IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION, EMPLOYMENT SECURITY DIVISION, **Appellant,** **vs.** **SIERRA NATIONAL CORPORATION, *dba* THE LOVE RANCH, a NEVADA CORPORATION,** **Respondent.**	**CASE NO.: 76639**

APPEAL FROM JUDGMENT AFTER JURY VERDICT
FIRST JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JAMES T. RUSSELL
District Court Case No. 17 OC 00222 1B

APPELLANT'S REPLY BRIEF

TRACIE K. LINDEMAN, ESQ.
Nevada State Bar No. 5049
Division Legal Counsel
State of Nevada DETR/ESD
500 East Third Street
Carson City, Nevada 89713
(775) 684-3996
(775) 684-3992 – Fax
tklindeman@detr.nv.gov
***Attorney for* Appellant**
Nevada Employment Security Division

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Cont'd)

STATE STATUTES

OTHER RULES, CODES, REGULATIONS, PUBLICATIONS

TABLE OF AUTHORITIES (Cont'd)

INTRODUCTION

The position of the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division (ESD) has been and continues to be that the information sought by Sierra National Corporation, *dba* The Love Ranch, a Nevada Corporation (SNC) is exempt from the provisions of NRS Chapter 239, the Nevada Public Records Act (NPRA) because it is statutorily confidential pursuant to NRS 612.265(1). Because NRS 239.010 and NRS 612.265(1) explicitly declare the records to be confidential, no individual or entity is entitled to the requested information pursuant to the NPRA, and no further balancing of the interests is necessary. The district court therefore erred by granting SNC's writ petition, and the district court's order should be reversed, including the award of attorney fees.

As a separate matter, SNC may be entitled to the requested information pursuant to NRS 612.265(2), as a participant in the administrative proceeding initiated by SNC in response to ESD's determination that the prostitutes at Love Ranch are employees rather than contractors.

Rather than let the administrative process play out, however, SNC filed a public records request in order to circumvent what SNC apparently anticipated to be an unfavorable ruling by the appeal referee. Consequently, the question of whether SNC is entitled to the information pursuant to NRS 612.265(2) remains pending, but is not at issue in this appeal.

ARGUMENT

A. SNC HAS MISSTATED THE STANDARD OF REVIEW.

SNC asserts that the proper standard of review for this matter is whether the district court abused its discretion. SNC cites *Las Vegas Metropolitan Police Department v. Blackjack Bonding,* for this proposition, but this is an incomplete and misleading citation. In *Blackjack Bonding,* this court held: "We review a district court's grant or denial of a writ petition for an abuse of discretion." 131 Nev. 80, 85, 343 P.3d 608, 612 (2015). SNC, however, omits the second part of the holding, which provides that this court will "review the district court's interpretation of caselaw and statutory language de novo." *Id.* Although this is an appeal from an order of the district court granting a writ petition, the key issues are questions of caselaw and statutory interpretation.

In particular, at issue are: (1) whether NRS 612.265 makes all information obtained pursuant to Chapter 612 confidential as a matter of law; (2) whether the NPRA can be used for purposes of discovery; (3) whether Chapter 612 requires the administrative appeal procedures be exhausted prior to taking some alternative action to circumvent those procedures; and (4) whether Chapter 612 or the NPRA require specificity in requests. Accordingly, the correct standard of review is de novo, and this court need not use the deferential "abuse of discretion" standard.

B. NONE OF ESD'S ARGUMENTS HAVE BEEN WAIVED.

SNC argues that by failing to assert confidentiality in the response to SNC's NPRA request, ESD has not only waived any *argument* regarding confidentiality, but also waived the *actual* confidentiality of the information. SNC's assertion lacks merit.

First, SNC argues that because the confidentiality provisions in Chapter 612 do not specifically state that they are non-waivable, they can be waived. In support of this proposition, SNC cites to NRS 40.453(1) and NRS 612.700 as examples where the legislature has included "non-waiver" provisions. Both of these statutes relate to the protection of individuals and their waiver of particular rights, i.e., to protect borrowers from over-reaching lenders, and to protect employees from employers' attempts to get them to waive their rights to unemployment insurance.[1] Both of those instances address situations where individuals might be coerced into waiving rights.

There is an important distinction here, however. Specifically, the information made confidential by NRS 612.265 is collected by ESD, but ESD does not have a privacy interest in the information except insofar as the statute requires

---

[1]SNC also cites to NRS 87A.195 and its list of "nonwaivable provisions." It is presumed that SNC intended to cite to NRS 87A.**190**, but even though that statute sets forth "nonwaivable provisions," they are not waivers of right, but rather mandatory provisions that must be included in partnership agreements. That statute is therefore not helpful in this context.

ESD to safeguard the information. The legislature did not need to include a provision that the confidentiality was "non-waivable" by ESD because it is impossible for ESD to waive the confidentiality of the information. To the extent that it could be waived, it could only be waived by those who actually have a privacy interest in the information.

ESD's lack of standing to waive the confidentiality is illustrated by NRS 612.265(13) which provides criminal penalties for the unauthorized disclosure of information obtained in the administration of Chapter 612 by: (1) the Administrator of ESD; (2) anyone acting on behalf of the Administrator; or (3) anyone acting on behalf of an agency or entity allowed to access such information. Notably missing from the list of those subject to penalty are employing units and persons from whom information has been obtained. It is clear that employing units and individuals from whom the information is obtained would be allowed to release such information without penalty, leading one to the conclusion that the claim of confidentiality belongs not to ESD, but to the employing units and individuals providing the information. Accordingly, whether ESD asserted confidentiality in its response to the NPRA request or not, ESD simply cannot waive the confidentiality of the information.

Based on the foregoing, SNC's argument that the district court has discretion to find a waiver if ESD has willfully refused to follow its duties does not

follow. "[T]he custodian of materials protected by an evidentiary privilege owes a duty to the holder of the privilege to claim the privilege and to take actions necessary to ensure that the materials are not disclosed improperly." *People v. Superior Court (Laff),* 25 Cal. 4th 703, 713 (2001). In the *Laff* case, two attorneys were suspected of insurance fraud. Numerous documents were seized pursuant to a search warrant, and the court held that a hearing before a special master was required to determine whether any of the documents were subject to attorney-client privilege. The court went on to hold, "Even if the custodian is suspected of a crime, when privileged materials in the custodian's possession are seized pursuant to a search warrant, he or she still owes a duty to take appropriate steps to protect the interest of the privilege holders in not disclosing the materials to law enforcement authorities or others." *Id.* It is clear that a custodian cannot waive confidentiality on behalf of the holder of the privilege; not even where the custodian is accused of criminal misconduct, and certainly not where, as here, ESD's only alleged misstep is a failure to specifically assert confidentiality in the denial of SNC's NPRA request.

SNC relies on various cases for the proposition that statutory exemptions can be waived, including *Valley Health System, LLC v. District Court,* 127 Nev. 167, 252 P.3d 676 (2011). In that case, the court held that a party could waive a claim of privilege by failing to timely assert the claim. That situation is distinguishable from the case at bar, however, because the privilege at issue in *Valley*

Health belonged to the medical center under NRS 439.875, which relates to proceedings and records of a patient safety committee. Because the medical center was the privilege holder, failure to assert the claim of privilege resulted in waiver. In the instant case, ESD is not the holder of the privilege, and cannot therefore waive the privilege.

In the event that this court disagrees with the analysis set forth above and concludes that ESD should have asserted confidentiality in its response to SNC's request under the NPRA, ESD asserts that the confidentiality of the records was not waived, but was, at most, arguably forfeited.

> The Supreme Court has observed that '[t]he terms waiver and forfeiture—though often used interchangeably by jurists and litigants—are not synonymous.' *Hamer v. Neighborhood Hous. Servs. of Chicago*, No. 16-658, —— U.S. ——, 138 S.Ct. 13, 17 n.1, —— L.Ed.2d ——, 2017 WL 5160782, at n.1 (U.S. Nov. 8, 2017). 'Waiver is different from forfeiture,' *United States v. Olano*, 507 U.S. 725, 733 (1993), and the distinction can carry great significance."

Barna v. Bd. of Sch. Directors of Panther Valley Sch. Dist., 877 F.3d 136, 146–47 (3d Cir. 2017)

"'[F]orfeiture is the failure to make the timely assertion of a right,' an example of which is an inadvertent failure to raise an argument. *Olano*, 507 U.S. at 733, 113 S.Ct. 1770. Waiver, in contrast, 'is the "intentional relinquishment or abandonment of a known right."'" *Id.* (quoting *Johnson v. Zerbst,* 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938))." *Id.* at 147.

Courts will reach forfeited issues in civil cases where there are exceptional circumstances. "Such 'circumstances have been recognized when the public interest requires that the issue[s] be heard or when a manifest injustice would result from the failure to consider the new issue[s].'" *Id.* (citations omitted).

Here, there was no intentional relinquishment or abandonment of the argument that the records were confidential. Moreover, failing to honor the confidentiality of the records would eviscerate the provisions of NRS 612.265(1). It simply cannot be the rule that records which the legislature intended to be confidential can be opened to public inspection simply because the agency's representative stepped into a trap for the unwary. Such a holding ignores the sound policy reasons for making the records confidential in the first place, including the privacy of the claimants and employing units, and the encouragement of full and robust litigation of employment insurance claims.

C. THE RECORDS AT ISSUE ARE CONFIDENTIAL BY STATUTE, AND NO BALANCING IS REQUIRED.

The information SNC requested under the NPRA is expressly and unequivocally exempt under NRS 239.010(1), which provides, in part:

> Except as otherwise provided in this section and ... NRS 612.265 ... and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person ... .

Regarding the NPRA, this court has held that it

> will presume that all public records are open to disclosure unless either (1) the Legislature has expressly and unequivocally created an exemption or exception by statute ... or (2) balancing the private or law enforcement interests for nondisclosure against the general policy in favor of an open and accessible government requires restricting public access to government records.

Reno Newspapers, Inc. v. Haley, 126 Nev. 211, 214-15, 234 P.3d 922, 925 (2010). SNC argues that NRS 612.265 does not provide an express and unequivocal exemption or exception. ESD, on the other hand, argues that the statute does provide such an exemption.

NRS 612.265(1) provides in pertinent part:

> [I]nformation obtained from any employing unit or person pursuant to the administration of this chapter ... **is confidential and may not be disclosed or be open to public inspection** in any manner which would reveal the person's or employing unit's identity.

(Emphasis added)

By its clear language, NRS 612.265(1) makes information obtained pursuant to Chapter 612 confidential and not open to public inspection. SNC narrowly focuses on the last part of the statute, arguing that the grant of confidentiality is negated by the phrase "in any manner which would reveal the person's or employing unit's identity." This disagreement between SNC and ESD demonstrates the ambiguity of the statute. *McKay v. Board of Supervisors,* 102 Nev. 644, 649, 730 P.2d 438, 442 (1986) ("Where a statute is capable of being understood in two or more senses by reasonably informed persons, the statute is ambiguous.").

> When presented with a question of statutory interpretation, the intent of the legislature is the controlling factor and, if the statute under consideration is clear on its face, a court can not go beyond the statute in determining legislative intent. If, however, the statute is ambiguous it can be construed "in line with what reason and public policy would indicate the legislature intended."

Robert E. v. Justice Court of Reno Township, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (citations omitted).

In the instant case, interpreting the legislative intent with respect to NRS 612.265(1) requires looking to NRS 612.265(2), which provides:

> Any claimant or a legal representative of a claimant is entitled to information from the records of the Division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the Division for any other purpose.

This section recognizes that due process requires that a claimant must have access to information from the records of the Division in order to present his or her claim. Nevertheless, the section limits the release of information only to a claimant (or the claimant's representative) and only for the purpose of preparing for a presentation of the claim. It expressly prohibits the release of such information "for any other purpose," including for the purpose of complying with a public records request. If NRS 612.265(1) did not intend an express and unequivocal declaration that all records collected pursuant to Chapter 612 are confidential, NRS 612.265(2) would not have been necessary.

It is clear from reading these two sections of NRS 612.265 together, that the legislature intended that NRS 612.265(1) expressly and unequivocally grant confidentiality to the information at issue here, and that NRS 612.265(2) give participants in the administrative process limited access to the information, despite its confidentiality. Applying this reasoning, participants in an administrative hearing have greater access to the records (pursuant to section 2) than those seeking the records through the NPRA (pursuant to section 1). This is a reasonable approach, and reflects the legislative intent.

Further, because there is a statute which makes the information sought expressly and unequivocally confidential, no balancing of interests is required. *Reno Newspapers, Inc. v. Gibbons,* 127 Nev. 873, 880, 266 P.3d 623, 628 (2011) (holding that balancing of the interests involved is only required in the absence of statutory confidentiality).

SNC also argues that ESD was required to provide a log with a description of any redactions, upon denying the request. This court has held, however, that a log is not always required. *Gibbons,* 127 Nev. at 881, 266 P.3d at 628. In particular, "'when the facts in plaintiff's possession are sufficient to allow an effective presentation of its case, an itemized and indexed justification of the specificity contemplated by *Vaughn*[2] may be unnecessary.'" *Id.* at 882, 266 P.3d at

[2]Referring to *Vaughn v. Rosen,* 484 F.2d 820 (D.C. Cir. 1973).

629 (quoting *Brown v. Federal Bureau of Investigation,* 658 F.2d 71, 74, (2d Cir. 1981)).

It is clear that a log was not necessary in order to allow SNC to make its case. ESD denied SNC's request in its entirety, based on the confidentiality of all of the information sought. If the denial had pertained to individual records, a log would have been necessary in order to challenge each denial, but where the denial is based on the statute which makes all the information confidential, SNC's arguments can be made without a log. Indeed, this appeal and the underlying proceedings demonstrate that SNC has had no difficulty in bringing a challenge without a log.

D. SNC SHOULD HAVE BEEN REQUIRED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES RATHER THAN USING THE NPRA TO CIRCUMVENT THE RULES OF DISCOVERY.

SNC argues that the NPRA does not require exhaustion of available administrative remedies. Although this argument may have some appeal at first blush, it requires some additional unpacking. While it is true that an action seeking records pursuant to the NPRA is separate from an administrative proceeding such as the one at issue here pursuant to Chapter 612, there is some interplay between the two.

NRS 239.001(1) provides: "The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records *to the extent permitted by law*." (Emphasis added)

Chapter 233B, the Administrative Procedure Act (APA) allows for the creation of regulations that control appeals in matters arising under Chapter 612. NRS 233B.039(3) provides, in pertinent part, that "[t]he special provisions of Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation . . . prevail over the general provisions of this chapter." Further, NRS 612.500(4) provides: "The Administrator shall adopt regulations governing the manner of filing appeals and the conduct of hearings and appeals consistent with the provisions of this chapter." In accordance with the mandate of NRS 612.500(4), NAC 612.225 governs the procedures to be followed in a hearing before the appeal referee, including requests for the issuance of subpoenas at the hearing. Notably, NAC 612.225(2) provides: "Unless issued on the motion of the examiner, subpoenas will be issued only upon a showing of necessity by the party requesting issuance of the subpoena."

It is clear from the foregoing, that discovery in a Chapter 612 proceeding is governed by NRS 612.500 and the relevant provisions of the NAC. If the Legislature had wanted the NPRA to control discovery in a Chapter 612 proceeding, it could have so provided.

On June 6, 2017, SNC requested the issuance of subpoenas from the appeal tribunal. 1 AA 22. Rather than following the procedures of NAC 612.225

and waiting for the prehearing conference to request the subpoenas, SNC apparently assumed that the appeal referee would not grant the request for the subpoenas, and on October 10, 2017, more than a week before the prehearing conference, SNC filed the instant Public Records request, asserting that the "public records requested are necessary for the proper presentation of a proceeding pursuant to NRS Chapter 612, and are not sought for any other purpose." 1 AA 37.

SNC is attempting to circumvent the discovery rules of Chapter 612 by filing a Public Records request. Indeed, in the petition for the writ of mandamus, SNC flatly stated: "[h]aving had its requests for discovery stonewalled by DETR in the administrative proceeding, and ignored (and ultimately denied) by the Appeals Referee, The Love Ranch issued a formal public records request … to DETR for documents that are necessary for the proper resolution of its appeal of DETR's Determination." 1 AA 49. Although there is nothing in the record to show that the requests for subpoenas were actually denied, even if they had been, SNC should have followed through with the process laid out in Chapter 612 and the accompanying regulations. The public records request here was, on its face, an attempted end-run around the discovery rules.

In support of its use of the NPRA to circumvent the discovery rules, SNC cites to an opinion issued by the State Bar of Nevada Standing Committee on Ethics and Professional Responsibility. Ethics Opinion 54 holds that an attorney

does not violate Rule 4.2, prohibiting contact with a person who is represented by counsel, by making a public records request to an agency when the attorney is actively involved in litigation against that agency. Rule 4.2 of the Nevada Rules of Professional Conduct (NRPC) states:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

The conclusion of the ethics opinion hinges on the language that allows such communication if it is "authorized by law." Because the NPRA allows "*any* person" to make a request, the Standing Committee concluded that attorneys are authorized to contact an agency for the limited purpose of a public records request without first obtaining the consent of the lawyer for that agency.

The ethics opinion then mentions that NRS 239.010(1) "goes on to state that public records may be used in 'any other way ... to the advantage of the general public.' This broad language would encompass the use of public records in connection with discovery." This last observation is entirely unnecessary to the holding of the ethics opinion, and also not based on any authority. ESD takes exception to the notion that the NPRA allows for the use of a public records request as a discovery tool. NRS 239.010(1) allows for the use of public records "to the advantage of the *general public*." SNC sought to use the records, not to the

advantage of the general public, but by its own admission (in both the records request and the writ petition) for "the proper resolution of its appeal of DETR's Determination." 1 AA 37, 49. That is, SNC sought the records for its *own* advantage.

The Court of Appeals of Tennessee has considered this very issue in a similar circumstance, and opined as follows:

> There is a palpable difference between persons who seek governmental records to ensure governmental responsibility and public accountability and those who seek to avoid the requirements and limitations of the … Rules of Civil and Criminal Procedure by invoking the public records statutes to obtain information not otherwise available to them through discovery.

Swift v. Campbell, 159 S.W.3d 565, 575–76 (Tenn. Ct. App. 2004).[3] In its petition for the writ of mandamus, SNC admitted that it was not trying to ensure governmental responsibility and public accountability, but was trying to obtain information that it thought it was not going to obtain through normal discovery channels.

ESD submits that although the NPRA does not specifically set forth an "exhaustion" requirement in so many words, the practical effect is the same. The

[3]The irony here is that the information SNC seeks may, in fact be available to them through NRS 612.265(2), but because SNC failed to follow the administrative procedures, that question is still unanswered. In any event, it is ESD's position that even if the records are available to SNC as a participant in a proceeding pursuant to Chapter 612, the records are not available to them through an action under the NPRA because of the confidentiality requirements of NRS 612.265(1).

fact that NRS 239.001(1) makes records accessible, *to the extent permitted by law*, and the fact that there are regulations governing how confidential information held pursuant to Chapter 612 can be obtained, means that the Chapter 612 process is the exclusive avenue for discovery. As the Tennessee Court noted, "Circumventing existing discovery rules was not what the [Legislature] had in mind when it enacted the public records statutes." *Id.* at 576. Surely this observation holds true in Nevada as well.

In sum, ESD submits that SNC's belief that the NPRA can be used in lieu of regular discovery processes is misplaced. There is no case law on this issue in Nevada, and it appears that the issue may be ripe for an opinion by this court.[4]

Turning to the exceptions to exhaustion, first of all SNC cannot argue that following the procedures outlined in Chapter 612 and NAC 612.225 would be futile, because they have not allowed the procedures to play out. For all their complaining about "stonewalling," the fact remains that the referee has not

---

[4]SNC also cites to an article in the Nevada Lawyer in which the author opines that "[t]he NPRA can also be used to obtain documents that may not otherwise be available in discovery." Colleen E. McCarty, *Public Records, Private Devices: The Nevada Public Records Act Enters the Digital Age,* Nevada Lawyer Vol. 26:11, available at https://www.nvbar.org/wpcontent/uploads/NevadaLawyer_Nov2018_Public-Records.pdf (last visited March 14, 2019). ESD completely disagrees with this unsupported, conclusory statement, and notes that it is not authoritative in any event. Nonetheless, it does demonstrate that there is a need for an opinion on this issue in order to provide guidance to the bench and bar.

considered or rendered a decision with respect to SNC's requested subpoenas. Secondly, SNC argues that the district court correctly found that there is an exception to the exhaustion doctrine because the petition raises purely legal questions. This court has held that this exception to the exhaustion doctrine is discretionary and should be utilized only in the face of compelling reasons. *State v. Glusman,* 98 Nev. 412, 419, 651 P.2d 639, 644 (1982). Although ESD agrees that the issues in this matter are primarily legal questions, ESD submits that the issues could have been adequately addressed in the administrative proceeding and subjected to further critical analysis by the district court in an appeal from the administrative decision. Accordingly, the exception to the exhaustion doctrine did not need to be applied in the instant matter.

E. SNC'S REQUEST WAS LACKING IN SPECIFICITY

The district court concluded that the request made by SNC was sufficiently specific according to this court's jurisprudence regarding the NPRA. In its support of the district court's order, SNC argues that the NPRA does not contain any specificity requirements, and that the legislature expressed its disfavor of such obstacles. Concededly, 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." NRS 239.001(1). Further, "[t]he purpose of the Act is to ensure the accountability of the government to the public by

facilitating public access to vital information about governmental activities." *DR Partners v. Bd. of County Com'rs of Clark County,* 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

As discussed above, SNC's purpose in filing its public records request was NOT to ensure government accountability, but to obtain "documents that are necessary for the proper resolution of its appeal of DETR's determination." 1 AA 49. This glaringly demonstrates that SNC was using the more expansive provisions of the NPRA to circumvent the narrower discovery provisions of Chapter 612. As previously discussed, the discovery processes for Chapter 612, as outlined in NAC 612.225(2) provide, in pertinent part, that "subpoenas will be issued only upon a showing of necessity by the party requesting issuance of the subpoena." The NPRA may not have specificity requirements, but the discovery rules do have limiting provisions.

The district court, in granting the writ petition, also concluded that the requester's motives are irrelevant. 2 AA 264-65. In support of this conclusion, the district court cited *LVMPD v. Blackjack Bonding,* 131 Nev. 80, 84, n.2, 343 P.3d 608, 611, n. 2 (2015). The district court's reading of that case is too broad with respect to that particular holding. The note to which the district court cites is dicta. The court in *Blackjack* held, in a footnote:

> LVMPD also argues that it had no duty to fulfill Blackjack's records request because Blackjack purportedly acted to serve a business

> interest. This argument is without merit because (1) LVMPD did not provide evidence to support its assertion about Blackjack's motive and (2) the NPRA does not provide that a requester's motive is relevant to a government entity's duty to disclose public records. See NRS 239.010 (2011).

Id. The court dismissed the argument based on a lack of evidence supporting the assertion, and generally noted that motive is irrelevant. In reading *Blackjack* in its entirety, it is clear that the dispositive issues in *Blackjack* were whether records held by a private entity could be considered public records, and whether such records were under the control and custody of a governmental agency. The note cited by the district court is not important to the holding of the case overall, and there is no analysis in the opinion regarding the relevance of motive to a public records request.

To the extent that this court views the cited note in *Blackjack* as anything more than dicta, ESD submits that the holding should be revisited. As discussed at length above, the purpose of the NPRA is to foster democratic principles, not to serve as a means to circumvent discovery rules. NRS 239.001(2) requires that "[t]he provisions of this chapter must be construed liberally *to carry out this important purpose* ..." (Emphasis added). ESD submits that obtaining "documents that are necessary for the proper resolution of its appeal of DETR's determination" is not the important purpose that the legislature had in mind when enacting the NPRA.

CONCLUSION

For the reasons expressed in the opening brief and in this reply brief, this court should reverse the district court's order granting the petition for a writ of mandamus and remand for the district court to vacate the award of attorney fees.

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman.

2. I further certify that this Reply Brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Reply Brief exempted by NRAP 32(a)(7)(C), it contains 4,757 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Reply Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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

DATED this 11th day of April, 2019.

TRACIE K. LINDEMAN, ESQ.
Nevada State Bar No. 5049
Division Legal Counsel
State of Nevada DETR/ESD
500 East Third Street
Carson City, Nevada 89713
(775) 684-3996
(775) 684-3992 - Fax
Attorney for Appellant ESD

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d)(1)(B), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I electronically filed the foregoing APPELLANT'S REPLY BRIEF with the Clerk of the Nevada Supreme Court; and, as a consequence thereof, electronic service was made in accordance with the Master List as follows:

ANTHONY HALL, ESQ.

RICO CORDOVA, ESQ.

DATED this 11th day of April, 2019.

Donna J. Artz

DONNA J. ARTZ