 43 pages produced after May 2017. This does not comply with this Court’s mandate for
21 evidence “that CCSD has fully searched the sources ... for records responsive to the
22 December Requests and February Request.” (June 6, 2017 Order, ¶ 48.)

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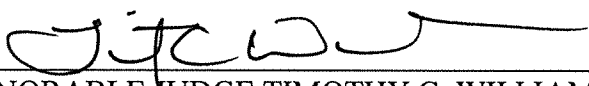

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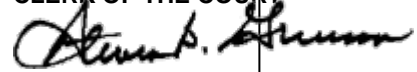
96. Accordingly, the Court hereby orders CCSD to make Mr. Wray and Ms. Smith-Johnson available to be deposed by the Review-Journal as to their efforts to search for, collect, and produce the requested records. The depositions of Mr. Wray and Ms. Smith-Johnson shall each be limited to two hours of questioning by the Review-Journal.

IT IS SO ORDERED this 5th day of July, 2017.


HONORABLE JUDGE TIMOTHY C. WILLIAMS


Respectfully submitted,


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7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,
10
11

11 Petitioner,

12 vs.

13
14 CLARK COUNTY SCHOOL DISTRICT,
15
16 Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

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

17 COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"),
18 by and through its undersigned counsel, hereby moves this Court to award the Review-
19 Journal its reasonable costs and attorneys' fees as the prevailing party in the above-
20 captioned action. The Review-Journal is entitled to its fees and costs pursuant to Nev. Rev.
21 Stat. §§ 18.010(2)(b) and 239.011(2). The Review-Journal further moves this Court for an
22 order finding that Respondent Clark County School District ("CCSD") acted in bad faith in
23 refusing to disclose records the Review-Journal requested pursuant to the Nevada Public
24 Records Act ("NPR"), Nev. Rev. Stat. § 239.001 *et seq.*

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This Motion is made pursuant to Nev. Rev. Stat. Chapter 239 and Nev. R. Civ. P. 54(d)(2)(B), and is based on the following Memorandum of Points and Authorities, any attached exhibits, the attached Declaration of Margaret A. McLetchie, the papers and pleadings already on file herein, and any oral argument the Court may permit at the hearing of this Motion.

DATED this 19th day of September, 2017.

/s/ Margaret A. McLetchie

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES.

YOU WILL TAKE NOTICE that the undersigned will bring on for hearing the above-noted PETITIONER LAS VEGAS REVIEW-JOURNAL'S MOTION FOR ATTORNEY'S FEES AND COSTS and to be heard the 24 day of OCTOBER 2017, at the hour of 9:00A a.m./p.m., in the above-entitled Court or as soon thereafter as counsel may be heard.

DATED this 19th day of September, 2017.

/s/ Margaret A. McLetchie

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MEMORANDUM OF POINTS AND AUTHORITIES

Because the Review-Journal is the prevailing party in this action, it is entitled to recover fees and costs pursuant to Nev. Rev. Stat. § 18.010(2)(b). The total requested fees are \$101,367.50, and the final requested costs are \$4,330.87. The billable time and costs for the Review-Journal’s attorneys’ fees are more particularly set forth in the attached declaration of Ms. McLetchie and supporting exhibits.

Additionally, for the reasons set forth below, the Review-Journal requests this Court enter an order finding that CCSD acted in bad faith in refusing to disclose public records in this matter.

I. PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS

Although the Court is already very familiar with the complex factual and procedural history of the Review-Journal’s public records request and the instant litigation, a review of the history and facts of this case is necessary to establish that the Review-Journal was the prevailing party in this matter, and to establish that CCSD acted in bad faith by refusing to disclose public records requested by the Review-Journal.

Starting in December 2016, the Las Vegas Review-Journal made several requests to CCSD pursuant to the Nevada Public Records Act (“NPRa”) targeting documents pertaining to the alleged misbehavior of School Board Trustee Kevin Child (the “Requests”). Since that time, the Review-Journal has also been doggedly working to obtain both access to the records sought by the Requests and information about the extent to which CCSD complied with the Requests. The convoluted procedural history of this case demonstrates that CCSD’s refusal to comply with the NPRa and the situation it now finds itself in—having to seek an emergency stay to avoid disclosing public records pertaining to its investigation of Trustee Child’s alleged misbehavior—is a bed of its own making.

As has been discussed in several pleadings on file with this Court, the litigation over this matter was precipitated by CCSD’s failure to comply with the NPRa and efforts to delay and hide information. As discussed in the Amended Petition submitted to this Court, on or around December 5, 2016, Review-Journal reporter Amelia Pak-Harvey sent CCSD a

request pursuant to the NPRA for certain public records pertaining to Trustee Kevin Child's alleged misbehavior. (See March 1, 2017 Amended Petition at ¶¶ 11-13.) According to Cynthia Smith-Johnson, the Public Records Officer for CCSD, when she received the December 5 request, she "sent it to [CCSD's] legal department for a heads up" and set up a file for the request. (Exh. 4 (8/17/17 Deposition of Cynthia Smith-Johnson), pp. 12:17-13:5.)

Ms. Pak-Harvey made multiple efforts over the course of seven weeks to get information about the status of the December Request and to resolve any possible concerns. (See generally Amended Petition at pp. 4-5, ¶¶ 15-31.) CCSD repeatedly told the Review-Journal that it need additional time to produce the requested records (see Amended Petition at ¶¶ 16, 20, 23-24, 26.) Ms. Smith-Johnson testified at her deposition in this matter that her failure to provide a meaningful response to the Review-Journal's records request was attributable to CCSD general counsel. According to Ms. Smith-Johnson, she could not provide a response to the Reporter's request without permission from CCSD general counsel. (See, e.g., Exh. 4, pp. 14:2-14 (testimony that she could not proceed with the request because she was "waiting [on] legal for direction what to do"); 18:16-19:2;¹ 20:20-22; p. 23:1-7, 17-19; 23:12-19.)

CCSD never indicated in its correspondence with the Reporter that it limited the request, which custodians it was limiting their records search to, how they were conducting the search, or whether it anticipated withholding or redacting any of the records. (See generally Exhibits 1-15 to January 26, 2017 Petition on file in this matter (communications between the Review-Journal and CCSD regarding the December requests).) It also appears

¹ Q. Do you remember [the Reporter] following up about [the December Request] a couple of times in December?

A. Yes.

Q. When she did that, did you do anything additional?

A. I forwarded that to legal.

Q. So essentially, was everything in legal's hands?

A. Yes.

Q. Whether or not to provide responsive documents was up to legal?

A. Yes.

that CCSD counsel did not provide search information to its Public Records Officer. Ms. Smith-Johnson testified that the first responsive documents she reviewed were provided to her by CCSD legal counsel, and she was not aware of how legal counsel searched for responsive documents. (Exh. 4, pp. 19:3-13; 23:3-7 (testifying that legal counsel was responsible for the search for responsive documents).)

CCSD's compliance with the NPRA did not improve as this litigation needlessly dragged on—even in the face of multiple orders from this Court directing CCSD to search for and produce responsive records. Eight weeks after the December Request—and only after the Review-Journal filed suit—CCSD produced one batch of responsive records on February 3, 2017. It did not, however, provide a privilege log indicating what documents it was keeping secret or why. CCSD also did not indicate it had limited its search in any way.

On February 8, 2017, the Court ordered CCSD to either fully produce all the records it was withholding in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing. (Amended Petition at ¶ 33.) CCSD did not do so. However, CCSD made various partial productions of the Redacted Records with changed and various redactions between February 8, 2017 and February 13, and then again after Court order with fewer redactions on February 24 and February 27, 2017. (Amended Petition at ¶¶ 34-40; 52-55.)

CCSD did not voluntarily indicate that it had limited the December Requests, whose records it had searched, what terms it used in searching for responsive records, or which records it was withholding. Indeed, its counsel contended that even search information was a state secret. It took extensive (and expensive) litigation just to get information CCSD should have provided in December.

CCSD did, however, produce its first log on February 13, 2017 listing the following purported bases for the redactions: Nev. Rev. Stat. § 386.230, and CCSD Regulations 1212 and 4110. 1 (Amended Petition at ¶ 37.) CCSD did not disclose that it was withholding responsive records and had only searched for records in a limited selection of email in-boxes.

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On February 14, 2017, the Court heard oral argument on the Review-Journal’s Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal’s Petition (“February Order”). (*See* February 22, 2017 Order, *see also* February 23, 2017 Notice of Entry of Order.) In the Order, this Court found that, regarding CCSD’s proposed broad redactions of the names of schools, teachers, administrators, and program administrators, CCSD had failed to meet its burden of demonstrating the existence of any applicable privilege. (Order at ¶ 28.) The Court ordered CCSD to provide the Review-Journal with new versions of the Redacted Records and Additional Redacted Records with only “the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff” redacted. (*Id.* at ¶ 34.) The Court further specified that “CCSD may not make any other redactions” and must unredact the names of schools, teachers, and all administrative-level employees. (*Id.* at ¶ 35) (emphasis in original). The Court directed CCSD to comply with the Order within two days. (*Id.* at ¶ 36.)

Meanwhile, on February 10, 2017, the Review-Journal submitted a supplemental request for public records to CCSD. (Amended Petition at ¶¶ 56-82.) The Review-Journal was forced to amend its petition on March 1, 2017 after CCSD refused to produce records in response to this supplemental request. Twelve days after the Review-Journal filed its Amended Petition, CCSD revealed for the first time that it had unilaterally limited its searches for responsive records. (Exh. V to March 29, 2017 Opening Brief, at CCSD-COM 38-39.)

In addition, after the entry of the Court’s February Order, the Review-Journal repeatedly requested that CCSD provide it with a privilege log of the documents it was withholding. (Exh. N to Opening Brief at CCSD-COM 018; Exh. P at CCSD-COM 028; CCSD-COM 035.) CCSD did not respond to these repeated requests until March 13, 2017, when counsel for CCSD stated via email that CCSD was withholding “a single document. An investigative report concerning allegations of harassment and discrimination by Trustee Child prepared by Cedric Cole of [the] Diversity and Affirmative Action Programs. It consists of 15 pages, which includes an 8 page report and 7 pages of notes.” (Exh. W to

Opening Brief at CCSD-COM 045.) Of course, that turned out not to be true. (*See* July 12, 2017 Order, ¶ 59 (finding that CCSD is withholding 102 pages of documents).)

The Court heard argument on the Review-Journal’s Amended Petition on May 9, 2017. During the hearing in this matter conducted on May 9, 2017, this Court ordered CCSD to conduct additional searches for responsive documents. It also ordered CCSD to produce all documents it had withheld to date, and any additional documents the searches yielded that CCSD contended should not be produced to the Review-Journal, for an *in camera* review by May 30, 2017.

Following this hearing, the parties could not agree on the scope of the order. Most markedly, CCSD contended that the Order should not require it to provide the Review-Journal with a copy of either the required certification or the privilege log. The parties submitted competing orders, and on June 6, 2017, the Court entered an order directing CCSD to produce all documents it had withheld to date, and any additional documents the searches yielded that CCSD contended should not be produced to the Review-Journal, for an *in camera* review. It also required CCSD to produce a privilege log, as well as certifications pertaining to the searches it had conducted. (June 5, 2017 Order Granting Writ of Mandamus, ¶¶ 45-48.)

On May 30, 2017, CCSD provided documents for an *in camera* review. It additionally provided the Court with two certifications and a privilege log. Unbeknownst to the Court, CCSD counsel did not provide a copy of either of these documents to the Review-Journal at that time.² On June 5, 2017 CCSD provided an additional thirty-eight pages of documents that it located after conducting the additional searches ordered by this Court. At a hearing held on June 6, 2017 the Court made clear that it expected CCSD to engage in the routine practice of providing privilege logs and certifications to opposing counsel in conjunction with *in camera* submissions. At that hearing, CCSD counsel finally provided the

² This reflects CCSD’s ongoing efforts to refuse to provide information to the Review-Journal, which has had to fight extensively for things like copies of these documents that CCSD should have provided voluntarily, and as a matter of course.

Review-Journal a copy of the final log and, later that day, provided copies of the certifications it had provided to the Court a week earlier. CCSD's actions served to delay this matter, and created unnecessarily expedited work by the Review-Journal, which submitted a memorandum addressing the log and certifications on June 13, 2017.

The Court then held a hearing on CCSD's final privilege log on June 27, 2017. At that hearing, the Court found the privileges cited by CCSD did not justify withholding the records in their entirety, and that CCSD had failed to prove by a preponderance of the evidence that any interest in nondisclosure outweighed the strong presumption in favor of public access. (*See generally* July 11, 2017 Order at ¶¶ 69-88.) The Court also found the certifications submitted by CCSD regarding its renewed searches for responsive documents were inadequate, and ordered CCSD to make the two CCSD employees who authored the certifications available to be deposed by the Review-Journal as to their efforts to search for, collect, and produce the requested records. (*Id.* at ¶¶ 89-96.) At the hearing, CCSD offered to produce the records to the Court by June 30, 2017. (June 27, 2017 Transcript, p. 78:4-5.)

On July 12, 2017, CCSD filed a notice of appeal from the Court's July 11 Order. Specifically, CCSD's appeal centered on the Court's order that it produce the withheld records; CCSD did not contest the Court's order that the two employees who had provided certifications—Ms. Smith-Johnson and CCSD Chief Technology Officer Dan Wray—be available for depositions. At the same time, CCSD filed a motion for a stay of the Court's July 11 Order pending appeal; the Review-Journal filed a response opposing the request for a stay on July 19, 2017. The Court conducted a hearing on CCSD's motion on July 27, 2017. At that hearing, the Court denied CCSD's request for a stay; the Court subsequently entered a written order on July 31, 2017.

CCSD filed an emergency motion with the Nevada Supreme Court on July 27, 2017, again requesting a stay of the Court's July 11 Order. (*See* Nevada Supreme Court Case No. 73525.) The Review-Journal submitted a response opposing the emergency request for a stay on August 4, 2017. On August 28, 2017, the Court of Appeals—to which the Supreme Court had assigned the matter solely for the purposes of ruling on the emergency motion for

1 a stay—entered an order granting CCSD’s motion. Thus, the Court’s July 11 Order has been
2 stayed pending appeal.

3 In the interim, the Review-Journal deposed Ms. Smith-Johnson on August 17, 2017
4 (*see* Exh.4), and deposed Mr. Wray on August 18, 2017. (*see* Exh. 5.) Both Ms. Smith-
5 Johnson and Mr. Wray testified that CCSD general counsel dictated the terms and nature of
6 the searches they conducted. (*See* Exh. 4, pp. 14:9-14; 18:19-19:13; 22:22-23:7; 25; 25:19-
7 26:7; Exh. 5, pp. 36:16-39:3; 45:9-46:14; 48:12-23; 58:6-25.)

8 In addition to his testimony that CCSD general counsel dictated the terms and
9 nature of the searches he conducted, Mr. Wray also provided testimony regarding CCSD’s
10 retention of e-mails sent and received on its internal email service, and—of particular
11 concern here—general counsel’s failure to direct him to potentially responsive emails outside
12 CCSD’s default retention period. Mr. Wray testified that emails sent and received using
13 CCSD’s email service “have a default expiration by the system of 90 days,” but that email
14 users have the ability to extend that expiration date. (Exh. 5 p. 65:7-9.) Although CCSD does
15 retain backups “for the purpose of disaster recovery,” CCSD only retains those backups for
16 21 days, and they are not searchable. (*Id.* pp. 65:12-66:24.)

17 Mr. Wray testified that CCSD general counsel did not request he preserve any email
18 accounts to maintain potentially responsive communications. (*Id.* p. 71:7-21.) This is
19 particularly disturbing given that, as Mr. Wray testified, CCSD general counsel had directed
20 him to preserve communications in other public records disputes. Specifically, Mr. Wray
21 testified that in 2007, CCSD general counsel directed him to make copies of the e-mail boxes
22 of CCSD Trustees to preserve records responsive to a records request from an activist named
23 Karen Gray. (*Id.* pp. 67:15-69:19; 70:21-71:5; *see also* Exh 6 (transcript of January 23, 2009
24 hearing in *Gray v. Clark County School District*, Case No. A-543861).) During an
25 evidentiary hearing which took place in the resulting litigation over Ms. Gray’s records
26 request, Mr. Wray testified as follows:

27 I was notified in February of 2007 when -- it was my understanding that
28 Ms. Gray went to the school board and said that she wanted to get this
information. It's my understanding that Shirley Barber then made that
request and at that point [then-CCSD general counsel Bill] Hoffman said

you need to make sure you preserve the mailboxes at that point. So we did, we took a snapshot as the system existed that day. We believe the date was February 23, 2007 and preserved that, okay?

(Exh. 6, p. 12:6-11; Exh. 5, p. 69:6-15.) Mr. Wray explained at the deposition in this matter that CCSD general counsel in the *Gray* matter inquired whether the trustees' email boxes could be copied. (Exh. 5, p. 70:7-8.) Because the email boxes were too large, Mr. Wray explained that he "took a backup snapshot" of the email boxes as they existed at the time of general counsel's inquiry, and thus preserved potentially responsive records. (*Id.*, pp. 70:11-71:2.) Again, in this case, CCSD general counsel provided no such direction to Mr. Wray. (*Id.*, pp. 71:11-72:2.)

II. LEGAL ARGUMENT

A. Legal Standard for Reasonable Attorneys' Fees.

Recovery of attorney fees as a cost of litigation is permissible by agreement, statute, or rule. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001). In this case, recovery of attorneys' fees is authorized by statute. Nevada's Public Records Act [NPRa] provides that "...[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." Nev. Rev. Stat. § 239.011 (2). As the Nevada Supreme Court has explained, "...by its plain meaning, this statute grants a requester who prevails in NPRa litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015). The Court went on to explain that a party need only prevail on "any significant issue":

A party prevails "if it succeeds on *any significant issue* in litigation which CCSD general counsel achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that "a plaintiff [can be] deemed 'prevailing' even though he succeeded on only some of his claims for relief").

Id. at 615; *see also* *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 628–29, 6 P.3d 465, 473 (2000) (reversing an order denying access and remanding to district court to award fees).³

B. The Review-Journal is the Prevailing Party.

As noted above, the Nevada Supreme Court has held that a party is the prevailing party if it “succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (quotations omitted); *accord* *Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615. The Review-Journal is the prevailing party in this matter. When CCSD refused to produce public records in response to a request from Review-Journal reporter Amelia Pak-Harvey, the Review-Journal was forced to initiate the instant litigation. As a result of the litigation, this Court has issued multiple orders directing CCSD to search for responsive records, produce responsive records, produce records in less-redacted forms, produce certifications regarding its efforts to search for responsive records, and make CCSD administrators available for depositions. Although a portion of this Court’s July 11 Order has been stayed pending appeal, that stay does not obviate the fact that the Review-Journal has prevailed in this litigation, and is therefore entitled to attorney’s fees and costs.

As the United States Supreme Court explained in *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983), “[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney’s fee reduced simply because the district court did not adopt each contention raised.” *Accord Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 581 (9th Cir. 1984). In the context of a Lanham Act case, United States District Court Judge Phillip M. Pro explained:

In evaluating the results obtained, the Court should be mindful that while in some cases the claims upon which the plaintiff prevailed may be discrete

³ Other Nevada Supreme Court cases likewise make clear that a party who substantially prevailed is entitled to recoup all attorney’s fees and costs, even if they did not ultimately succeed on all claims. *See, e.g., University of Nevada v. Tarkanian*, 110 Nev. 581, 595-598, 879 P.2d 1180, 1189-90 (1994).

from those on which the plaintiff did not prevail, “[i]n other cases the plaintiff’s claims for relief will involve a common core of facts or will be based on related legal theories.” *Hensley*, 461 U.S. at 435, 103 S.Ct. 1933. In cases where the claims for relief are related, “[m]uch of counsel’s time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis.” *Id.*

Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc., 915 F. Supp. 2d 1179, 1188 (D. Nev. 2013), *aff’d*, 778 F.3d 1059 (9th Cir. 2015).

In the Ninth Circuit, courts apply a two-part analysis to determine whether fees can be recovered for issues on which a party was unsuccessful. *Thorne v. City of El Segundo*, 802 F.2d 1131, 1141 (9th Cir.1986). “First, the court asks whether the claims upon which the [party] failed to prevail were related to the [party’s] successful claims. If unrelated, the final fee award may not include time expended on the unsuccessful claims.” *Id.* (citing *Hensley*, 461 U.S. at 434–35). If the claims are related, then the court considers the “significance of the overall relief obtained by the [party] in relation to the hours reasonably expended on the litigation.” *Id.* If the party “obtained ‘excellent results,’ full compensation may be appropriate, but if only ‘partial or limited success’ was obtained, full compensation may be excessive.” *Id.*

In this instance, all the Review-Journal’s claims centered on a common core of facts and law: attempting to obtain access to public records pertaining to CCSD Trustee Kevin Child. Notwithstanding the order from the Court of Appeals staying a portion of this Court’s July 11 Order pending appeal, the fact remains that the Review-Journal was forced to petition the Court for extraordinary relief to get CCSD to comply with its obligations under the NPRA to produce the requested public records, and that the Court entered multiple orders directing CCSD to produce records. Thus, the Review-Journal is the prevailing party in this matter.

C. The Review-Journal’s Attorney Fees Are Reasonable and Fully Documented

1. The Review-Journal’s Attorneys’ Fees Are Reasonable.

Any fee-setting inquiry begins with the calculation of the “lodestar:” the number of hours reasonably expended multiplied by a reasonable hourly rate. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 896-97 (1984); *accord Herbst v. Humana Health Ins. of Nevada*, 105 Nev.

586, 590, 781 P.2d 762, 764 (1989). Relevant factors include the preclusion of other employment by the attorney due to acceptance of the case; time limitations imposed by the client or the circumstances; the amount involved and results obtained; the undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th Cir.1975). In most cases, the lodestar figure is a presumptively reasonable fee award. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).

2. *The Review-Journal is Entitled to a Full Award of Attorneys’ Fees for All the Work Performed by Its Attorneys.*

The Review-Journal anticipates CCSD may assert that any fees awarded in this case should be reduced to reflect that the Court’s July 11 Order is pending appellate review. However, where, as here, the claims asserted by the Review-Journal in its petition for a writ of mandamus—and the work done to obtain full disclosure of the records regarding Trustee Child as directed in the July 11 Order—are so interrelated, this Court should not separate those claims for the purposes of awarding attorneys’ fees. The Review-Journal obtained access to many of the records only after filing suit, and only after this Court issued multiple orders granting the Review-Journal’s requests for public records CCSD was withholding.

As the Ninth Circuit has explained in the context of § 1983 cases, “where a plaintiff in a § 1983 action alleges multiple interrelated claims based on the same underlying facts, and some of those claims are frivolous and some are not, a court may award defendants attorney’s fees with respect to the frivolous claims only when those claims are not ‘intertwined.’” *Harris v. Maricopa Cnty. Superior Court*, 631 F.3d 963, 971 (9th Cir.2011); accord *Fox v. Vice*, 563 U.S. 826, 839-40 (2011) (discussing the “interrelated[ness]” of plaintiffs’ frivolous and non-frivolous claims); see also *McCown v. City of Fontana*, 711 F. Supp. 2d 1067, 1070 (C.D. Cal. 2010), aff’d, 464 F. App’x 577 (9th Cir. 2011) (holding that although the plaintiff’s claims involved “different legal theories against different defendants,” the court “should not attempt to divide the request for attorney’s fees on a claim by claim basis” because each of claims “arose from a common core of facts”); cf. *Cain v.*

J.P. Prods., 11 F. App'x 714, 716 (9th Cir. 2001) (holding that, in the context of a Lanham Act case, "no apportionment was needed because the claims are so inextricably intertwined that even an estimated adjustment would be meaningless") (citing *Gracie v. Gracie*, 217 F.3d 1060, 1068, (9th Cir.2000); other citation omitted).

The Review-Journal is the prevailing party in this litigation. Furthermore, the issues raised by the Review-Journal were not frivolous, and the work was all interrelated. *See, e.g., Braunstein v. Arizona Dep't of Transp.*, 683 F.3d 1177, 1187 (9th Cir. 2012). Accordingly, the Review-Journal is entitled to an award of attorneys' fees for all the work performed in this case.

3. The Brunzell Factors

In addition to calculating the lodestar, a court must also consider the requested amount in light of the factors enumerated by the Nevada Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of attorneys' services:

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

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

a. The Review-Journal Seeks Fees for a Reasonable Number of Hours, and Exercised Appropriate Billing Judgment.

Pursuant to Nev. R. Civ. P. 54(d)(2)(B), statements "swearing that the fees were actually and necessarily incurred and were reasonable" are set forth in the attached declaration of Margaret A. McLetchie ("McLetchie Decl.") attached hereto as Exhibit 1 and supported by the billings for the Review-Journal's attorney fees and costs attached hereto as Exhibits 2 and 3.

As detailed above, the litigation in this matter was complex and time-consuming. The Review-Journal’s counsel exercised appropriate billing judgment and structured work on this case to maximize efficiencies, and the hours listed in the fee request are neither duplicative, unnecessary nor excessive. (McLetchie Decl., ¶ 11); *see also Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) (“Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.”).

To keep billing as low as possible, Ms. Shell conducted work where appropriate. Further, counsel utilized a student law clerk and a paraprofessional to perform tasks such as research and organization to assure that attorneys with higher billing rates were not billing for tasks that lower billers could perform. (McLetchie Decl. at ¶ 12.) Potentially duplicative or unnecessary time has not been included. (*Id.* at ¶ 7.) In all these ways, counsel for the Review-Journal has charged a reasonable and reduced rate for the attorneys’ time. (*Id.* at ¶¶ 14.) Counsel also exercised appropriate billing judgment by *not* including in this application certain time, even time which would likely be compensable. (*Id.* at ¶ 15.) The description of costs and fees in this case also excludes the majority of the time spent working on this Motion, or as will be necessary to Reply to any Opposition to this Motion. (*Id.* at ¶ 16.)

b. An Analysis of the *Brunzell* Factors Supports the Award of the Fees the Review-Journal Seeks.

As discussed above, the Nevada Supreme Court’s opinion in *Brunzell* sets forth a number of factors that should be used to determine whether a requested amount of attorney fees is reasonable. *See Brunzell*, 85 Nev. 345, 349, 455 P.2d 31, 33. Each of these factors supports the amount sought.

i) The Advocates

To be considered in determining the reasonable value of an attorney’s services are the qualities of the advocate, including ability, training, education, experience, professional standing, and skill. *Id.* The Review-Journal’s attorneys include attorneys, law clerks, and

paraprofessionals from McLetchie Shell LLC. Student law clerks, and paraprofessionals were utilized whenever possible and appropriate to keep fees low.

Ms. McLetchie, as an outside attorney who handles the Review-Journal's public records, FOIA, and court access matters, has extensive experience handling NPRA litigation and similar matters. Indeed, she frequently represents the Review-Journal and other clients in pursuing NPRA matters and overcoming objections to NPRA requests without having to litigate. From 2007 through 2009, while working at the ACLU of Nevada, Ms. McLetchie helped litigate issues pertaining to the Clark County School District's refusal to provide certain records in *Karen Gray v. Clark County School District et al.*, Eighth Judicial Dist. Ct. Case No. 07A543861. In that case, over seven years ago, the ACLU of Nevada was awarded \$46,118.00. Ms. McLetchie's time on this case was billed at the rate of \$450.00 per hour, for a total billed of \$62,190.00.

Alina M. Shell, working a total of 88.2 hours on this case, is a Partner at McLetchie Shell with almost eight years of legal experience. Prior to transitioning into private practice, Ms. Shell was an attorney with the Federal Public Defender (FPD) for the District of Nevada. While employed by the FPD, Ms. Shell represented numerous defendants in a variety of criminal cases which ran the gamut from revocations of supervised release to complex mortgage fraud cases. She also wrote and argued several complex criminal appeals in before the United States Court of Appeals for the Ninth Circuit. Since moving into private practice in June 2015, Ms. Shell has represented plaintiffs in state and federal court in civil matters, including several civil rights cases. Ms. Shell has also represented the Review-Journal in both state and federal court in public records matters. Ms. Shell's time on this case was billed at the rate of \$350.00 per hour with some time entries reduced (McLetchie Decl., ¶ 8), resulting in a total of \$30,065.00.

Leo Wolpert, working a total of 24 hours, is a research and writing attorney for McLetchie Shell. Mr. Wolpert is 2011 graduate of the University of Virginia School of Law and has experience with public records matters. Mr. Wolpert's time on this case was billed at a rate of \$175.00 per hour, for a total billed of \$4,200.00.

Pharan Burchfield, working a total of 26.8 credited hours on this case, is a paraprofessional at McLetchie Shell. Ms. Burchfield has an associate's degree in paralegal studies, and has been a paralegal for three years. Ms. Burchfield's time on this case was billed at the rate of \$150.00 per hour, for a total billed of \$4,020.00.

In sum, the attorneys and employees at McLetchie Shell worked a total of 280 hours on this case. With reduced entries as described above and in the declaration of Ms. McLetchie, the combined total of \$101,367.50 for that work is well under market for the experience brought to bear on this action. Reasonable costs for documents, filing fees, and the like were calculated for a total billed of \$4,330.87. With costs, the total billed for McLetchie Shell is \$105,698.37. Further qualification and qualities, including a declaration from Kathleen J. England, Esq. in support of counsel's rates (Exh. 7), and an itemization of these bills are included in the attached declaration of Ms. McLetchie and Exhibits 2 and 3.

ii) **The Work Performed, Including Skill, Time, and Attention.**

The work actually performed by the lawyer is relevant to the reasonableness of attorneys' fees, including the skill, time, and attention given to the work. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. As demonstrated by the billing statement attached in Exhibit 2 and the attached declaration of Ms. Shell, a substantial portion of the work in this case was done by attorneys and staff with lower billing rates. Even though some of the work was done by lower billing attorneys and staff, Ms. McLetchie was still required to analyze the research and apply it strategically to the various arguments posed by CCSD. As discussed above, counsel for the Review-Journal fully briefed this matter, including filing a petition and amending that petition. Counsel was also required to file a memorandum in support of the petition and a reply brief. In addition, counsel was required to submit a memorandum regarding CCSD's certifications regarding its searches for responsive records, and to conduct depositions of the CCSD administrators who authored those certifications. Additionally, there were multiple hearings in this case counsel which expended significant time preparing for and attending to effectively represent the Review-Journal in this matter.

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iii) The Result.

Lastly, “the result: whether the attorney was successful and what benefits were derived” is relevant to this inquiry. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. As noted above, the Review-Journal is the prevailing party in this matter. Because each of these factors weighs in the Review-Journal’s favor, this Court should exercise its discretion and award the Review-Journal reasonable attorneys’ fees and costs in the sum of \$105,698.37.

D. CCSD Acted in Bad Faith in This Matter.

Pursuant to Nev. Rev. Stat. § 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.” In this case, CCSD acted in bad faith in refusing to produce the requested public records pertaining to Trustee Child. As discussed in the procedural and factual history above, the litigation in this matter has been marked by CCSD’s obstinate refusal to comply with its obligations under the NPRA, its refusal to provide information about its search for responsive records, and—as Mr. Wray’s testimony illustrates—its failure to preserve potentially responsive records. Although any one of CCSD’s actions in this case could merit a finding of bad faith, its entire course of conduct demonstrates that CCSD—through its general counsel—acted in bad faith in refusing to disclose the requested records.

The NPRA mandates that, within five (5) days, CCSD either provide responsive records or provide specific reasons why documents should be withheld. Nev. Rev. Stat. § 239.0107(1). It also mandates that a governmental establish why the presumption of openness does not apply when it is withholding documents. Nev. Rev. Stat. § 239.0107(1)(d). CCSD has consistently failed to comply with these obligations, both before and after the petition was filed. The Review-Journal first sought records in December of 2016. CCSD failed to respond timely to the December requests. As discussed above, the Review-Journal learned during its deposition of Ms. Smith-Johnson that CCSD general counsel was responsible for CCSD’s failure to respond to the Review-Journal’s records request. As Ms. Smith-Johnson testified, she could not respond to the Review-Journal’s records request

without direction from CCSD general counsel (*see, e.g.*, Exh. 4, pp. 14:10-14; 18:16-24; 23:25-24:12; 25:19-25), and relied on general counsel to provide her with documents responsive to the Review-Journal's records request. (*Id.* pp. 19:3-10; 22:22-23:7; 26:1-7.)

CCSD general counsel also failed to preserve email boxes that contained potentially responsive records. As Mr. Wray testified, CCSD's email system automatically expire after 90 days. (Exh. 5, p. 65:5-7.) In other cases involving requests for records pursuant to the NPRA, CCSD general counsel took necessary steps to circumvent this default destruction of responsive emails by directing Mr. Wray to preserve the email boxes of CCSD trustees. (*Id.*, pp. 69:6-70:24.) In this case, however, CCSD general counsel failed to similarly instruct Mr. Wray to preserve potentially responsive emails. (*Id.*, p. 71:7-10.)

This is particularly egregious given the protracted nature of this case, and CCSD's obstinate and repeated refusals to provide responsive records. As discussed above, the Review-Journal first requested public records pertaining to Trustee Child on December 5, 2016. According to Mr. Wray's certification (Exh. HH to June 13, 2017 Memorandum, LVRJ025-041), Mr. Wray conducted an initial search of only two email boxes (belonging to Superintendent Pat Skorkowsky and Chief Academic Officer Mike Barton) on December 9, 2016. (Exh. HH, ¶ 3, LVRJ025.) Although Mr. Wray did conduct come additional searches in February and March of 2017, he did not conduct the bulk of his searches for responsive records until May 12, 2017—***158 days after the Review-Journal's December 5, 2016 request.*** (Exh. HH, LVRJ029-041.) Thus, the Review-Journal and this Court will never know if there were potentially responsive public records that were destroyed. Indeed, even in the case of Mr. Wray's February and March 2017 searches, it is impossible to determine if any records were destroyed prior to those searches simply because CCSD general counsel failed to take the necessary steps to prevent their automatic destruction.

This is textbook spoliation. In a typical civil case, a court could impose many different kinds of sanctions for spoliated evidence, including instructing a jury that it may infer a fact based on lost or destroyed evidence, dismissing a case, or granting summary judgment. *Adkins v. Wolever*, 554 F.3d 650, 652-53 (6th Cir. 2009) (citation omitted); *accord*

May v. F/V LORENA MARIE, No. 3:09-CV-00114-JWS, 2011 WL 5244345, at *6 (D. Alaska Nov. 2, 2011); *see also Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 591—92 (4th Cir. 2001) (upholding dismissal as spoliation sanction for plaintiff who anticipated filing suit, knew evidence was relevant to potential claims, and preserved evidence for only three months, but did not file suit until three years later). Here, the appropriate sanction at this stage in the litigation is a finding from this Court that CCSD’s failure to preserve potentially responsive records—combined with all the other acts described above—evidences bad faith.

III. CONCLUSION

Based on the foregoing, the Review-Journal respectfully requests that this Court, award the Review-Journal all its attorneys’ fees and costs, pursuant to Nev. Rev. Stat. § 239.011(2), in the total amount of \$105,698.37. The Review-Journal hereby reserves the right to supplement its request for fees with additional fees and costs incurred by counsel in preparing and defending the instant motion for fees and costs, and further reserves the right to supplement this request for fees should it prevail in the appeal filed by CCSD.

The Review-Journal further requests that this Court enter an order finding that CCSD acted in bad faith in refusing to disclose public records, and allow further relief in accordance as appropriate.

Respectfully submitted this 19th day of September, 2017.

/s/ Margaret A. McLetchie

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ALINA M. SHELL, Nevada Bar No. 11711
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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 19th day of September, 2017, I did cause a true copy of the foregoing PETITIONER LAS VEGAS REVIEW-JOURNAL’S MOTION FOR ATTORNEY’S FEES AND COSTS in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 19th day of September, 2017, I mailed a true and correct copy of the foregoing PETITIONER LAS VEGAS REVIEW-JOURNAL’S MOTION FOR ATTORNEY’S FEES AND COSTS by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Carlos McDade, General Counsel
Adam Honey, Asst. General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Counsel for Respondent, Clark County School District

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC



CLERK OF THE COURT

1 **APET**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE SHELL LLC

5 701 East Bridger Avenue, Suite. 520

6 Las Vegas, NV 89101

7 Telephone: (702)-728-5300

8 Email: maggie@nvlitigation.com

9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

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

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

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

17
18 COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"),
19 by and through its undersigned counsel, and hereby submits this Amended Nevada Public
20 Records Act Application and Petition for Writ of Mandamus for declaratory and injunctive
21 relief, ordering the Clark County School District to provide Petitioner access to public
22 records. Petitioner also requests an award for all fees and costs associated with its efforts to
23 obtain withheld public records as provided for by Nev. Rev. Stat. § 239.011(2). The Review-
24 Journal also respectfully asks that this matter be expedited pursuant to Nev. Rev. Stat. §
25 239.011(2).

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Petitioner hereby alleges as follows:

NATURE OF ACTION

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

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

3. Petitioner is entitled to an expedited hearing on this matter pursuant to Nev. Rev. Stat. § 239.011(2), which mandates that "the court shall give this matter priority over other civil matters to which priority is not given by other statutes."

PARTIES

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

5. Respondent Clark County School District ("CCSD") is a political subdivision of the State of Nevada that is authorized to operate the public school system in Clark County, Nevada.

6. CCSD is subject to the Nevada State Public Records Act pursuant to Nev. Rev. Stat. § 239.005(b).

JURISDICTION AND VENUE

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

8. Further, this Court has jurisdiction to issue writs of mandamus pursuant to Article 6, Section 6 of the Nevada Constitution and Nevada Revised Statutes § 34.160.

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

STANDING

10. Petitioner has standing to pursue this expedited action pursuant to Nev. Rev. Stat. § 239.010 because the public records it has requested from CCSD have been unjustifiably withheld and CCSD has failed to meaningfully respond to its request, which is not permitted by law.

FACTS

The Initial Records Requests

11. Almost three months ago, on or around December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the “Reporter”) sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”). The request sought certain documents pertaining to CCSD Trustee Kevin Child (the “Request”). (*See* Exhibit (“Exh.”) 1 to January 26, 2017 Petition.¹)

12. The Request asked CCSD to produce:

- All incident reports filed by CCSD staff, CCSD police or any other CCSD officials that involve grief counselors and Trustee Kevin Child;
- All emails from CCSD staff, CCSD police or CCSD officials regarding school visits conducted by Kevin Child; and
- All emails and correspondence relating to the guidelines issued to CCSD staff on December 5, 2016 regarding Trustee Kevin Child’s visits to schools and interaction with staff.

(*Id.*)

13. On behalf of CCSD’s Office of Community and Government Relations, Cynthia Smith-Johnson confirmed receipt on December 9, 2016. (Exh. 2.)

¹ In its January 26, 2017 Petition, the Review-Journal included Exhibits 1 through 15 to support its claims. To avoid unnecessary redundancy, the Review-Journal has not included Exhibit 1-15 in this Amended Petition.

1 14. As detailed below, despite repeated promises to respond and provide
2 information and despite numerous efforts by the Review-Journal to get information about
3 the status and to resolve any possible concerns, CCSD failed to comply with the NPRA.

4 15. The Reporter supplemented the Request on December 9, 2016
5 (“Supplemental Request”). (Exh. 3.) The Supplemental Request asked CCSD to produce
6 “any written complaints the Clark County School District has received regarding Trustee
7 Kevin Child.”

8 16. On December 13, 2015, Ms. Smith-Johnson responded to the Reporter’s
9 December 9, 2016 email, indicating that CCSD was “unable to provide the information
10 within 5 days” but that “[w]e anticipate a further response by close of business day on
11 December 16, 2016, if not before.” (Exh. 4.)

12 17. The Reporter wrote to Ms. Smith-Johnson on December 15, 2016 to check
13 on the status of her Request and Supplemental Request (the “Requests”). (Exh. 5.)

14 18. Despite having promised to do so, CCSD failed to respond on or before
15 December 16, 2016.

16 19. Not having received documents or any other information, on December 19,
17 2016, the Reporter again inquired about the status and requested “an updated timeline of
18 when I might receive these records.” (Exh. 6.)

19 20. Ms. Smith-Johnson responded to the Reporter’s December 19, 2016 email
20 the same day, stating she “expect[ed] to get back to you [with] something” within a few
21 days, by Wednesday, December 21, 2016, at the latest.” (Exh. 7.)

22 21. The Reporter followed up again on December 20, 2016 to check on the
23 status of the Requests and let Ms. Smith-Johnson know she could call “if there are any
24 obstacles.” (Exh. 8.)

25 22. The Reporter emailed again on Wednesday, December 21, 2016, the date
26 CCSD had promised to provide information. (Exh. 9.)

27 23. Ms. Smith-Johnson responded to the December 21, 2016 email, apologized
28 for the delay, and promised to get back to the Reporter the next day. (Exh. 10.)

1 24. Ms. Smith-Johnson did get back to the Reporter on December 22, 2016,
2 but failed to provide records or any meaningful information. (Exh. 11.) Without any
3 explanation, Ms. Smith-Johnson stated that “[a]dditional time is needed regarding the
4 information requested[,]” but promised the Reporter that she would follow up “on January
5 9, 2017, if not before.” (*Id.*)

6 25. On January 4 2017, the Reporter followed up again and again provided her
7 phone number. (Exh. 12.)

8 26. Ms. Smith-Johnson responded on January 9, 2017. (Exh. 13.) However,
9 again no documents or meaningful information was provided. (*Id.*) Instead, without
10 explanation for the continued delays, Ms. Smith-Johnson said “I anticipate a further
11 response on January 13, 2017.” (*Id.*)

12 27. The Reporter responded to Ms. Smith-Johnson’s email on the same day,
13 noting that it had been over a month since the Requests were made, expressing confusion,
14 and asking for a call if there were any issues with regard to the Requests. (Exh. 14.)

15 28. CCSD did not respond to the Reporter’s concerns or offer to address any
16 issues. Instead, despite having extended its deadline numerous times, failed to meet its
17 promised deadline of January 13, 2017.

18 29. On January 16, 2017, the Reporter again requested information from
19 CCSD regarding the status of the Requests. (Exh. 15.)

20 30. On January 20, 2017, counsel for the Review-Journal wrote to Carlos
21 McDade, CCSD’s General Counsel, to express concerns regarding this protracted and
22 delayed history, and CCSD’s violations of the NPRA. In the January 20, 2017 letter, the
23 Review-Journal asked for immediate compliance due to the stale nature of the Requests and
24 because CCSD had failed to provide information despite having repeatedly promised do so.

25 31. On January 24, 2017, counsel for the Review-Journal called the office of
26 Mr. McDade to follow up about the Requests and left a message but has not received a
27 return call.

28 ///

1 ***The Review-Journal Files Suit Against CCSD to Obtain the Requested Records***

2 32. After the Review-Journal's efforts to obtain a response to the Requests
3 failed, it filed a Public Records Act Application/Petition for Writ of Mandamus with this
4 Court on January 26, 2017. (*See* Petition, on file with this Court.)

5 33. On February 8, 2017, the Court ordered CCSD to either fully produce all
6 of the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or
7 that the matter would proceed to hearing.

8 34. On February 8, 2017, CCSD produced the Redacted Records, as well as an
9 unredacted corresponding set of records, to the Court.

10 35. Later that same day, CCSD provided a copy of the Redacted Records to
11 the Review-Journal.

12 36. On February 10, 2017, CCSD provided the Redacted Records with fewer
13 redactions to both the Court and the Review-Journal.

14 37. On February 13, 2017, CCSD provided a further version of the Redacted
15 Records to the Court and the Review-Journal, along with a log listing the following bases
16 for the redactions: Nev. Rev. Stat. § 386.230 and CCSD Regulations 1212 and 4110.

17 38. On February 13, 2017, CCSD also provided ten additional pages not
18 previously identified (the "Additional Redacted Records").

19 39. CCSD also provided a new log (the "revised Log") including the
20 Additional Redacted Records and additionally asserting the following bases for the
21 redactions:

22 a. The "safety and well-being of employees (fear of retaliation) and inherent
23 chilling effect if names of individual employees are released;" and

24 b. The "inherent chilling effect if names of . . . general public are released."

25 40. Finally, CCSD provided an unredacted version of the Additional Redacted
26 Records to the Court.

27 41. The Court conducted an *in camera* review of the Redacted Records, the
28 Additional Redacted Records, and the unredacted versions of both sets of records.

1 42. On February 14, 2017, the Court heard oral argument on the Review-
2 Journal's Petition.

3 43. Following that hearing, on February 22, 2017, the Court entered an Order
4 granting the Review-Journal's Petition. (*See* February 22, 2017 Order, *see also* February 23,
5 2017 Notice of Entry of Order).)

6 44. In the Order, this Court found that, with regard to CCSD's proposed
7 redactions of the names of schools, teachers, administrators, and program administrators,
8 CCSD had failed to meet its burden of demonstrating the existence of any applicable
9 privilege. (Order at p. 6, ¶ 28.)

10 45. In reaching this finding, the Court first noted that CCSD had failed to assert
11 any claim of confidentiality within five (5) days as mandated by Nev. Rev. Stat. §
12 239.0107(d). (*Id.* at ¶ 29.)

13 46. Second, the Court found that CCSD's Revised Log did not sufficiently
14 articulate that the information CCSD had redacted was protected by confidentiality. (*Id.* at
15 pp. 6-7, ¶ 30.)

16 47. Third, the Court found that even if CCSD had met its burden of asserting
17 an applicable privilege by a preponderance of the evidence, it had failed to articulate how
18 the privilege applied to each piece of information it sought to redact, and therefore failed to
19 meet its burden of establishing that the records were privileged or confidential. (*Id.* at p. 7,
20 ¶¶ 31-32.)

21 48. Finally, the Court found that even if CCSD had met its burden of
22 establishing the existence of an applicable privilege, it had failed to demonstrate that the
23 interests in secrecy outweighed the interests in disclosure. (*Id.* at ¶ 33.)

24 49. Given these findings, the Court ordered CCSD to provide the Review-
25 Journal with new versions of the Redacted Records and Additional Redacted Records with
26 only "the names of direct victims of sexual harassment or alleged sexual harassment,
27 students, and support staff" redacted. (*Id.* at ¶ 34.)

28 50. The Court further specified that **"CCSD may not make any other**

1 **redactions”** and must unredact the names of schools, teachers, and all administrative-level
2 employees. (*Id* at p. 8, ¶ 35) (emphasis in original).

3 51. The Court directed CCSD to comply with the Order with two day. (*Id.* at ¶
4 36.)

5 **CCSD Produces Records to the Review-Journal and the Court**

6 52. On February 24, 2017, CCSD produced new versions of the Redacted
7 Records and Additional Redacted Records to the Review-Journal. (*See* Exh. 16.)

8 53. On February 24, 2017, after reviewing the Revised Records, counsel for
9 the Review-Journal notified CCSD that it had improperly redacted the name of a school
10 administrator in the redacted sexual harassment complaint. (Exh. 17.)

11 54. Later that same day, CCSD notified the Review-Journal that it would
12 provide a revised version of the sexual harassment complaint by February 27, 2017. (Exh.
13 18.)

14 55. On February 27, 2017, CCSD produced a revised version of the sexual
15 harassment complaint to the Review Journal and the Court. (Exh. 19.)

16 **The Review-Journal Submits a New Records Request to CCSD**

17 56. On February 10, 2017, the Review Journal submitted a new records request
18 to CCSD for records pertaining to Mr. Child (the “February Request”). (Exh. 20.)

19 57. The February Request asked CCSD to produce:

- 20 • Records that pertain to, discuss, or reference any inappropriate sexual
21 comments Mr. Child is alleged to have made to female CCSD employees
22 or any appropriate sexual behavior Mr. Child is alleged to have engaged
23 in;
- 24 • Records that pertain to, discuss, or reference any complaints (formal and
25 informal) submitted by female CCSD employees about Mr. Child’s
26 behavior;
- 27 • Records that pertain to, discuss, or reference Concerns about female
28 employees’ concerns about being alone with Mr. Child;

- Records that pertain to, discuss, or reference concerns about Mr. Child having (or wanted to have) romantic relationships with female CCSD employees;
- Records that pertain to, discuss, or reference concerns that Mr. Child's behavior and/or statements have created a hostile work environment;
- • Records that pertain to, discuss, or reference the factual bases for CCSD's determination that Mr. Child has violated Title VII of the Civil Rights Act of 1964;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding their appearance;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding sexual orientation;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD students and/or employees regarding suicide;
- Records that pertain to, discuss, or reference concerns about inappropriate comments regarding inappropriate comments made by Mr. Child about race, ethnicity, or national origin;
- Records that pertain to, discuss, or reference concerns that Mr. Child engaged in
- inappropriate behavior at the Magnet Schools of America Conference that took place in
- Miami, Florida in May of 2016;
- • Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at events conducted at CCSD schools as part of CCSD's Professionals and Youth Building A Commitment (PAYBAC) Program;

- 1 • Records that pertain to, discuss, or reference concerns about Mr. Child's
- 2 behavior at KidsVentions events;
- 3 • Records that pertain to, discuss, or reference concerns about Mr. Child's
- 4 behavior while visiting any CCSD school during any instructional day; and
- 5 • Records that pertain to, discuss, or reference concerns about Mr. Child's
- 6 behavior at the CCSD administrative building.

7 (*Id.* at pp. 1-2.)

8 58. The February Request specifically asked CCSD to provide records on a

9 rolling basis as they became available. (*Id.* at p. 3.)

10 59. On February 15, 2017, counsel for the Review-Journal contacted CCSD to

11 discuss the February request. (Exh. 21.)

12 60. On February 17, 2017, CCSD notified the Review-Journal via email that it

13 was unable to provide the records listed in the February Request within the five days

14 mandated by Nev. Rev. Stat. § 239.0107(d). (Exh. 22.)

15 61. CCSD indicated that it "anticipates a further response" by March 3, 2017.

16 (*Id.*)

17 62. In that same correspondence, CCSD set forth a series of boilerplate

18 objections to the February Request. (*Id.*)

19 63. Those objections were as follows:

20 The public records law does not require the release of confidential employee

21 personnel information. See NRS 239.010; NRS 386.350; NAC 284.718;

22 NAC 284.726; CCSD Regulation 1212; CCSD Regulation 4311; CCSD

23 Regulation 4110; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990);

24 People for Ethical Treatment of Animals v. Bobby Berosini Ltd., 111 Nev.

25 615, 629 (Nev. 1995); El Dorado Savings & Loan Assoc. v. Superior Court

26 of Sacramento County, 190 Cal. App. 3d 342 (1987).

27 Further, to the extent documents are received or gathered by the District in

28 the course of investigating an alleged unlawful discriminatory practice

those documents are confidential. See CCSD Regulation 4110(X). Also,

to the extent records include personally identifiable student information

they are confidential under the Family Educational Rights and Privacy Act

(FERPA). See 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029. Other

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documents may be subject to the deliberative process privilege. See DR Partners v. Board of County Commissioners of Clark County, 116 Nev. 616, 621 (2000).

The United States Equal Employment Opportunity Commission has stated that employers are obligated in investigate and address instances of harassment, including sexual harassment. The EEOC also states that employees who are subjected to harassment frequently do not complain to management due to fear of retaliation. See Faragher, 118 S. Ct. 2275, 2292 (1998) (defense established if plaintiff unreasonably failed to avail herself of “a proven, effective mechanism for reporting and resolving complaints of sexual harassment, available to the employee without undue risk or expense”). See also Restatement (Second) of Torts § 918, comment (tort victim “is not barred from full recovery by the fact that it would have been reasonable for him to make expenditures or subject himself to pain or risk; it is only when he is unreasonable in refusing or failing to take action to prevent further loss that his damages are curtailed”).

Regarding confidentiality of an investigation, EEOC states that “[a]n employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis.”

EEOC Notice No. 915.002, date 6/18/99, *in effect until rescinded or superceded* [sic].

“To assure employees that such a fear is unwarranted, the employer must clearly communicate and enforce a policy that no employee will be retaliated against for complaining of harassment.” As Trustee Child is a corporate officer and not subject to internal employer corrective action, the only manner in which the District may act to protect against potential retaliation is to withhold the identity of the employees. Therefore, the records of the investigation should be kept confidential under EEOC guidance.

The District and public have an interest in a strong system to address complaints of harassment that encourages reporting without fear of retaliation. A balancing of the interests weighs in favor of confidentiality and non-disclosure. See NRS 239.010; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990).

(*Id.*)

64. The objections provided by CCSD do not specify which requests they pertain to.

65. Further, CCSD's February 17 correspondence indicated it may assert additional privileges, and may not produce the requested records. (*Id.* (noting that CCSD "reserves the right to assert any additional privileges, if necessary, at the time of production, *if any*").

66. The Review-Journal has followed up numerous times regarding the February Request to attempt to get information about a specific production date, and to offer assistance resolving issues.

67. For example, on February 17, 2017, and February 21, 2017, counsel for the Review-Journal spoke to counsel for CCSD regarding the February Request and CCSD's February 17 response. (Exh. 23 at p. 1.)

68. CCSD explained during those calls that the objections in its February 17 letter were placeholder objections. (*Id.*)

69. CCSD indicated that the documents requested in the February Request were under review. (*Id.*)

70. CCSD also indicated it would try to comply with the Review-Journal's request to provide documents on a rolling basis. (*Id.*)

71. On February 21, 2017, counsel for the Review-Journal wrote CCSD a letter regarding the February 17 and February 21 calls. (*Id.*)

72. In that letter, the Review-Journal reiterated its request that CCSD provide the records outlined in the February request on a rolling basis, and reiterated its request that CCSD provide a log. (*Id.*)

73. CCSD did not respond to that letter.

74. The Review-Journal reached out to CCSD again by both email and telephone on February 24, 2017. (Exh. 16.)

75. CCSD did not respond to these communications.

76. The Review-Journal contacted CCSD again on February 27, 2017. (Exh. 24.)

77. CCSD did not respond to the Review-Journal's February 27 email.

78. On March 1, 2017, counsel for the Review-Journal called counsel CCSD. (Declaration of Margaret A. McLetchie ("McLetchie Decl.") at ¶ 6.)

79. During that call, counsel for CCSD indicated that he did not believe any of the Review-Journal's correspondence regarding the February Request required a response. (McLetchie Decl. at ¶ 8.)

80. Counsel for CCSD also indicated that CCSD did not intend to produce the records subject to the February Request on a rolling basis, and that CCSD "hoped" to provide records by March 3, 2017. (McLetchie Decl. at ¶ 9; *see also* Exh. 25.)

81. Finally, counsel for CCSD indicated that he did not believe CCSD would provide a log, but indicated that the Review-Journal should follow up with Carlos McDade, General Counsel for CCSD. (McLetchie Decl. at ¶ 10; *see also* Exh. 25.)

82. Following that conversation, counsel for the Review-Journal emailed CCSD's General Counsel and again requested that CCSD provide a firm date for its response to the February Request. (Exh. 25.)

83. To date, CCSD has not provided the requested records to the Review-Journal.

84. To date, CCSD has not indicated when it intends to provide the records outlined in the February Request.

85. CCSD has failed to comply with both the spirit and the letter of the NPRA.

LEGAL AUTHORITY

86. The NPRA reflects that records of governmental entities belong to the public in Nevada. Nev. Rev. Stat. § 239.010(1) mandates that, unless a record is 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..." The NPRA reflects specific legislative findings and declarations that "[its purpose is to foster

1 democratic principles by providing members of the public with access to inspect and copy
2 public books and records to the extent permitted by law” and that it provisions “must be
3 construed liberally to carry out this important purpose.”

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

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

12 88. More generally, the NPRA dictates that a meaningful response be provided
13 within five (5) days of a request. Nev. Rev. Stat. § 239.0107(1).

14 89. A governmental entity seeking to withhold or redact records on some basis
15 other than a specifically delineated statutory privilege must prove—by a preponderance of
16 the evidence—that the records are confidential or privileged *and* that the interest in
17 nondisclosure outweighs the strong presumption in favor of access. *See, e.g., Reno*
18 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 628 (2011).

19 90. Moreover, at every step of this analysis, privileges and limitations on
20 disclosure must be construed narrowly. *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*,
21 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (“It is well settled that privileges, whether
22 creatures of statute or the common law, should be interpreted and applied the NPRA “must
23 be construed liberally” to ensure the presumption of openness and explicitly declares that
24 any restriction on disclosure “must be construed narrowly.” *See also* Nev. Rev. Stat. §
25 239.001 (3) (requiring that any limitation on the public’s access to public records “must be
26 construed narrowly”).

27 91. Further, if a public record contains confidential or privileged information
28 only in part, in response to a request for access to the record, a governmental entity shall

1 redact the confidential information and produce the record in redacted form. Nev. Rev. Stat.
2 § 239.010 (3).

3 92. A governmental entity cannot meet its applicable “burden by voicing non-
4 particularized hypothetical concerns[.]” *DR Partners v. Board of County Comm’rs*, 116
5 Nev. 616, 628, 6 P.3d 465, 472-73 (2000).

6 93. “[C]oncerns [that are] merely hypothetical and speculative,” do not
7 “outweigh the public interest in access to . . . records.” *PERS v. Reno Newspapers, Inc.*, 129
8 Nev. Adv. Op. 88, 313 P.3d 221, 225 (2013) citing *Reno Newspapers v. Haley*, 126 Nev.
9 211, 219, 234 P.3d 922, 927 (2010).

10 CLAIM FOR RELIEF

11 94. Petitioner re-alleges and incorporates by reference each and every
12 allegation contained in paragraphs 1-93 with the same force and effect as if fully set forth
13 herein.

14 95. The Review-Journal should be provided with the records set forth in the
15 February Request, and should be provided with a log.

16 96. The records listed in the February Request are subject to disclosure, and
17 Respondent has failed to meet its burden of establishing otherwise, and indeed has failed to
18 provide any basis for withholding records within five (5) business days as required by the
19 NPRA. Nev. Rev. Stat. § 239.0107(1)(d).

20 97. A writ of mandamus is necessary to compel Respondent’s compliance with
21 the NPRA.

22 98. Respondent has violated the letter and the spirit of Nev. Rev. Stat. §
23 239.010 by refusing to meaningfully respond within five (5) days, delaying, and failing to
24 provide the records.

25 WHEREFORE, the Petitioner prays for the following relief:

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

28 2. Injunctive relief ordering CCSD to immediately make available complete

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copies of all records requested;

3. Reasonable costs and attorney’s fees; and

4. Any further relief the Court deems appropriate.

DATED this the 1st day of March, 2017.

Respectfully submitted,

/s/ Margaret A. McLetchie
MARGARET A. MCLEITCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLEITCHIE SHELL LLC
701 East Bridger Avenue, Suite. 520
Las Vegas, NV 89101
Telephone: (702)-728-5300
Email: maggie@nvlitigation.com
Counsel for Petitioner

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 1st day of March, 2017, I did cause a true copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, to be served electronically using the Wiznet Electronic Service system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B), I further hereby certify that on the 1st day of March, 2017, I mailed a true and correct copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Carlos McDade, General Counsel
Adam Honey, Asst. General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Counsel for Respondent, Clark County School District

/s/ Pharan Burchfield
An Employee of MCLETSCHIE SHELL LLC

1 **DECL**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE SHELL LLC

5 701 East Bridger Avenue, Suite. 520

6 Las Vegas, NV 89101

7 Telephone: (702)-728-5300

8 Email: maggie@nvlitigation.com

9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

17 **DECLARATION OF MARGARET A. MCLEATCHIE**

18 I, MARGARET A. MCLEATCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330,
19 as follows:

20 1. I have personal knowledge of the facts set forth below, and, if called as a
21 witness, could testify to them.

22 2. I am an attorney duly licensed to practice law in Nevada.

23 3. I am partner at the law firm of McLetchie Shell, LLC, and I am counsel for
24 the Las Vegas Review-Journal in the above-entitled matter.

25 4. I am making this declaration to authenticate documents attached as exhibits
26 to Petitioner's Amended Public Records Act Application Pursuant To NRS § 239.001/
27 Petition For Writ Of Mandamus, and to verify factual representations contained therein.

28 5. I have personal knowledge of the matters contained herein and am
competent to testify hereto.

6. On March 1, 2017, I called Adam Honey, counsel for the Clark County
School District ("CCSD") to discuss the public records request the Review-Journal submitted

1 to CCSD on February 10, 2017 (the "February Request") and other communications from
2 me.

3 7. During that call, I asked Mr. Honey if CCSD intended to respond to the
4 letter I sent on February 21, 2017 regarding CCSD's February 17, 2017 email regarding the
5 February Request.

6 8. Mr. Honey stated he did not believe any correspondence I sent regarding
7 the February Request required a response.

8 9. Mr. Honey also indicated that CCSD did not intend to produce the records
9 outlined in the February Request on a rolling basis, and that CCSD "hoped" to provide
10 records by March 3, 2017.

11 10. Mr. Honey further indicated that he did not believe CCSD would provide a
12 log to the Review-Journal, but indicated I should follow up with Carlos McDade, General
13 Counsel for CCSD.

14 11. I did email Mr. McDade on March 1, 2017. (*See* Exh. 25.)

15 12. Exhibit 16 is a true and correct copy of an email I sent to CCSD on February
16 24, 2017.

17 13. Exhibit 17 is a true and correct copy of an email I sent to CCSD on February
18 24, 2017.

19 14. Exhibit 18 is a true and correct copy of an email I received from the Office
20 of the General Counsel for CCSD on February 24, 2017.

21 15. Exhibit 19 is a true and correct copy of an email and attached
22 correspondence I received from the Office of the General Counsel on February 27, 2017.

23 16. Exhibit 20 is a true and correct copy of the public records request I sent to
24 CCSD on February 10, 2017.

25 17. Exhibit 21 is a true and correct copy of an email I sent to CCSD on February
26 15, 2017.

27 18. Exhibit 22 is a true and correct copy of a response I received from CCSD
28 on February 17, 2017 regarding the February Request.

1 19. Exhibit 23 is a true and correct copy of a letter I sent to CCSD on February
2 21, 2017.

3 20. Exhibit 24 is a true and correct copy of an email I sent to CCSD in February
4 27, 2017.

5 21. Exhibit 25 is a true and correct copy of an email I sent on March 1, 2017 to
6 Carlos McDade, General Counsel for CCSD.

7 I certify and declare under the penalty of perjury under the law of the State of
8 Nevada that the foregoing is true and correct, and this declaration was executed at Las Vegas,
9 Nevada, the 1st day of March, 2017.

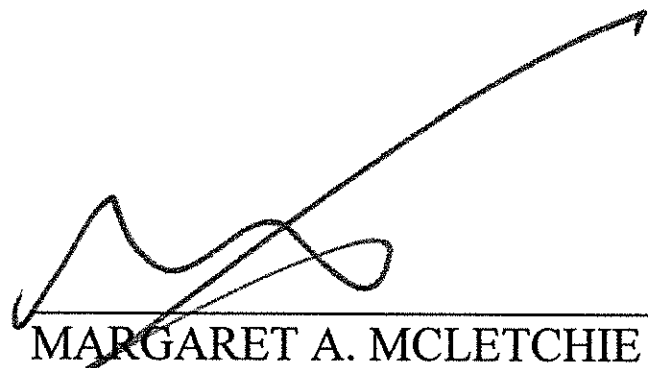
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13 MARGARET A. MCLEITCHIE

EXHIBIT 16

Alina

From: maggie
Sent: Friday, February 24, 2017 1:18 PM
To: Adam Honey
Cc: pharan@nvlitigation.com; clmcdade@interact.ccsd.net
Subject: RJ v CCSD

Adam,

Just left you a message. I was calling to let you know that we received the un-redacted documents. Thank you very much.

On the subsequent request for records, I had hoped to hear from you once you received responsive documents for review. Please let me know what the status is, and give me a call back when you get the chance.

Regards,

Maggie



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EXHIBIT 17

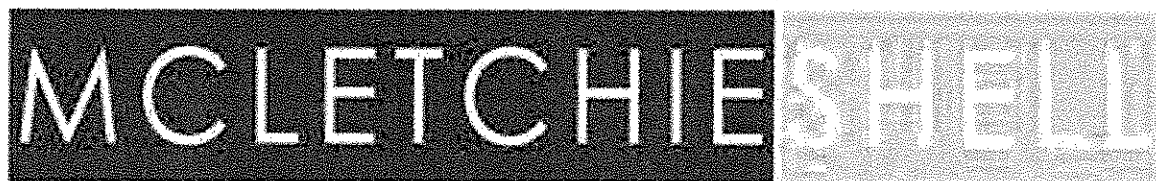
pharan@nvlitigation.com

From: maggie
Sent: Friday, February 24, 2017 1:31 PM
To: Adam Honey
Cc: pharan@nvlitigation.com; clmcdade@interact.ccsd.net
Subject: RE: RJ v CCSD

Adam and Carlos-

Sorry for the multiple emails but I just reviewed the redactions quickly and wanted to alert you to an issue right away. It appears that the redactions on the first page violate the Court's Order. For example, the name of the principal has been redacted.

We can discuss that issue as well when you call. Thank you in advance for your prompt attention to these matters.



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From: maggie
Sent: Friday, February 24, 2017 1:18 PM
To: 'Adam Honey' <ahoney@interact.ccsd.net>
Cc: pharan@nvlitigation.com; clmcdade@interact.ccsd.net
Subject: RJ v CCSD

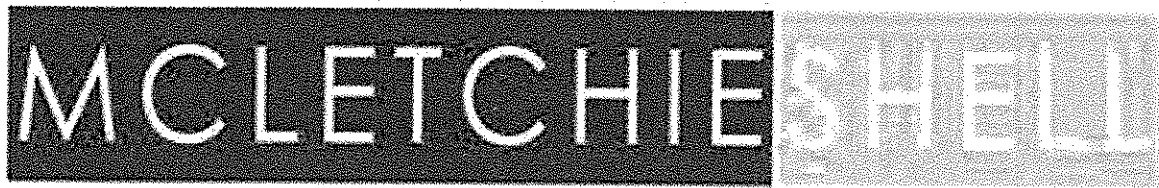
Adam,

Just left you a message. I was calling to let you know that we received the un-redacted documents. Thank you very much.

On the subsequent request for records, I had hoped to hear from you once you received responsive documents for review. Please let me know what the status is, and give me a call back when you get the chance.

Regards,

Maggie



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EXHIBIT 18

pharan@nvlitigation.com

From: Susan Gerace <sgerace@interact.ccsd.net>
Sent: Friday, February 24, 2017 4:19 PM
To: maggie; pharan@nvlitigation.com
Cc: Carlos L. McDade; Adam Honey
Subject: LVRJ v. CCSD - Case No. A-17-750151-W

Dear Ms. McLetchie:

On behalf of Carlos McDade, our office is in receipt of your e-mail today. On Monday morning, we will provide you with a new version of page 1.

Susan Gerace
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue, 3rd Floor
Las Vegas, NV 89146
Phone: (702) 799-5373
Fax: (702) 799-5505

EXHIBIT 19

pharan@nvlitigation.com

From: Susan Gerace <sgerace@interact.ccsd.net>
Sent: Monday, February 27, 2017 8:48 AM
To: maggie; pharan@nvlitigation.com
Cc: Carlos L. McDade; Adam Honey
Subject: LVRJ v. CCSD - Case No. A-17-750151-W
Attachments: 02.27.17 Letter to Judge Williams re page 1 revised.pdf

Dear Ms. McLetchie:

On behalf of Carlos McDade, attached for your review is correspondence to Judge Timothy Williams regarding the above referenced matter.

Susan Gerace
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue, 3rd Floor
Las Vegas, NV 89146
Phone: (702) 799-5373
Fax: (702) 799-5505

OFFICE OF THE GENERAL COUNSEL

5100 WEST SAHARA AVENUE • LAS VEGAS, NV 89146 • (702) 799-5373 • FAX (702) 799-5505



CLARK COUNTY
SCHOOL DISTRICT

BOARD OF SCHOOL TRUSTEES

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Dr. Linda E. Young, Vice President
Carolyn Edwards, Clerk
Lola Brooks, Member
Kevin L. Child, Member
Erin E. Cranor, Member
Chris Garvey, Member

Pat Skorkowsky, Superintendent

February 27, 2017

Via Hand-Delivery

The Honorable Timothy C. Williams
Eighth Judicial District Court, Department 16
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Re: Las Vegas Review Journal v. Clark County School District
Case No. A-17-750151-W

Dear Judge Williams:

Pursuant to the Court's Order issued in Case No. A-17-750151-W, dated February 22, 2017, enclosed is a copy of Bates labeled page 001 that has been revised as ordered by the Court. The only redaction is the name of a victim or alleged victim of sexual harassment, which the Court expressly allowed in the Order. See Order p. 6-8.

The December 5, 2016 public records request by the LVRJ (which was supplemented on December 9) is the only request subject to the Writ of Mandate. Because these documents satisfy the Order of the Court, we request that the status check set for March 2, 2017, be vacated.

Sincerely,

Carlos L. McDade
General Counsel

CLM
Enclosure

cc: Maggie McLetchie, via e-mail

Date: September 13, 2016

Re: Incident Report (Trustee Kevin Child)

Time: approximately 11:27 am (after 1st lunch)

After 1st lunch on Tuesday, September 13, 2016, I was on duty by the 300/400 hallway. As I was clearing the hallway, I saw Mr. Kevin Child walking towards me, and as he approached me, he asked me if I was a monitor. I replied, "No, Sir. I am one of the assistant principals." As I responded to his question, I noticed that he looked at me from head to toe and back, which made me uncomfortable. He acknowledged me by saying, "Oh, you are one of the assistant principals," but as he spoke, he continued to look at me from head to toe and back. This made me so uncomfortable. He continued to converse with me about the school, and I responded by telling him how I love the school and I also said that our principal, Ms. Esparza, is so awesome. Mr. Child continued to look at me from head to toe and back, which made me very uncomfortable. I noticed that he repeated the words that I said about Ms. Esparza and Valley H.S., but as he spoke to me, he looked at me from head to toe and back. When he walked away, another assistant principal, Ms. Ramona Fricker, was walking towards me, so I approached her and told her what just transpired. I told Ms. Fricker that it made me so uncomfortable. She remarked, "Ewww, he checked you out? That's disgusting." As I walked towards the top of the ramp, I saw my principal, Ms. Ramona Esparza, and I told her what just transpired, and again, I told her that it made me really very uncomfortable.



Assistant Principal
Valley High School

EXHIBIT 20

VIA U.S. MAIL AND E-MAIL

February 10, 2017

Adam Honey, Assistant General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
Email: ahoney@interact.ccsd.net

Dear Mr. Honey:

Pursuant to Nevada's Public Records Act (Nevada Revised Statutes § 239.010 et. seq.) and on behalf of the Las Vegas Review-Journal, I hereby request the Clark County School District ("CCSD") documents listed below.

Documents requested:

Please provide any and all records (including but not limited to investigative memos, notes, reports, summaries, interviews (written or recorded), emails, correspondence, and communications to or from CCSD staff and police)¹ that have not previously been provided to the Las Vegas Review-Journal and that pertain to, discuss, or reference concerns about the actions and behavior of Trustee Kevin Child. Please include, but do not limit your production, to the following

- Records that pertain to, discuss, or reference any inappropriate sexual comments Mr. Child is alleged to have made to female CCSD employees or any appropriate sexual behavior Mr. Child is alleged to have engaged in;
- Records that pertain to, discuss, or reference any complaints (formal and informal) submitted by female CCSD employees about Mr. Child's behavior;
- Records that pertain to, discuss, or reference Concerns about female employees' concerns about being alone with Mr. Child;
- Records that pertain to, discuss, or reference concerns about Mr. Child having (or wanted to have) romantic relationships with female CCSD employees;

¹ Unless specifically limited below, please interpret "record" broadly to include hard copy records as well as electronically stored information ("ESI"). The NPRA provides broad public access to public records, requires that its terms be construed liberally, and mandates that any exception be construed narrowly. NRS 239.010(1); NRS § 239.001(2), (3); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Op. 79, 266 P.3d 623, 626 (2011).

- Records that pertain to, discuss, or reference concerns that Mr. Child's behavior and/or statements have created a hostile work environment;
- Records that pertain to, discuss, or reference the factual bases for CCSD's determination that Mr. Child has violated Title VII of the Civil Rights Act of 1964;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding their appearance;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding sexual orientation;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD students and/or employees regarding suicide;
- Records that pertain to, discuss, or reference concerns about inappropriate comments regarding inappropriate comments made by Mr. Child about race, ethnicity, or national origin;
- Records that pertain to, discuss, or reference concerns that Mr. Child engaged in inappropriate behavior at the Magnet Schools of America Conference that took place in Miami, Florida in May of 2016;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at events conducted at CCSD schools as part of CCSD's Professionals and Youth Building A Commitment (PAYBAC) Program;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at KidsVentions events;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior while visiting any CCSD school during any instructional day; and
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at the CCSD administrative building.

Instructions for Production; Minimizing Burdens

Please provide copies of all responsive records. I imagine that a search for "Kevin Child" would yield appropriate records. However, should any searches yield too many hits or otherwise be too cumbersome, please contact me so we can minimize any burden or any nonresponsive documents being produced. As we discussed by phone today, I am happy to work with you on ways to locate records and narrow searches if necessary. My aim is to avoid any unnecessary burden or the need for extraordinary resources while quickly obtaining documents for the Review-Journal. To that

end, and in light of the number of topics below, perhaps we can sequence the work so that I can receive documents on an ongoing basis, and at least some records as soon as possible.

For electronic records, please provide the records in their original electronic form attached to an email, or downloaded to an electronic medium. I am 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. I am also happy to arrange of pick- up of copies.

I will also gladly take information as it becomes available; **please do not wait to fill the entire request, but send each part or contact me as it becomes available.**

Fees and Costs

If you intend to charge any fees for obtaining copies of these records, please contact me immediately (no later than 5 days from today) if the cost will exceed \$50.00. In any case, I 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 CCSD. In any case, I can inspect the records in person. No fees can be charged for a request to inspect records (Nev. Rev. Stat. § 239.010 mandates that "all public books and public records of a government entity must be open at all times during office hours to inspection by any person...").

Claims of Confidentiality

If you deny access to any of the records requested in whole or in part, please explain your basis for doing so, 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). Further, 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.")

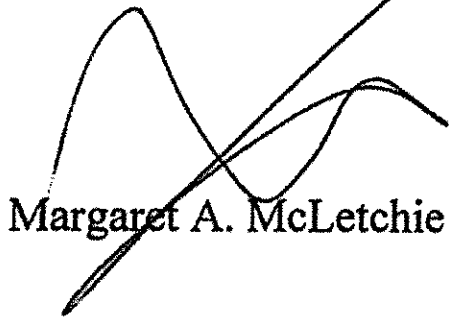
Please also redact or separate out the information that you contend is confidential rather than withholding records in their entirety, as required by Nev. Rev. Stat. § 239.010(3). Again, please cite the statutory provision you rely upon to redact or withhold part of a record.

If you deny access to any of the records requested in whole or in part, you are required to provide your legal basis for doing so in writing within five (5) days. NRS § 239.011(1)(d). **However, in light of the urgent nature of this request, please do not wait to provide documents that you are willing to provide in order to provide a log. We will be happy to cooperate with you on timing.**

Please provide the records within five (5) business days pursuant to Nev. Rev. Stat. §239.0107. Again, please email your response to efile@nvlitigation.com rather than U.S. Mail so I can review as quickly as possible.

Thank you in advance for your cooperation with my request. Please contact me with any questions whatsoever. In addition to email, you can reach me by phone at 702-728-5300.

Sincerely,



Margaret A. McLetchie

MCLETCHIE I SHELL
701 E. Bridger Avenue, Suite 520
Las Vegas NV 89101



MAILED

2/10/17

Adam Honey, Assistant General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146

B50148.10



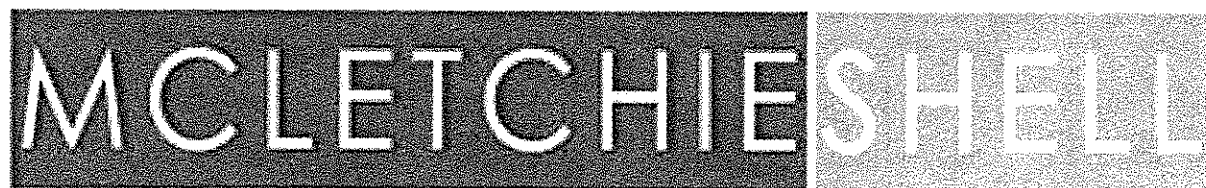
\$0.460
US POSTAGE
FIRST-CLASS
062S0008250957
89101

From: pharan@nvlitigation.com
Sent: Friday, February 10, 2017 4:03 PM
To: 'ahoney@interact.ccsd.net'
Cc: maggie
Subject: Public Records Act request
Attachments: CCSD - 2017.02.10 PRA.pdf

Good afternoon, Mr. Honey.

I am writing on behalf of Ms. McLetchie. Attached please find her correspondence dated today. A copy has also been sent by mail. Should there be questions or concerns, please contact the office.

Thank you,
Pharan Burchfield
Paralegal



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EXHIBIT 21

Alina

From: maggie
Sent: Wednesday, February 15, 2017 1:08 PM
To: Adam Honey
Cc: pharan@nvlitigation.com; Carlos L. McDade
Subject: RE: RJ v CCSD - Draft ORDER

Adam – Moving on to the response due Friday- please let me know when you are available to discuss. Since you are out the rest of today, could we please set a time for tomorrow?



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From: Adam Honey [mailto:ahoney@interact.ccsd.net]
Sent: Wednesday, February 15, 2017 12:43 PM
To: maggie <maggie@nvlitigation.com>
Cc: pharan@nvlitigation.com; Carlos L. McDade <clmcdade@interact.ccsd.net>
Subject: Re: RJ v CCSD - Draft ORDER

Hey Maggie,

I am sure it is no surprise to you, but I disagree. Your proposed order is still greatly over reaching and goes far beyond what is contained in the minutes. As such, attached please find CCSD's proposed order limited to the findings and order contained in the aforementioned minutes. If you are still in disagreement, we will need to submit the proposed orders to Dept. 16 and let Judge Williams decide.

As a heads up, I am out of the office after about 1:30 p.m. today so if you try to reach me after 1:30, I won't be able to respond until Thursday a.m.

Sincerely,

Adam Honey

maggie <maggie@nvlitigation.com> writes:

Adam –

I haven't appeared before Judge Williams before but in my experience in other PRA matters, the courts want to address the legal and factual bases for a ruling (even if they don't use the language you note below in open court) -- and I do think this accurately reflects the judge's reasoning with regard to the law and his legal findings (5 day deadline, burden, and the failure to demonstrate confidentiality by CCSD, etc.).

I agree that the Court did not provide a specific timeframe but, based on our conversations, I thought that 24 hours would work. In any case, I have changed it on the attached to 2 days. Please let me know if you would suggest a different timeframe and why. Even though it wasn't explicitly addressed today, the Court did set a short deadline in the previous order in this matter (2 days) and I do not think an open-ended order is appropriate.

I disagree with your summary below re what needs to be redacted vs unredacted in that I think we need to start with what can be redacted, which the Court made clear was very limited., and then make clear what you must unredact to comply, if that makes sense. The items listed are just examples of what may need to be un-redacted. Further, the Court only indicated that the names of victims can be redacted – your language below is too broad I believe. In any case, I have made some edit in the attached in light of your notes below.

I am happy to discuss this further but do not want further delays (especially in light of your view that CCSD should not have a deadline to comply) and it appears from the below that you intend to provide your own proposed order rather than edits to my draft. I respectfully contend that the Judge instructed me to prepare an order and we do not appear to be on the same page as to what an order should contain. Accordingly, I will touch base with you in the morning but with all due respect, unless it appears we can agree on the form the order should take, I intend to submit my own order (as revised) without delay – and without relitigating this matter.

I will speak with you tomorrow.

Regards,

Maggie

image001

Attorneys at Law

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

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From: Adam Honey [mailto:ahoney@interact.ccsd.net]
Sent: Tuesday, February 14, 2017 4:48 PM
To: maggie <maggie@nvlitigation.com>
Cc: Carlos L. McDade <clmcdade@interact.ccsd.net>; pharan@nvlitigation.com
Subject: Re: RJ v CCSD - Draft ORDER

Maggie,

With all due respect, I believe your Order greatly over reaches the content of Judge Williams' Order today. Additionally, he did not make findings of fact.. There was no, "I hereby find" The order was strictly as to what information needed to be unredacted as that was the lone topic of today's hearing. I believe the Order was to the following affect: CCSD shall un-redact the names of all schools and administrators to include principals, assistant principals, deans, counselors, coordinators and teachers but not support staff, students or any persons complaining or reporting sexual harassment. Please note that in our view, we include "program administrators" in with administrators. We will not be splitting hairs so to speak as to the administrators. In an abundance of caution, I will wait for the minutes to ensure accuracy before I provide our proposed order. Finally, I do not recall the Judge ordering the District to un-redact the information within 24 hours or any time period for that matter. That being said, complying with the Order probably will be done within quickly, once the Order is made more accurate, as it is my intent to move this along.

Sincerely,

Adam Honey

maggie <maggie@nvlitigation.com> writes:

Carlos and Adam,

Attached please find the R-J's proposed order. Please let me know if you have any comments or proposed edits. In light of the fact that CCSD will require an order before providing the documents without redactions (and my client's continued interest in getting documents), I would really appreciate it if you would get back to me at your earliest convenience so we can submit this to the Court without delay. As ever, I am happy to discuss this matter with you. I also look forward to working with you, Adam, on resolving any issues with regard to the most recent request.

Best Regards,

Maggie McLetchie

image001

Attorneys at Law

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Las Vegas, NV 89101

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EXHIBIT 22

From: Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net>
Sent: Friday, February 17, 2017 4:06 PM
To: pharan@nvlitigation.com
Subject: Fwd: Public Records Act request
Attachments: CCSD - 2017.02.10 PRA.pdf

Ms. McLetchie,

We are in receipt of the attached request, dated February 10, 2017, for additional records regarding Kevin Child. Pursuant to NRS 239.0107, we are unable to provide the information to you within 5 business days. The District anticipates a further response by the close of the business day on, March 3, 2017.

If some records become available before that date, we will attempt, but do not make any guarantee, to provide the same on an ongoing as requested in your correspondence.

In order to ensure that CCSD does not waive any privileges by way of this responsive correspondence, CCSD hereby asserts the following privileges but reserves the right to assert additional privileges, if necessary, at the time of production, if any:

The public records law does not require the release of confidential employee personnel information. See NRS 239.010; NRS 386.350; NAC 284.718; NAC 284.726; CCSD Regulation 1212; CCSD Regulation 4311; CCSD Regulation 4110; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); People for Ethical Treatment of Animals v. Bobby Berosini Ltd., 111 Nev. 615, 629 (Nev. 1995); El Dorado Savings & Loan Assoc. v. Superior Court of Sacramento County, 190 Cal. App. 3d 342 (1987).

Further, to the extent documents are received or gathered by the District in the course of investigating an alleged unlawful discriminatory practice those documents are confidential. See CCSD Regulation 4110(X). Also, to the extent records include personally identifiable student information they are confidential under the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029. Other documents may be subject to the deliberative process privilege. See DR Partners v. Board of County Commissioners of Clark County, 116 Nev. 616, 621 (2000).

The United States Equal Employment Opportunity Commission has stated that employers are obligated to investigate and address instances of harassment, including sexual harassment. The EEOC also states that employees who are subjected to harassment frequently do not complain to management due to fear of retaliation. See *Faragher*, 118 S. Ct. 2275, 2292 (1998) (defense established if plaintiff unreasonably failed to avail herself of “a proven, effective mechanism for reporting and resolving complaints of sexual harassment, available to the employee without undue risk or expense”). See also Restatement (Second) of Torts § 918, comment (tort victim “is not barred from full recovery by the fact that it would have been reasonable for him to make expenditures or subject himself to pain or risk; it is only when he is unreasonable in refusing or failing to take action to prevent further loss that his damages are curtailed”).

Regarding confidentiality of an investigation, EEOC states that “[a]n employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis.”

EEOC Notice No. 915.002, date 6/18/99, *in effect until rescinded or superceded*.

“To assure employees that such a fear is unwarranted, the employer must clearly communicate and enforce a policy that no employee will be retaliated against for complaining of harassment.” As Trustee Child is a corporate officer and not subject to internal employer corrective action, the only manner in which the District may act to protect against potential retaliation is to withhold the identity of the employees. Therefore, the records of the investigation should be kept confidential under EEOC guidance.

The District and public have an interest in a strong system to address complaints of harassment that encourages reporting without fear of retaliation. A balancing of the interests weighs in favor of confidentiality and non-disclosure. See NRS 239.010; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990).

Thank you.

Cindy Smith-Johnson

Public Records Request
Office of Community and Government Relations
publicrecordrequest@interact.ccsd.net
702-799-5865
00155503

EXHIBIT 23

VIA U.S. MAIL AND E-MAIL

February 21, 2017

Adam Honey, Assistant General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
Email: ahoney@interact.ccsd.net

Dear Mr. Honey:

Just following up to memorialize our calls of today and Friday and to partially respond to your letter dated February 17, 2017 (responding in turn to the Review-Journal's February 10, 2017).

Order; Timely Compliance

You re-affirmed that you do not plan to begin un-redacting documents until a notice of entry is filed. Should the Court leave filing the order to you, please be sure to do so quickly. While you would not agree to a due date for compliance, you did indicate you would try to turn around the documents as soon as possible (same day or next day) when we receive an order. Thank you for your consideration and recognition of my client's desire to obtain unredacted documents as quickly as possible.

February 10, 2017 Request

I am in receipt of your February 17, 2017 response, as you know. We discussed the fact that you have simply provided "place-holder" objections so you do not waive any claims of confidentiality while you are waiting to receive and review documents. I will address those claims once I have more information (I hope to see at least some responsive document soon). You also noted that you would provide specifics regarding the documents you are withholding (or redacting) and why at a later date. Thank you. Again, as indicated in the February 10, 2017 request, please do not wait to provide documents while you are preparing a log.

Finally, you noted that you would try to comply with my request to provide documents on a rolling basis. On Friday, you indicated to me that you hoped to receive the documents today, but you had not received them (as of 4:15 pm or so). As you know, in addition to requiring timely assertion of claims of confidentiality, Nevada's Public Records Act also requires governmental entities to provide a date regarding when documents will actually be available. I look forward to that information from you once you receive responsive documents for review.

We also discussed the process for searching for and locating responsive documents. I asked what sources were being searched, and how searches were being conducted. You indicated that the search was being conducted by a completely separate department (IT) and that you were not

February 21, 2017

involved in that process. I asked you to ask the IT department for information regarding searches and suggested your participation could help ensure a timely production. I also offered to do a joint call with you and your IT department to narrow searches.

I continue to look forward to resolving the issues at hand with you as quickly as possible, and thank you for your continued attention to these matters. I understand that you aren't usually tasked with NPRA matters and I appreciate the efforts to resolve the matters we can.

Regards,

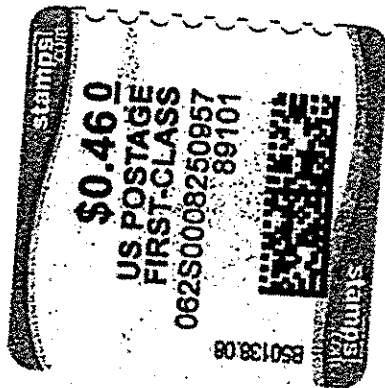


Margaret A. McLetchie

cc: file; Carlos McDade (via email only)

MCLEATCHIE I SHELL

701 E. Bridger Avenue, Suite 520
Las Vegas NV 89101



Adam Honey, Assistant General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146

pharan@nvlitigation.com

From: pharan@nvlitigation.com
Sent: Tuesday, February 21, 2017 5:50 PM
To: 'Adam Honey'
Cc: maggie; 'clmcdade@interact.ccsd.net'
Subject: Public Records Act request
Attachments: CCSD - 2017.02.21 PRA.pdf

Good afternoon, Mr. Honey.

I am writing on behalf of Ms. McLetchie. Attached please find her correspondence dated today. A copy has also been sent by mail. Should there be questions or concerns, please contact the office.

Thank you,

Pharan Burchfield

Paralegal



ATTORNEYS AT LAW

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

(702)728-5300 (T) / (702)425-8220 (F)

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EXHIBIT 24

Alina

From: maggie
Sent: Monday, February 27, 2017 6:10 PM
To: Adam Honey
Cc: pharan@nvlitigation.com; clmcdade@interact.ccsd.net
Subject: RE: RJ v CCSD

Adam,

Following up again on the documents currently under review. As it currently stands, we have a hearing 3/2 and I am hoping for an update in advance of the hearing (and, again, am here to help resolve any over-breadth issues and to make suggestions on narrowing searches if you are able to obtain that information.) Thanks in advance.

Maggie



ATTORNEYS AT LAW

701 East Bridger Ave., Suite 520
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From: maggie
Sent: Friday, February 24, 2017 1:18 PM
To: 'Adam Honey' <ahoney@interact.ccsd.net>
Cc: pharan@nvlitigation.com; clmcdade@interact.ccsd.net
Subject: RJ v CCSD

Adam,

Just left you a message. I was calling to let you know that we received the un-redacted documents. Thank you very much.

On the subsequent request for records, I had hoped to hear from you once you received responsive documents for review. Please let me know what the status is, and give me a call back when you get the chance.

Regards,

Maggie



ATTORNEYS AT LAW

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

(702)728-5300 (T) / (702)425-8220 (F)

www.nvlitigation.com

IMPORTANT NOTICE: Privileged and/or confidential information, including attorney-client communication and/or attorney work product may be contained in this message. This message is intended only for the individual or individuals to whom it is directed. If you are not an intended recipient of this message (or responsible for delivery of this message to such person), any dissemination, distribution or copying of this communication is strictly prohibited and may be a crime. No confidentiality or privilege is waived or lost by any misdirection of this message. If you received this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender by return e-mail.

EXHIBIT 25

From: maggie
Sent: Wednesday, March 01, 2017 10:04 AM
To: clmcdade@interact.ccsd.net
Cc: Alina; Adam Honey; sgerace@ccsd.net; pharan@nvlitigation.com
Subject: RJ v. CCSD

Carlos:

Because my messages and letters requesting information have been ignored, I just called and spoke to Adam about the RJ's 2/10 request. He and I had previously spoken about providing documents as they were reviewed and available but I have not received any and he just indicated that this was now not possible. He also indicated that CCCSD "hoped" to have records available by 3/3 – could you please provide a date certain? Also, while CCSD previously asserted some "placeholder" objections, to the extent that CCSD does in fact withhold documents, the RJ will need more specific information. However, from speaking with Adam, it does not sound like a log or document with similar information will be provided. He indicated that you might be the appropriate person to discuss these matters with since he is not the decision-maker. Would you please get back to me at your earliest convenience about these matters? The RJ is in the process of amending its petition but I am hoping we can resolve as many matters as possible in advance of tomorrow.

Thank you for your consideration.

Maggie



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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 **CLARK COUNTY SCHOOL**
3 **DISTRICT,**

4 Appellant.

5 vs.

6 **LAS VEGAS REVIEW-JOURNAL,**

7 Respondent.
8
9

Supreme Court No. 75534

District Court No. A750151

District Court Dep. No. XVI

Electronically Filed
Sep 07 2018 12:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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15 **APELLANT’S APPENDIX**
16 **VOLUME I**
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23 Adam Honey, Nevada State Bar No. 9588
24 Clark County School District
25 Office of General Counsel
26 5100 W. Sahara Avenue
27 Las Vegas, NV 89146
28 *Counsel for Appellant, Clark County School District*

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Margaret A. McLetchie, Esq.
MCLECHIE SHELL LLC
701 East Briger Avenue, Suite 520
Las Vegas, NV 89101
Attorney for Respondent

Christina Reeves

5

VIA U.S. MAIL AND E-MAIL

February 10, 2017

Adam Honey, Assistant General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
Email: ahoney@interact.ccsd.net

Dear Mr. Honey:

Pursuant to Nevada's Public Records Act (Nevada Revised Statutes § 239.010 et. seq.) and on behalf of the Las Vegas Review-Journal, I hereby request the Clark County School District ("CCSD") documents listed below.

Documents requested:

Please provide any and all records (including but not limited to investigative memos, notes, reports, summaries, interviews (written or recorded), emails, correspondence, and communications to or from CCSD staff and police)¹ that have not previously been provided to the Las Vegas Review-Journal and that pertain to, discuss, or reference concerns about the actions and behavior of Trustee Kevin Child. Please include, but do not limit your production, to the following

- Records that pertain to, discuss, or reference any inappropriate sexual comments Mr. Child is alleged to have made to female CCSD employees or any appropriate sexual behavior Mr. Child is alleged to have engaged in;
- Records that pertain to, discuss, or reference any complaints (formal and informal) submitted by female CCSD employees about Mr. Child's behavior;
- Records that pertain to, discuss, or reference Concerns about female employees' concerns about being alone with Mr. Child;
- Records that pertain to, discuss, or reference concerns about Mr. Child having (or wanted to have) romantic relationships with female CCSD employees;

¹ Unless specifically limited below, please interpret "record" broadly to include hard copy records as well as electronically stored information ("ESI"). The NPRA provides broad public access to public records, requires that its terms be construed liberally, and mandates that any exception be construed narrowly. NRS 239.010(1); NRS § 239.001(2), (3); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Op. 79, 266 P.3d 623, 626 (2011).

- Records that pertain to, discuss, or reference concerns that Mr. Child's behavior and/or statements have created a hostile work environment;
- Records that pertain to, discuss, or reference the factual bases for CCSD's determination that Mr. Child has violated Title VII of the Civil Rights Act of 1964;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding their appearance;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding sexual orientation;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD students and/or employees regarding suicide;
- Records that pertain to, discuss, or reference concerns about inappropriate comments regarding inappropriate comments made by Mr. Child about race, ethnicity, or national origin;
- Records that pertain to, discuss, or reference concerns that Mr. Child engaged in inappropriate behavior at the Magnet Schools of America Conference that took place in Miami, Florida in May of 2016;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at events conducted at CCSD schools as part of CCSD's Professionals and Youth Building A Commitment (PAYBAC) Program;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at KidsVentions events;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior while visiting any CCSD school during any instructional day; and
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at the CCSD administrative building.

Instructions for Production; Minimizing Burdens

Please provide copies of all responsive records. I imagine that a search for "Kevin Child" would yield appropriate records. However, should any searches yield too many hits or otherwise be too cumbersome, please contact me so we can minimize any burden or any nonresponsive documents being produced. As we discussed by phone today, I am happy to work with you on ways to locate records and narrow searches if necessary. My aim is to avoid any unnecessary burden or the need for extraordinary resources while quickly obtaining documents for the Review-Journal. To that

end, and in light of the number of topics below, perhaps we can sequence the work so that I can receive documents on an ongoing basis, and at least some records as soon as possible.

For electronic records, please provide the records in their original electronic form attached to an email, or downloaded to an electronic medium. I am 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. I am also happy to arrange of pick- up of copies.

I will also gladly take information as it becomes available; **please do not wait to fill the entire request, but send each part or contact me as it becomes available.**

Fees and Costs

If you intend to charge any fees for obtaining copies of these records, please contact me immediately (no later than 5 days from today) if the cost will exceed \$50.00. In any case, I 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 CCSD. In any case, I can inspect the records in person. No fees can be charged for a request to inspect records (Nev. Rev. Stat. § 239.010 mandates that "all public books and public records of a government entity must be open at all times during office hours to inspection by any person...").

Claims of Confidentiality

If you deny access to any of the records requested in whole or in part, please explain your basis for doing so, 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). Further, 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.")

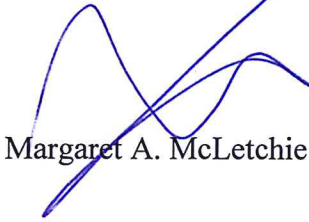
Please also redact or separate out the information that you contend is confidential rather than withholding records in their entirety, as required by Nev. Rev. Stat. § 239.010(3). Again, please cite the statutory provision you rely upon to redact or withhold part of a record.

If you deny access to any of the records requested in whole or in part, you are required to provide your legal basis for doing so in writing within five (5) days. NRS § 239.011(1)(d). **However, in light of the urgent nature of this request, please do not wait to provide documents that you are willing to provide in order to provide a log. We will be happy to cooperate with you on timing.**

Please provide the records within five (5) business days pursuant to Nev. Rev. Stat. §239.0107. Again, please email your response to efile@nvlitigation.com rather than U.S. Mail so I can review as quickly as possible.

Thank you in advance for your cooperation with my request. Please contact me with any questions whatsoever. In addition to email, you can reach me by phone at 702-728-5300.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Margaret A. McLetchie', is written over the typed name. A long, sweeping blue line extends from the end of the signature across the page.

Margaret A. McLetchie