

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

Appellant,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Supreme Court No.: 77511

District Court Case No. A-18-780538-W
Department 4

Electronically Filed
Mar 12 2019 11:55 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX VOLUME 1 of 4

FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE KERRY EARLEY, DISTRICT COURT JUDGE

DEANNA L. FORBUSH
Nevada Bar No. 6646
COLLEEN E. MCCARTY
Nevada Bar No. 13186
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Appellant
Republican Attorneys General Association

INDEX

Tab	Document	Date	Vol	Pages
1	Public Records Act Application Pursuant to NRS 239.001 Petition for Writ of Mandamus	09/06/2018	1	JA000001-JA000048
2	Affidavit of Service regarding Public Records Act Application Pursuant to NRS 239.001 Petition for Writ of Mandamus	09/11/2018	1	JA000049
3	Notice of Hearing Petition Hearing	09/20/2018	1	JA000050-JA000051
4	Stipulation and Order Regarding Briefing Schedule	09/21/2018	1	JA000052-JA000056
5	Notice of Entry of Stipulation and Order Regarding Briefing Schedule	09/25/2018	1	JA000057-JA000064
6	Republican Attorneys General Association's Opening Brief in Support of Public Records Act Application Pursuant to NRS 239.001/Petition For Writ of Mandamus	09/26/2018	1	JA000065-JA000108
7	Republican Attorneys General Association's Emergency Motion for Examination of Withheld Records on Order Shortening Time	9/27/2018	1	JA000109-JA000118
8	Respondent Las Vegas Metropolitan Police Department's Opposition to Republican Attorneys General Association's Emergency Motion for Examination of Withheld Records on Order Shortening Time	10/03/2018	1	JA000119-JA000139
9	Recorders Transcript of Hearing on Emergency Motion for Examination of Withheld Records on Order Shortening Time	10/05/2018	1	JA000140-JA000181
10	Minute Order regarding Emergency Motion for Examination of Withheld Records on Order Shortening Time	10/05/2018	1	JA000182

11	Emergency Petition for Writ of Mandamus Pursuant to NRAP 21(a) and NRAP 27(e) (Supreme Court)	10/08/2018	2	JA000183-JA000200
12	Appendix Volume 1 of 1 to Emergency Petition for Writ of Mandamus Pursuant to NRAP 21(a) and NRAP 27(e)	10/08/2018	2	JA000201-JA000238
13	Minute Order re in camera review	10/09/2018	2	JA000239
14	Respondent Las Vegas Metropolitan Police Department's Response to Republican Attorneys General Association's Public Records Act Application Pursuant to NRS 239.001/Petition For Writ of Mandamus	10/10/2018	2	JA000240-JA000261
15	Order Denying Republican Attorneys General Association's Emergency Motion for Examination of Withheld Records	10/11/2018	2	JA000262-JA000265
16	Order Directing Service of Respondent and Denying Motion to Supplement Appendix	10/11/2018	2	JA000266-JA000267
17	Notice of Entry of Order Denying Republican Attorneys General Association's Emergency Motion for Examination of Withheld Records	10/12/2018	2	JA000268-JA000275
18	Supplement to Appendix to the Emergency Petition for Writ of Mandamus Pursuant to NRAP 21(A) and NRAP 27(E) (Supreme Court)	10/12/2018	2	JA000276-JA000287
19	Republican Attorneys General Association's Reply in Support of Public Records Act Application Pursuant to NRS 239.001 Petition for Writ of Mandamus	10/15/2018	2	JA000288-JA000313
20	Order Denying Petition for Writ of Mandamus (Supreme Court)	10/15/2018	2	JA000314-JA000315
21	Recorders Transcript of Hearing on Petition for Writ of Mandamus	10/17/2018	2	JA000316-JA000348

22	Minute Order re Petition for Writ of Mandamus Hearing	10/17/2018	2	JA000349- JA000350
23	Findings of Fact, Conclusions of Law And Order Denying Republican Attorneys General Association's Public Records Act Application Pursuant to NRS 239.001/Petition For Writ of Mandamus	10/18/2018	2	JA000351- JA000354
24	Notice of Entry of Findings of Fact, Conclusions of Law And Order Denying Republican Attorneys General Association's Opening Brief in Support of Public Records Act Application Pursuant to NRS 239.001/Petition For Writ of Mandamus	10/19/2018	2	JA000355- JA000362
25	Emergency Petition for Writ of Mandamus Pursuant to NRAP 21(a) and NRAP 27(e) (Supreme Court)	10/22/2018	2	JA000363- JA000386
26	Order Directing Answer (Supreme Court)	10/23/2018	2	JA000387
27	Real Party of Interest Las Vegas Metropolitan Police Department's Answer to Emergency Petition for Writ of Mandamus Pursuant to NRAP 21(a) and NRAP 27(e) (Supreme Court)	10/25/2018	3	JA000388- JA000419
28	Appendix of Real Party of Interest Las Vegas Metropolitan Police Department (Supreme Court)	10/25/2018	3	JA000420- JA000422
29	Order Denying Petition for Writ of Mandamus	10/29/2018	3	JA000423- JA000425
30	Notice of Appeal	11/19/2018	3	JA000426- JA000428
31	Case Appeal Statement	11/19/2018	3	JA000429- JA000433
32	Notice of Appeal transmitted (Supreme Court)	11/28/2018	3	JA000434- JA000467
33	Notice of Referral to the Settlement Program (Supreme Court)	11/28/2018	3	JA000468

34	Notice of Assignment to NRAP 16 Settlement Program (Supreme Court)	11/30/2018	3	JA000469- JA000470
35	Settlement Program Early Case Assessment Report (Supreme Court)	12/10/2018	3	JA000471
36	Order Removing from Settlement Program and Reinstating Briefing (Supreme Court)	12/11/2018	3	JA000472- JA000473
37	Docketing Statement Civil Appeals (Supreme Court)	12/18/2018	4	JA000474- JA000662
38	Request for Transcript of Proceedings (Supreme Court)	12/20/2018	4	JA000663- JA000665

CERTIFICATE OF SERVICE

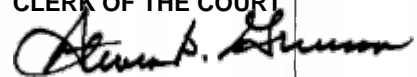
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this 11th day of March, 2019, I caused to be served a true and correct copy of the foregoing **JOINT APPENDIX VOLUME 1 of 4** by the method indicated to the counsel stated below:

- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

MARQUIS AURBACH COFFING
Nick D. Crosby, Esq.
Jackie V. Nichols, Esq.
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Respondent Las Vegas
Metropolitan Police Department.



An Employee of Clark Hill PLLC



PET
DEANNA L. FORBUSH
Nevada Bar No. 6646
Email: dforbush@clarkhill.com
COLLEEN E. MCCARTY
Nevada Bar No. 13186
Email: cmccarty@clarkhill.com
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Facsimile: (702) 862-8400
Attorneys for Petitioner
Republican Attorneys General Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

A-18-780538-W

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

Case No.:
Dept. No.: Department 18

Petitioner,

vs.

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

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

**EXPEDITED MATTER PURSUANT TO
NRS 239.011**

Respondent.

COMES NOW Petitioner, Republican Attorneys General Association ("RAGA" or "Petitioner"), by and through its undersigned counsel of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of the law firm of Clark Hill PLLC, and hereby brings this Petition for Writ of Mandamus seeking an Order requiring the Las Vegas Metropolitan Police Department ("Metro") to provide Petitioner access to public records. Petitioner also requests an award for all fees and costs associated with its efforts to obtain the withheld public records as provided for by NRS 239.011(2). Further, Petitioner respectfully asks that this matter be expedited pursuant to NRS 239.011(2). Petitioner hereby alleges as follows:

///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4

6
7
8
9
0

- 1
- 2
- 3

5

6
7
8
9
0
1
2

3
4

5
6
7
8

1 officer. The information contained therein may inform and influence the public regarding their
2 choice of candidate for Nevada's next Attorney General and voters are scheduled to go to the
3 polls beginning October 20, 2018.

4 JURISDICTION AND VENUE

5 7. This Court has jurisdiction to issue writs of mandamus. Nev. Const. Art. VI, § 6;
6 NRS 34.160.

7 8. This Court has jurisdiction pursuant to NRS 239.011(1), as the court of Clark
8 County where all relevant public records sought are held.

9 9. Venue is proper in the Eighth Judicial District Court pursuant to NRS
10 239.011(1), as Metro and all relevant actions that are the subject of this action are in Clark
11 County, Nevada.
12

13 STANDING

14 10. Petitioners have standing to pursue this expedited action pursuant to NRS
15 239.010 because the public records they have requested from Metro have been unjustifiably
16 withheld.
17

18 FACTS

19 11. On December 5, 2017, Petitioner RAGA, through its agent, sent Metro a request
20 pursuant to the NPRA seeking "all body camera footage and or audio from body camera
21 footage" relating to police interactions with Senator Aaron Ford between October 1, 2017 to
22 December 5, 2017 ("First Request"). See **Exhibit 1-A** to the Declaration of Colleen E.
23 McCarty, attached hereto as **Exhibit 1**.

24 12. On December 14, 2017, after the statutory deadline for Metro's response had
25 elapsed, Metro indicated via email that it could not process the request without additional
26 information, i.e. Metro event number, date and time of event, or officer's badge number. See
27 **Exhibit 1-B**.
28

1 13. Thereafter, on January 25, 2018, RAGA, through its agent, sent Metro a more
2 detailed request ("Second Request") pursuant to the NPRA seeking the following public
3 records:

4 [A]ll body cam footage and or audio from body camera footage (if visual
5 images do not exist), the police or investigative report or summary,
6 witness and or victim statements, all computer aided dispatch (CAD)
7 between all LVMPD personnel at the scene and with dispatch, or any
8 other statements by officers or witnesses relating to an incident with
9 LVMPD Officer Zarkowski concerning minor child . . . and/or . . . Aaron
10 D. Ford (State Senator) at approximately 3:00PM on November 13, 2017
11 at 7008 Connor Cove Street, Las Vegas, NV 89118.

12 *See Exhibit 1-C.*

13 14. Also on January 25, 2018, Metro confirmed receipt of the Second Request. *See*
14 **Exhibit 1-D.**

15 15. On February 5, 2018, after the statutory deadline for Metro's response had
16 elapsed and no response had been received from Metro regarding the Second Request, RAGA,
17 through its agent, emailed Metro seeking an update of its status. *See id.*

18 16. Metro responded to RAGA on February 6, 2018. It refused to provide any
19 records, claiming that because the requested body camera recordings were part of an "active
20 criminal investigation" they were "considered evidence according to the Nevada Public Records
21 Act." *See Exhibit 1-E.*

22 17. In its response to RAGA's request, Metro did not cite to any specific provision of
23 the NPRA to justify its refusal. *See id.*

24 18. The same day, RAGA indicated its intent to obtain the records upon the
25 completion of the criminal investigation. *See id.* To facilitate its standing request, RAGA
26 inquired as to whether Metro would advise it of the completion of the investigation, or whether
27 RAGA instead should resubmit its public records request at regular intervals. *See Exhibit 1-E.*
28

1 19. Metro responded that it was unable to provide RAGA with notice of the closure
2 of the investigation and invited RAGA to resubmit its request. *See id.*

3 20. On March 19, 2018, RAGA sent Metro a third request pursuant to the NPRA
4 (“Third Request”). *See Exhibit 1-F.*

5 21. The Third Request sought the identical information previously requested in the
6 Second Request. *See id.*

7 22. On March 20, 2018, Metro confirmed receipt of the Third Request. *See Exhibit*
8 **1-G.**

9 23. On May 2, 2018, more than one and a half months after the statutory deadline for
10 Metro’s response had elapsed and no response had been received from Metro, RAGA requested
11 a status update regarding the Third Request from Metro. *See id.*

12 24. Metro responded to RAGA on May 15, 2018. *See Exhibit 1-H.* This time,
13 Metro refused to provide any of the records sought in the Third Request (which were identical
14 to those sought in the Second Request) because the “investigation involved juvenile suspects”
15 and “juveniles arrested” and were, therefore, confidential. *See id.* Metro cited NRS 62H.025
16 and 62H.030 as authority for its refusal. *See id.*

17 25. Metro provided no explanation for its conflicting responses to the Second and
18 Third Requests and its refusal to provide the requested records. *See id.* Further, it failed to
19 indicate whether it completed the investigation of the incident at issue. *See id.*

20 26. On May 17, 2018, RAGA sent Metro a Fourth Request¹ pursuant to the NPRA
21 (“Fourth Request”) in response to Metro’s denial of its Second and Third Requests. *See*
22 **Exhibit 1-I.** The Fourth Request narrowed the records requested in the Second and Third
23
24
25
26
27

28 ¹ The Fourth Request, dated May 17, 2018, was incorrectly entitled “Third Request for Public Records.”

1 Requests to those “relating to or depicting Aaron D. Ford’s (State Senator) interactions with
2 LVMPD Officer Zarkowski or other LVMPD personnel...” *See id.*

3 27. The Fourth Request specifically excluded “any information that may be
4 confidential pursuant to Nevada Revised Statutes NRS 62H.025 and 62H.030” and reminded
5 Metro of its duty pursuant to NRS 239.010(3) to redact, delete, conceal or separate purportedly
6 confidential information to provide responsive records that are otherwise not confidential. *See*
7 *id.*
8

9 28. The Fourth Request further challenged Metro’s overly-broad interpretation of
10 NRS 62H.025 and 62H.030 and its unreasonable delay (57 days at that time) in providing a
11 response to the Third Request. *See id.*
12

13 29. On June 15, 2018, after the statutory deadline for Metro’s response had elapsed,
14 Metro denied the Fourth Request on the basis that it disagreed with RAGA’s “broad
15 interpretation of NRS 62H.025 and 62H.030.” *See Exhibit 1-J.* Metro further advised that
16 RAGA should direct its Fourth Request for Metro records to the juvenile courts. *See id.*

17 30. To date, Metro has provided no responsive documents to any of the requests
18 made by RAGA between December, 2017 and May, 2018.

19 LEGAL AUTHORITY

20 *Legal Authority for Petitioner’s Request*

21 31. The NPRA states that records of governmental entities belong to the public in
22 Nevada. NRS 239.010(1) mandates that, unless a record is confidential, “all public books and
23 public records of a governmental entity must be open at all times during office hours to
24 inspection by any person, and may be fully copied[.]” The NPRA states specific legislative
25 findings and declarations that “[its] purpose . . . is to foster democratic principles by providing
26 members of the public with access to inspect and copy public books and records to the extent
27
28

1 permitted by law” and that its provisions “must be construed liberally to carry out this important
2 purpose[.]” NRS 239.001(1) and (2).

3 ***The Records Requested by Petitioner Are Public Records***

4 32. Under Nevada law, all video and audio recordings made by police-worn body
5 cameras are public records subject to inspection. See NRS 289.830(2) (emphasis
6 added):
7

8 *Any record made by a portable event recording device² pursuant to
9 this section is a public record which may be:*

- 10 (a) Requested only on a per incident basis; and
11 (b) Available for inspection only at the location where the record is
held if the record contains confidential information that may
not otherwise be redacted.

12 See also Metro Form LVMPD 556 (entitled “Body-Worn Camera Video Public Records
13 Request, Pursuant to NRS 239”), [https://www.lvmpd.com/en-us/Documents/
14 LVMPD556_BWC_10-15v2_07-2017.pdf](https://www.lvmpd.com/en-us/Documents/LVMPD556_BWC_10-15v2_07-2017.pdf).

15 33. Similarly, police and arrest reports are public records. And, Metro has not
16 established otherwise.

17 34. Chapter 179A of the Nevada Revised Statutes governs dissemination of “records
18 of criminal history.” Pursuant to NRS 179.070(1), arrest reports fall within the definition of a
19 “record of criminal history:”
20

21 **[I]nformation contained in records collected and maintained by agencies of
22 criminal justice, the subject of which is a natural person, consisting of
23 descriptions which identify the subject and notations of summons in a
24 criminal action, warrants, arrests . . . detentions, decisions of a district attorney
25 or the Attorney General not to prosecute the subject, indictments, informations or
26 other formal criminal charges and dispositions of charges, including, without
27 limitation, dismissals, acquittals, convictions, sentences, information . .
concerning the status of an offender on parole or probation, and information
concerning a convicted person who has registered as such pursuant to chapter
179C of NRS. The term includes only information contained in a record,**

28 ² “‘Portable event recording device’ means a device issued to a peace officer by a law enforcement agency to be
worn on his or her body and which records both audio and visual events occurring during an encounter with a
member of the public while performing his or her duties as a peace officer.” NRS 289.830(3)(b).

1 maintained in written or electronic form, of a formal transaction between a person
2 and an agency of criminal justice in this State, including, without limitation, the
3 fingerprints and other biometric identifiers of a person who is arrested and taken
4 into custody and of a person who is placed on parole or probation and supervised
5 by the Division of Parole and Probation of the Department.

6 NRS 179.070(1) (Emphasis added).

7 35. Metro falls within the definition of an “agency of criminal justice” set forth in
8 Chapter 179A, which includes “[a]ny governmental agency or subunit of any governmental
9 agency which performs a function in the administration of criminal justice pursuant to a statute
10 or executive order, and which allocates a substantial part of its budget to a function in the
11 administration of criminal justice.” NRS 179A.030(2).

12 36. NRS 179A.100(1)(b) explicitly permits the dissemination of records of criminal
13 history for open matters to any person. It provides that “records of criminal history may be
14 disseminated by an agency of criminal justice without any restriction pursuant to this chapter:
15 (a) Any which reflect records of conviction only; and (b) Any which pertain to an incident for
16 which a person is currently within the system of criminal justice, including parole or probation.”
17 This makes clear that arrest reports may be disseminated without restriction, to any person, if
18 the person who is the subject of the record is currently within the system of criminal justice.

19 37. Likewise, all recordings of phone calls and computer aided dispatch logs
20 received by Metro through its 911 call center are “public records” as defined by the NPRA. *See*
21 NRS 239.010(1). *See also* Sparks, Nev. City Atty. Opinion Mem., *Status of Records of 911*
22 *Calls to Dispatch and Dispatch Logs as “Public Records”* (Apr. 2, 2008) (concluding that
23 “unless an exception . . . exists, a copy of a 911 dispatch call must be made available to a person
24 making a proper (i.e., written) request.”), [http://cityofsparks.us/wpcontent/uploads/2016/12/atty-](http://cityofsparks.us/wpcontent/uploads/2016/12/atty-opinion-2008-7.pdf)
25 [opinion-2008-7.pdf](http://cityofsparks.us/wpcontent/uploads/2016/12/atty-opinion-2008-7.pdf).

26 ///

27 ///

1 *Metro's Failure to Adequately Assert Claims of Confidentiality*

2 38. The NPRA provides that a governmental entity must provide specific notice
3 within five (5) business days of receiving a request if it is denying the request on the basis that
4 the documents sought are confidential:

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

11 NRS 239.0107(l)(d).

12 39. In accordance with the presumption of openness and "emphasis on disclosure,"
13 both the NPRA and the Nevada Supreme Court place a high burden on a governmental entity to
14 justify nondisclosure. First, the law requires that, if a governmental entity seeks to withhold or
15 redact a public record in its control, it must prove by a preponderance of the evidence that the
16 record or portion thereof is confidential. *See* NRS 239.0113; *see also Reno Newspapers*, 127
17 Nev. at 882, 266 P.3d at 629; *accord Nev. Policy Research Inst., Inc. v. Clark Cty. Sch. Dist.*,
18 No. 64040, 2015 WL 3489473, at *2 (Nev. May 29, 2015) (unpublished). Moreover, as a
19 general matter, "[i]t is well settled that privileges, whether creatures of statute or the common
20 law, should be interpreted and applied narrowly." *DR Partners*, 116 Nev. at 621, 6 P.3d at 468
21 (citing *Ashokan v. State Dep't of Ins.*, 109 Nev. 662, 668, 856 P.2d 244, 247 (1993)).
22 Especially in the public records context, any restriction on disclosure "must be construed
23 narrowly." NRS 239.001(2) and (3).

24 40. Second, unless the privilege is absolute, the governmental entity bears the burden
25 of establishing that the interest in withholding documents outweighs the interest in disclosure
26 pursuant to the balancing test first articulated in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630,
27 798 P.2d 144 (1990). *See DR Partners*, 116 Nev. at 621, 6 P.3d at 468 ("Unless a statute
28

1 provides an absolute privilege against disclosure, the burden of establishing the application of a
2 privilege based upon confidentiality can only be satisfied pursuant to a balancing of
3 interests[.]”); *see also Reno Newspapers*, 127 Nev. at 879, 266 P.3d at 627 (“when the requested
4 record is not explicitly made confidential by a statute, the balancing test set forth in *Bradshaw*
5 [*Donrey*] must be employed” and “any limitation on the general disclosure requirements of
6 [NRS] § 239.010 must be based upon a balancing or ‘weighing’ of the interests of non-
7 disclosure against the general policy in favor of open government” (citation omitted)).

9 41. Further, in applying the *Donrey* balancing test, the burden remains squarely on
10 the agency: “In balancing the interests . . . , the scales must reflect the fundamental right of a
11 citizen to have access to the public records as contrasted with the incidental right of the agency
12 to be free from unreasonable interference The citizen’s predominant interest may be
13 expressed in terms of the burden of proof which is applicable in this class of cases; the burden is
14 cast upon the agency to explain why the records should not be furnished.” *DR Partners*, 116
15 Nev. at 621, 6 P.3d at 468 (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421-22 (1961)
16 and citing *Bradshaw*, 106 Nev. at 635-36, 798 P.2d at 147-48).

18 42. Here, Metro has not and cannot meet its heavy burden in establishing that the
19 public records sought are subject to any claim of confidentiality, let alone that the interests in
20 non-disclosure outweigh the public interest in access.

21 ***Metro Must Produce the Requested Records***

22 43. In its First Request, RAGA requested body camera footage and/or audio from
23 body camera footage, police or investigative reports or summaries, witness and/or victim
24 statements, computer aided dispatch records, and any other statements by officers or witnesses
25 concerning the incident at issue involving Senator Ford.
26
27
28

1 44. In its untimely response of February 6, 2018 to the Second Request, Metro
2 refused to provide the body camera video on the basis that it was part of an “active criminal
3 investigation” and “considered evidence” under the NPRA.

4 45. Metro did not address the remainder of RAGA’s Second Request, nor did it
5 provide any of the requested reports or records.

6 46. As Metro wholly failed to timely cite any specific statutory or legal basis to
7 justify withholding the remaining requested records, it has waived its ability to now assert
8 claims of confidentiality and the requested records must be immediately produced. *See* NRS
9 239.0107.
10

11 47. RAGA also requested body camera footage and/or audio from body camera
12 footage regarding the law enforcement contact involving Senator Ford and a juvenile (Second
13 through Fourth Requests). To protect the privacy of any juvenile involved, RAGA narrowly
14 tailored its request to include only that information which relates to and/or depicts Senator Ford.
15

16 48. Under Nevada law, all video and audio recordings made by police-worn body
17 cameras are public records subject to inspection. *See* NRS 289.830(2).

18 49. Metro refused to provide the requested records on the purported basis that they
19 are confidential pursuant to NRS 62H.025, the statute which governs the disclosure of records
20 of a **juvenile justice agency**. (Emphasis added). Specifically, NRS 62H.025 permits juvenile
21 justice agencies to release juvenile justice information to stakeholders within the juvenile justice
22 system under certain circumstances. “Juvenile justice agency” is defined as the “Youth Parole
23 Bureau or a director of juvenile services.” *See* NRS 62H.025(6)(a). NRS 62H.025 in no way
24 precludes or even contemplates the disclosure of records created and held by Metro, and does
25 not render Metro’s body camera video and audio confidential.
26

27 50. Likewise, Metro unlawfully refused to provide the requested records on the
28 purported basis that they are confidential pursuant to NRS 62H.030, which governs the

1 disclosure of records made and kept by the juvenile court. The requested records are Metro
2 records, not juvenile court records, and Metro has provided no evidence, nor made any assertion
3 to the contrary. NRS 62H.030 as a statutory exception to the NPRA is not applicable to Metro.

4 51. Accordingly, Metro's blanket refusal to produce any of the requested records is
5 improper, and all requested information and records should be produced.

6
7 **CLAIM FOR RELIEF**

8 52. Petitioner re-alleges and incorporates by reference each and every allegation
9 contained in Paragraphs 1-51 as if fully set forth herein.

10 53. Petitioner should be provided with the records it has requested pursuant to the
11 NPRA.

12 54. The records sought are subject to disclosure, and Respondent has not met its
13 burden of establishing otherwise.

14 55. A writ of mandamus is necessary to compel Respondent's compliance with the
15 NPRA.

16
17 WHEREFORE, the Petitioner prays for the following relief:

18 1. That the Court resolve this matter on an expedited basis as mandated by NRS
19 239.011;

20 2. Injunctive relief ordering Metro to immediately make available complete copies
21 of all records requested without charging fees, other than permissible fees should the Petitioner
22 request copies;

23 3. Declaratory relief;

24 4. Reasonable attorney's fees and costs; and

25
26 ///

27 ///

28 ///

5. Any further relief the Court deems appropriate.

Dated this 6th of September, 2018.

CLARK HILL PLLC

By:

DEANNA L. FORBUSH

Nevada Bar No. 6646

COLLEEN E. MCCARTY, ESQ.

Nevada Bar No. 13186

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

Attorneys for Petitioner

Republican Attorneys General Association

EXHIBIT 1

EXHIBIT 1

JA000014

**DECLARATION OF COLLEEN E. MCCARTY, ESQ. IN SUPPORT OF PUBLIC
RECORDS ACT APPLICATION PURSUANT TO NRS 239.001/
PETITION FOR WRIT OF MANDAMUS**

I, Colleen E. McCarty, depose and declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am an associate in the law firm of Clark Hill PLLC, attorneys for Petitioner Republican Attorneys General Association ("RAGA" or "Petitioner").

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

3. I make this Declaration in Support of Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus.

4. Attached hereto as **Exhibit 1-A** is a true and correct copy¹ of a public records request made by RAGA, through its agent, to the Las Vegas Metropolitan Police Department ("Respondent" or "Metro"), dated December 5, 2017 ("First Request").

5. Attached hereto as **Exhibit 1-B** is a true and correct copy of Metro's response confirming receipt of the First Request and seeking additional information, dated December 14, 2017.

6. Attached hereto as **Exhibit 1-C** is a true and correct copy of a public records request made by RAGA, through its agent, to Metro, dated January 25, 2018 ("Second Request").

7. Attached hereto as **Exhibit 1-D** is a true and correct copy of a string of emails containing the following communications: (i) Metro's response confirming receipt of the Second

1 Request, dated January 25, 2018; and (ii) RAGA'S request, through its agent, for an update on
2 the status of the Second Request, dated February 5, 2018.

3
4 9. Attached hereto as **Exhibit 1-E** is a true and correct copy of a string of emails
5 containing the following communications: (i) Metro's response to RAGA denying the Second
6 Request, dated February 6, 2018; (ii) RAGA's response, through its agent, to Metro indicating its
7 desire to make the Second Request a standing request and seeking guidance from Metro, dated
8 February 6, 2018; and (iii) Metro's response to RAGA indicating it is unable to provide it with
9 notice of the closure of the investigation and inviting RAGA to resubmit its request, dated
10 February 6, 2018.
11

12 12. Attached hereto as **Exhibit 1-F** is a true and correct copy of a public records
13 request made by RAGA, through its agent, to Metro, dated March 19, 2018 ("Third Request").
14

15 13. Attached hereto as **Exhibit 1-G** is a true and correct copy of a string of emails
16 containing the following communications: (i) Metro's response confirming receipt of the Third
17 Request, dated March 20, 2018; and (ii) RAGA's request, through its agent, to Metro seeking an
18 update on the status of the Third Request, dated May 2, 2018.

19 15. Attached hereto as **Exhibit 1-H** is a true and correct copy of Metro's response to
20 RAGA denying the Third Request, dated May 15, 2018.
21

22 16. Attached hereto as **Exhibit 1-I** is a true and correct copy of a public records
23 request made by RAGA, through its agent, to Metro, dated May 17, 2018 ("Fourth Request").
24

25 17. Attached hereto as **Exhibit 1-J** is a true and correct copy of Metro's response to
26
27

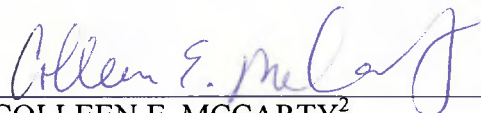
///

///

28 ¹ To protect the privacy of the juveniles involved, RAGA has redacted their identifying information.

1 RAGA denying the Fourth Request, dated June 15, 2018.

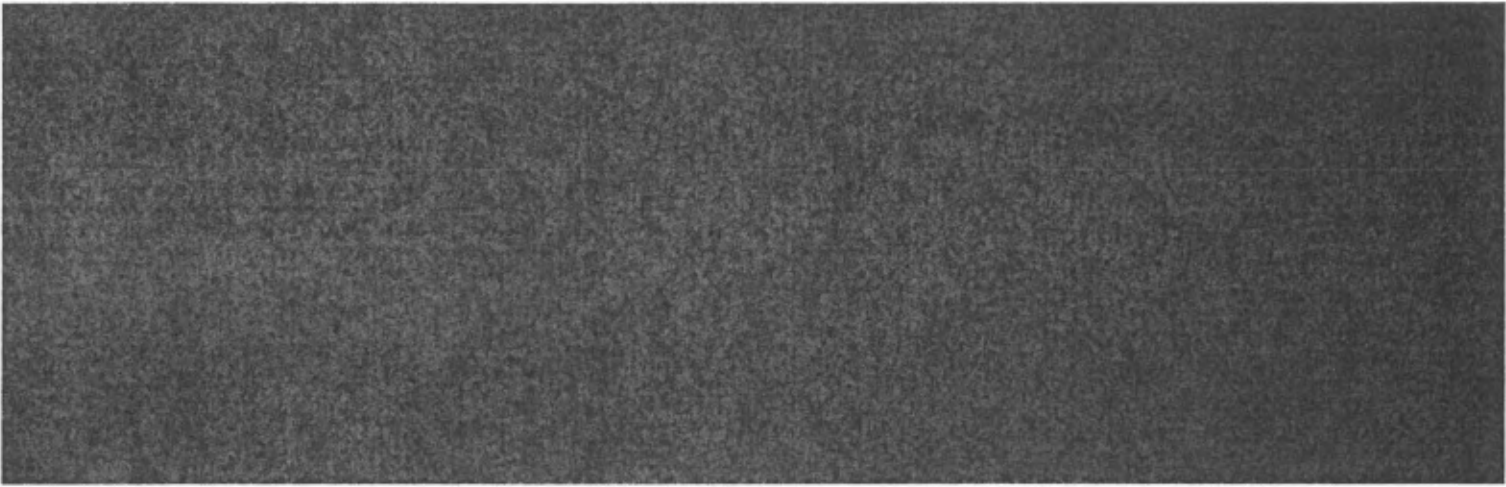
2 Executed this 6th day of September, 2018.

3
4 
5 COLLEEN E. MCCARTY²

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 ² NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose
28 existence or truth may be established by an affidavit or other sworn declaration may be established with the same
effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury.

EXHIBIT 1-A

EXHIBIT 1-A



From: Jeremy hughes <JHughes@novemberinc.com>

Date: Tuesday, December 5, 2017 at 2:49 PM

To: "BWCRECORDSREQUEST@LVMPD.COM" <BWCRECORDSREQUEST@LVMPD.COM>

Subject: Body-Worn Camera Video Public Records Request

Thank you,
Jeremy

JA000019

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
**BODY-WORN CAMERA VIDEO
PUBLIC RECORDS REQUEST**
Pursuant to NRS 239

This form is ONLY to be used to request body-worn camera video that is in the legal custody or control of the Las Vegas Metropolitan Police Department.

INSTRUCTIONS:

REQUESTS CAN BE MADE IN WRITING, IN PERSON, VIA EMAIL, OR TELEPHONICALLY. ALL INFORMATION REQUESTED ON THIS FORM MUST BE PROVIDED REGARDLESS OF THE METHOD OF REQUEST. INCOMPLETE REQUESTS WILL NOT BE HONORED. ALL FORMS MUST BE SIGNED** BEFORE THE REQUEST WILL BE PROCESSED. ONLY VIDEOS THAT ARE CLEARLY DEFINED AS PUBLIC RECORDS WILL BE RELEASED. YOU WILL BE CONTACTED WITHIN FIVE (5) BUSINESS DAYS TO ACKNOWLEDGE RECEIPT OF YOUR REQUEST AND TO ARRANGE AN INSPECTION APPOINTMENT. YOU WILL BE CONTACTED IN WRITING IF THE REQUESTED VIDEO CANNOT BE LOCATED, NO LONGER EXISTS, OR IS NOT A PUBLIC RECORD.

IN WRITING:

TYPE OR USE BLACK INK ONLY. YOU MAY:

1. FAX TO (702) 828-2688 OR
2. MAIL TO:
BWC DISSEMINATION MANAGER
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
BUILDING "C", 4TH FLOOR
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

VIA EMAIL:

AFTER COMPLETING THE INTERACTIVE FORM ON YOUR COMPUTER, SAVE IT FOR YOUR RECORDS AND ADDRESS AN EMAIL TO BWCRecordsRequest@LVMPD.COM WITH YOUR COMPLETED FORM AS AN ATTACHMENT.

IN PERSON:

BRING THE COMPLETED FORM TO LVMPD HEADQUARTERS
RECEPTION DESK, BUILDING C
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

BY PHONE:

(702) 828-8947

NOTE: TELEPHONIC REQUESTS MUST BE FOLLOWED BY VERIFICATION OF SUBMITTED INFORMATION AND A SIGNATURE, IN PERSON, AT THE ADDRESS SHOWN ABOVE BEFORE PROCESSING.

REQUESTOR INFORMATION (Information with an asterisk (*) is required.)

Your Name:* <input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. <input type="checkbox"/> Other _____ Jeremy Hughes		Your Phone Number:* 702-304-1414		Your Fax Number:	
Email Address: jhughes@novemberinc.com		Business Name:			
Your Mailing Address:* (Number and Street) PO Box 371553		City* Las Vegas	State:* NV	Zip Code:* 89137	

BWC VIDEO REQUESTED

Identify the video you are requesting. Please be as specific as possible (i.e., event number, date, time, location, officer's name or badge number, etc.) to assist staff in locating the video. Define the content and narrow the scope as much as possible since videos can be lengthy. The Dissemination Manager may have to contact you for clarification or additional information.

I request all body camera footage and or audio from body camera footage relating to an incident with LVMPD concerning minor child [REDACTED] and/or [REDACTED] Aaron D. Ford (State Senator) between on or about 1 October 2017 to December 5, 2017.

By signing below, I certify that the information above is true and correct to the best of my knowledge. I understand that I must inspect the video at LVMPD Headquarters for verification prior to a copy being made (if a copy is desired). I also understand that there is a fee for redacting and copying the video and that its release is contingent upon full payment. By Nevada law, some videos may not be a public record.

Date: 12/05/2017

X

Jeremy Hughes

Requester Signature Required.

(If submitting this form via email, the Requester's typed name on the line above will serve as a valid signature.)

LVMPD STAFF USE ONLY

Assigned To	Receipt of Request (Date)	Acknowledgement or Follow-up Contact (Date)
Inspection Appointment (Date):	Cost Estimate (Amount)	
Request Status <i>(Check one)</i> Authorization to Proceed Request Withdrawn Record Confidential by Law	Customer Signature _____	
Payment Received (Amount)	Receipt Number	

DESCRIPTION OF RELEASED VIDEO

NOTES

Date Request Closed: _____ By: _____
Name and P#

Reviewed By: _____
Name and P#

JA000021

EXHIBIT 1-B

EXHIBIT 1-B

From: BWC Records Request <BWCRecordsRequest@LVMPD.COM>

Date: Thursday, December 14, 2017 at 1:09 PM

To: Jeremy hughes <JHughes@novemberinc.com>

Subject: NPRA #354

Greetings,

Regarding your request for body worn camera video additional information is needed in order to research your request. Please provide additional information, (LVMPD event number or officer's badge number, date and time of the occurrence).

Thank you,

Body Camera Detail
Las Vegas Metropolitan Police Dept.
Mon-Fri. 0600-1600
Office: (702)828-1905
Email: BodyCamera@LVMPD.COM
Fax: (702)828-2688



EXHIBIT 1-C

EXHIBIT 1-C

From: Kristopher Anderson <kris@prospectstrategic.com>
Sent: Thursday, January 25, 2018 7:46 AM
To: bwcrecordsrequest@lvmpd.com
Subject: NV Public Records Request -- BWC Footage/Audio
Attachments: LVMPD BWC Records Request Form.pdf

Dear Public Records Officer—

Please see attached for a NV Public Records Act request for body-worn camera video footage/audio. Please do not hesitate to contact me via email (kris@prospectstrategic.com) with any questions or requests for further info.

When possible, please transmit any responsive documents to me in electronic form via e-mail.

Thank you for your assistance!

-Kris

Kristopher Anderson
3033 Wilson Blvd., Ste. E-116
Arlington, VA 22201
kris@prospectstrategic.com

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
BODY-WORN CAMERA VIDEO
PUBLIC RECORDS REQUEST
Pursuant to NRS 239**

This form is ONLY to be used to request body-worn camera video that is in the legal custody or control of the Las Vegas Metropolitan Police Department.

INSTRUCTIONS:

REQUESTS CAN BE MADE IN WRITING, IN PERSON, VIA EMAIL, OR TELEPHONICALLY. ALL INFORMATION REQUESTED ON THIS FORM MUST BE PROVIDED REGARDLESS OF THE METHOD OF REQUEST. INCOMPLETE REQUESTS WILL NOT BE HONORED. ALL FORMS MUST BE SIGNED** BEFORE THE REQUEST WILL BE PROCESSED. ONLY VIDEOS THAT ARE CLEARLY DEFINED AS PUBLIC RECORDS WILL BE RELEASED. YOU WILL BE CONTACTED WITHIN FIVE (5) BUSINESS DAYS TO ACKNOWLEDGE RECEIPT OF YOUR REQUEST AND TO ARRANGE AN INSPECTION APPOINTMENT. YOU WILL BE CONTACTED IN WRITING IF THE REQUESTED VIDEO CANNOT BE LOCATED, NO LONGER EXISTS, OR IS NOT A PUBLIC RECORD.

IN WRITING:

TYPE OR USE BLACK INK ONLY. YOU MAY:

1. FAX TO (702) 828-2688 **QB**
2. MAIL TO:
BWC DISSEMINATION MANAGER
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
BUILDING "C", 4th FLOOR
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

VIA EMAIL:

AFTER COMPLETING THE INTERACTIVE FORM ON YOUR COMPUTER, SAVE IT FOR YOUR RECORDS AND ADDRESS AN EMAIL TO BWCRECORDSREQUEST@LVMPD.COM WITH YOUR COMPLETED FORM AS AN ATTACHMENT.

IN PERSON:

BRING THE COMPLETED FORM TO LVMPD HEADQUARTERS
RECEPTION DESK, BUILDING C
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

BY PHONE:

(702) 828-8947

NOTE: TELEPHONIC REQUESTS MUST BE FOLLOWED BY VERIFICATION OF SUBMITTED INFORMATION AND A SIGNATURE, IN PERSON, AT THE ADDRESS SHOWN ABOVE BEFORE PROCESSING.

REQUESTOR INFORMATION (Information with an asterisk (*) is required.)

Your Name:* <input checked="" type="radio"/> Mr. <input type="radio"/> Mrs. <input type="radio"/> Ms. <input type="radio"/> Other _____ Kristopher Anderson		Your Phone Number:* 206.999.7227	Your Fax Number:	
Email Address: kris@prospectstrategic.com		Business Name: Prospect Strategic Communications		
Your Mailing Address:* (Number and Street) 3033 Wilson Blvd., Ste. E-116		City* Arlington	State:* VA	Zip Code:* 22201

BWC VIDEO REQUESTED

Identify the video you are requesting. Please be as specific as possible (i.e., event number, date, time, location, officer's name or badge number, etc.) to assist staff in locating the video. Define the content and narrow the scope as much as possible since videos can be lengthy. The Dissemination Manager may have to contact you for clarification or additional information.

Pursuant to Nevada Public Records Act § 239.001, we request all body camera footage and or audio from body camera footage (if visual images do not exist), the police or investigative report or summary, witness and or victim statements, all computer aided dispatch (CAD) between all LVMPD personnel at the scene and with dispatch, or any other statements by officers or witnesses relating to an incident with LVMPD Officer Zarkowski concerning minor child [REDACTED] and/or [REDACTED] Aaron D. Ford (State Senator) at approximately 3:00PM on November 13, 2017 at 7008 Connor Cove Street, Las Vegas, NV 89118. We request a copy of the records in electronic form to be physically mailed and/or emailed.

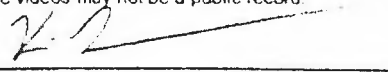
I, the requestor, understand there may be a fee which will be paid in full before receiving the copy; I also understand that I will receive from a records official a written estimate to reproduce the public record if the estimated actual cost of reproducing the record is more than \$25.

Sincerely,
Kristopher Anderson

By signing below, I certify that the information above is true and correct to the best of my knowledge. I understand that I must inspect the video at LVMPD Headquarters for verification prior to a copy being made (if a copy is desired). I also understand that there is a fee for redacting and copying the video and that its release is contingent upon full payment. By Nevada law, some videos may not be a public record.

Date: 01/25/2018

X


Requester Signature Required.

(If submitting this form via email, the Requester's typed name on the line above will serve as a valid signature.)

Assigned To	Receipt of Request (Date)	Acknowledgement or Follow-up Contact (Date)
Inspection Appointment (Date)	Cost Estimate (Amount)	
Request Status <i>(Check one)</i> Authorization to Proceed Request Withdrawn Record Confidential by Law	Customer Signature _____	
Payment Received (Amount)	Receipt Number	

DESCRIPTION OF RELEASED VIDEO

[illegible]

NOTES

[illegible]

Date Request Closed: _____ By: _____
Name and P#

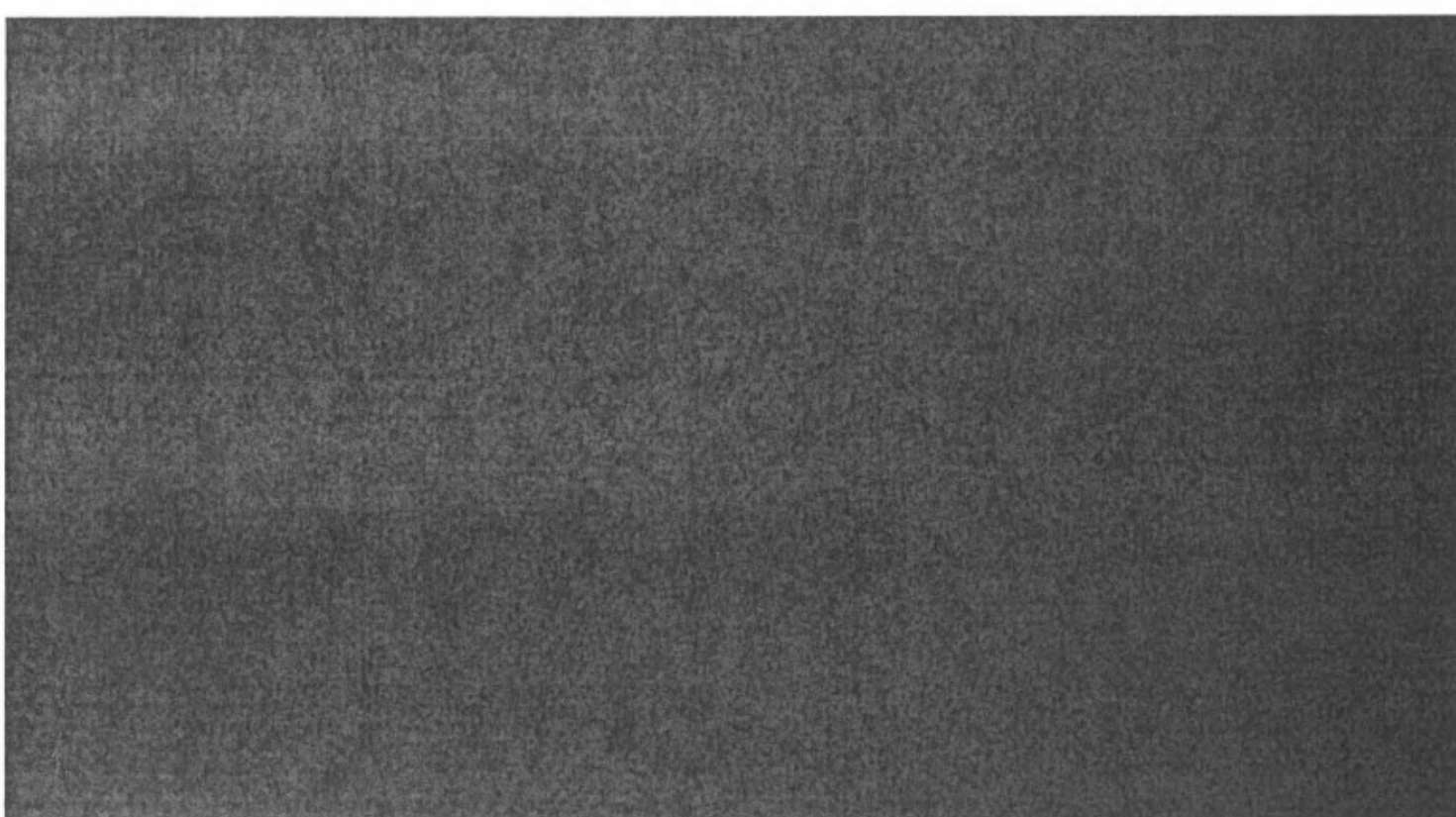
Reviewed By: _____
Name and P#

JA000027

EXHIBIT 1-D

EXHIBIT 1-D

JA000028



From: Kristopher Anderson [<mailto:kris@prospectstrategic.com>]
Sent: Monday, February 5, 2018 12:40 PM
To: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: RE: NV Public Records Request -- BWC Footage/Audio

Hello,

Thank you again for considering my NV Public Records Act request. Do you have any updates on the status of this records request?

-Kris

From: BWC Records Request [<mailto:BWCRecordsRequest@LVMPD.COM>]
Sent: Thursday, January 25, 2018 8:50 AM
To: Kristopher Anderson <kris@prospectstrategic.com>
Cc: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: RE: NV Public Records Request -- BWC Footage/Audio

Greetings,

With this email the Las Vegas Metropolitan Dept. Body Camera Detail hereby acknowledge receipt of your request for body camera video submitted on (1/25/18).

In an effort to consider your request, research will be performed to determine dissemination eligibility. You will be notified regarding your request.

Thank you,

V/r,
Body Camera Detail
Las Vegas Metropolitan Police Dept.
Mon-Fri. 0600-1600
Email: BWCRecordsRequest@LVMPD.COM
Office: (702)828-1905
Fax: (702)828-2688



From: Kristopher Anderson [<mailto:kris@prospectstrategic.com>]
Sent: Thursday, January 25, 2018 7:46 AM
To: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: NV Public Records Request -- BWC Footage/Audio

Dear Public Records Officer—

Please see attached for a NV Public Records Act request for body-worn camera video footage/audio. Please do not hesitate to contact me via email (kris@prospectstrategic.com) with any questions or requests for further info.

When possible, please transmit any responsive documents to me in electronic form via e-mail.

Thank you for your assistance!

-Kris

Kristopher Anderson
3033 Wilson Blvd., Ste. E-116
Arlington, VA 22201
kris@prospectstrategic.com

EXHIBIT 1-E

EXHIBIT 1-E

JA000031

From: Kristopher Anderson <kris@prospectstrategic.com>
Sent: Tuesday, February 06, 2018 12:39 PM
To: BWC Records Request
Subject: RE: NPRA # 390

Great, will do. Thank you again.

From: BWC Records Request [mailto:BWCRecordsRequest@LVMPD.COM]
Sent: Tuesday, February 6, 2018 12:38 PM
To: Kristopher Anderson <kris@prospectstrategic.com>
Cc: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: RE: NPRA # 390

We are unable to notify you when the case is closed but you are more than welcome to resubmit your request.

Thank you.

Body Camera Detail
PMVB / Body Camera Detail
702-828-1905

From: Kristopher Anderson [mailto:kris@prospectstrategic.com]
Sent: Tuesday, February 6, 2018 7:54 AM
To: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: RE: NPRA # 390

Hello,

Thank you for your reply to my BWC Records Request. Fully understand that the footage will not be available until after the criminal investigation is complete.

I still would like this footage, so I will be requesting again after the investigation is finished. Can you provide notification when the footage is available for request, or would you prefer I just re-submit the request every few weeks?

Thank you again for your help!

-Kris

From: BWC Records Request [mailto:BWCRecordsRequest@LVMPD.COM]
Sent: Tuesday, February 6, 2018 7:28 AM
To: Kristopher Anderson <kris@prospectstrategic.com>
Cc: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: NPRA # 390

Greetings,

Your request for body camera video is denied.

Research shows there is an active criminal investigation occurring for the requested event number. As a result the body camera video recording(s) is considered evidence according to the Nevada Public Records Act.

If the videos are wanted for court proceedings, the request should be made through the discovery process with the respective court system. If not, eligibility for release of body camera video(s) can be reevaluated, once any court cases have been adjudicated, upon your request.

If you have questions about the Nevada Public Record laws or why the request was denied, you may contact us at the Body Camera Detail using the contact information listed below.

Body Camera Detail
Las Vegas Metropolitan Police Dept.
Mon-Fri. 0600-1600
Office: (702)828-1905
Email: BodyCamera@LVMPD.COM
Fax: (702)828-2688



From: Kristopher Anderson [<mailto:kris@prospectstrategic.com>]
Sent: Monday, February 5, 2018 12:40 PM
To: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: RE: NV Public Records Request -- BWC Footage/Audio

Hello,

Thank you again for considering my NV Public Records Act request. Do you have records request?

-Kris

From: BWC Records Request [<mailto:BWCRecordsRequest@LVMPD.COM>]
Sent: Thursday, January 25, 2018 8:50 AM
To: Kristopher Anderson <kris@prospectstrategic.com>
Cc: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Subject: RE: NV Public Records Request -- BWC Footage/Audio

Greetings,

With this email the Las Vegas Metropolitan Dept. Body Camera Detail hereby acknowledge receipt of your request for body camera video submitted on (1/25/18).

EXHIBIT 1-F

EXHIBIT 1-F

From: Kristopher Anderson <kris@prospectstrategic.com>
Sent: Monday, March 19, 2018 4:57 PM
To: BWC Records Request
Subject: NV Public Records Request -- BWC Footage/Audio
Attachments: LVMPD BWC Records Request Form - 03192018.pdf

Dear Public Records Officer—

Please see attached for a NV Public Records Act request for body-worn camera video footage/audio. Please do not hesitate to contact me via email (kris@prospectstrategic.com) with any questions or requests for further info.

When possible, please transmit any responsive documents to me in electronic form via e-mail.

Thank you for your assistance!

-Kris

Kristopher Anderson
3033 Wilson Blvd., Ste. E-116
Arlington, VA 22201
kris@prospectstrategic.com

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
BODY-WORN CAMERA VIDEO
PUBLIC RECORDS REQUEST
Pursuant to NRS 239**

This form is ONLY to be used to request body-worn camera video that is in the legal custody or control of the Las Vegas Metropolitan Police Department.

INSTRUCTIONS:

REQUESTS CAN BE MADE IN WRITING, IN PERSON, VIA EMAIL, OR TELEPHONICALLY. ALL INFORMATION REQUESTED ON THIS FORM MUST BE PROVIDED REGARDLESS OF THE METHOD OF REQUEST. INCOMPLETE REQUESTS WILL NOT BE HONORED. ALL FORMS MUST BE SIGNED** BEFORE THE REQUEST WILL BE PROCESSED. ONLY VIDEOS THAT ARE CLEARLY DEFINED AS PUBLIC RECORDS WILL BE RELEASED. YOU WILL BE CONTACTED WITHIN FIVE (5) BUSINESS DAYS TO ACKNOWLEDGE RECEIPT OF YOUR REQUEST AND TO ARRANGE AN INSPECTION APPOINTMENT. **YOU WILL BE CONTACTED IN WRITING IF THE REQUESTED VIDEO CANNOT BE LOCATED, NO LONGER EXISTS, OR IS NOT A PUBLIC RECORD.**

IN WRITING:

TYPE OR USE BLACK INK ONLY. YOU MAY:

1. FAX TO (702) 828-2688 OR
2. MAIL TO:
BWC DISSEMINATION MANAGER
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
BUILDING "C", 4th FLOOR
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

VIA EMAIL:

AFTER COMPLETING THE INTERACTIVE FORM ON YOUR COMPUTER, SAVE IT FOR YOUR RECORDS AND ADDRESS AN EMAIL TO BWCRecordsRequest@LVMPD.COM WITH YOUR COMPLETED FORM AS AN ATTACHMENT.

IN PERSON:

BRING THE COMPLETED FORM TO LVMPD HEADQUARTERS
RECEPTION DESK, BUILDING C
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

BY PHONE:

(702) 828-8947

NOTE: TELEPHONIC REQUESTS MUST BE FOLLOWED BY VERIFICATION OF SUBMITTED INFORMATION AND A SIGNATURE, IN PERSON, AT THE ADDRESS SHOWN ABOVE BEFORE PROCESSING.

REQUESTOR INFORMATION (Information with an asterisk (*) is required.)

Your Name:* <input checked="" type="radio"/> Mr. <input type="radio"/> Mrs. <input type="radio"/> Ms. <input type="radio"/> Other _____ Kristopher Anderson		Your Phone Number:* 206.999.7227	Your Fax Number:	
Email Address: kris@prospectstrategic.com		Business Name: Prospect Strategic Communications		
Your Mailing Address:* (Number and Street) 3033 Wilson Blvd., Ste. E-116		City* Arlington	State:* VA	Zip Code:* 22201

BWC VIDEO REQUESTED

Identify the video you are requesting. Please be as specific as possible (i.e., event number, date, time, location, officer's name or badge number, etc.) to assist staff in locating the video. Define the content and narrow the scope as much as possible since videos can be lengthy. The Dissemination Manager may have to contact you for clarification or additional information.

Pursuant to Nevada Public Records Act § 239.001, we request all body camera footage and or audio from body camera footage (if visual images do not exist), the police or investigative report or summary, witness and or victim statements, all computer aided dispatch (CAD) between all LVMPD personnel at the scene and with dispatch, or any other statements by officers or witnesses relating to an incident with LVMPD Officer Zarkowski concerning minor child [REDACTED] and/or [REDACTED] Aaron D. Ford (State Senator) at approximately 3:00PM on November 13, 2017 at 7008 Connor Cove Street, Las Vegas, NV 89118. We request a copy of the records in electronic form to be physically mailed and/or emailed.

I, the requestor, understand there may be a fee which will be paid in full before receiving the copy; I also understand that I will receive from a records official a written estimate to reproduce the public record if the estimated actual cost of reproducing the record is more than \$25.

Sincerely,
Kristopher Anderson

By signing below, I certify that the information above is true and correct to the best of my knowledge. I understand that I must inspect the video at LVMPD Headquarters for verification prior to a copy being made (if a copy is desired). I also understand that there is a fee for redacting and copying the video and that its release is contingent upon full payment. By Nevada law, some videos may not be a public record.

Date: 3/19/2018

X

Requester Signature Required.

(If submitting this form via email, the Requester's typed name on the line above will serve as a valid signature.)

LVMPD STAFF USE ONLY

Assigned To	Receipt of Request (Date)	Acknowledgement or Follow-up Contact (Date)
Inspection Appointment (Date)	Cost Estimate (Amount)	
Request Status (Check one) Authorization to Proceed Request Withdrawn Record Confidential by Law	Customer Signature _____	
Payment Received (Amount)	Receipt Number	

DESCRIPTION OF RELEASED VIDEO

NOTES

Date Request Closed: _____ By: _____
Name and P#

Reviewed By: _____
Name and P#

EXHIBIT 1-G

EXHIBIT 1-G

From: Kristopher Anderson <kris@prospectstrategic.com>
Sent: Wednesday, May 02, 2018 8:39 AM
To: BWC Records Request
Subject: RE: NPRA# 443

Hello,

Just wanted to check on the status of my NPRA request. Thank you for your assistance!

-Kris

From: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Sent: Tuesday, March 20, 2018 9:41 AM
To: Kristopher Anderson <kris@prospectstrategic.com>
Subject: NPRA# 443

Greetings,

With this email the Las Vegas Metropolitan Dept. Body Camera Detail hereby acknowledge receipt of your request for body camera video submitted on
In an effort to consider your request, research will be performed to determine dissemination eligibility. You will be notified regarding your request.

Thank you,

Project Management and Video Bureau
Body Camera Detail, Mon-Thurs 0600-1600
Desk: (702)828-7253
BWC Office: (702)828-1905
N.P.R.A. Dissemination: (702)828-8947
Fax: (702)828-2688



JA000039

EXHIBIT 1-H

EXHIBIT 1-H

JA000040

From: BWC Records Request <BWCRecordsRequest@LVMPD.COM>

Sent: Tuesday, May 15, 2018 9:19 AM

To: Kristopher Anderson <kris@prospectstrategic.com>

Subject: NPRA# 443

Mr. Kristopher Anderson,

Your request to view or obtain body camera video is denied.

Research shows the investigation involved juvenile suspects. Therefore, because it involves juveniles arrested our Office of General Counsel has determined that it is confidential pursuant to Nevada Revised statutes NRS 62H.025 and 62H.030.

If you have questions about the Nevada Public Record laws or why the request was denied, you may contact us at the Body Camera Detail at 702-828-1905.

Thank you,

Las Vegas Metropolitan Police Dept.

Body Camera Detail

Office: (702)828-1905



EXHIBIT 1-I

EXHIBIT 1-I

JA000042

May 17, 2018

THIRD REQUEST FOR PUBLIC RECORDS

On May 15, 2018, your office denied our Second Request for public records related to a specific law enforcement incident occurring on November 13, 2017, on the basis that "it involves juveniles arrested." It has been five months since our first request for this information, and we now submit our Third Request for these public records, clarified as follows:

Pursuant to Nevada Public Records Act § 239.001, we request all body camera footage and or audio from body camera footage (if visual images do not exist), the police or investigative report or summary, all computer aided dispatch (CAD) between all LVMPD personnel at the scene and with dispatch, or any other statements by officers or witnesses, relating to or depicting Aaron D. Ford's (State Senator) interactions with LVMPD Officer Zarkowski or other LVMPD personnel at approximately 3:00PM on November 13, 2017, at 7008 Connor Cove Street, Las Vegas, NV 89118. We request a copy of the records in electronic form to be physically mailed and/or emailed.

I, the requestor, understand there may be a fee which will be paid in full before receiving the copy; I also understand that I will receive from a records official a written estimate to reproduce the public record if the estimated actual cost of reproducing the record is more than \$25.

To clarify, this request excludes any information that may be confidential pursuant to Nevada Revised Statutes NRS 62H.025 and 62H.030. However, pursuant to NRS 239.010, your office has an obligation to "redact, delete, conceal or separate" any such confidential information and provide to the requestor the responsive records that are not otherwise confidential.

Additionally, your office's denial of our Second Request was based on an incorrect and overly-broad interpretation of NRS 62H.025 and 62H.030. Under these statutes "juvenile justice information is confidential and may only be released" under certain circumstances. But, "juvenile justice information" is a defined term, and does not encompass all situations "involving juveniles arrested," the explanation your office gave for its last denial. Instead, "'juvenile justice information' means any information which is *directly* related to a child ... subject to the jurisdiction of the juvenile court." (emphasis added)

Information falling within the scope of our request, but that does not *directly* relate to a child, would include, among other things, Senator Aaron D. Ford's statements to officers and the body camera footage of those statements.

It should also be brought to your attention that denials based on NRS 62H.025 and 62H.030 must be made "not later than 5 business days after receipt of the request." Your denial was made 57 days after our last request and only after a follow-up email was submitted in regard to the March 19 request. Based on this unreasonable delay, and in the interest of obtaining the responsive, non-confidential records your office possesses, should you have any questions about the scope of our request, please contact me at (206) 999-7227 so that we prevent further unwarranted delays or denials.

Sincerely,

JA000043



Kristopher Anderson
3033 Wilson Blvd., Ste. E-116
Arlington, VA 22201
206.999.7227
kris@prospectstrategic.com

JA000044

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
**BODY-WORN CAMERA VIDEO
PUBLIC RECORDS REQUEST**
Pursuant to NRS 239

*This form is ONLY to be used to request body-worn camera video that is in
the legal custody or control of the Las Vegas Metropolitan Police Department.*

INSTRUCTIONS:

REQUESTS CAN BE MADE IN WRITING, IN PERSON, VIA EMAIL, OR TELEPHONICALLY. ALL INFORMATION REQUESTED ON THIS FORM MUST BE PROVIDED REGARDLESS OF THE METHOD OF REQUEST. INCOMPLETE REQUESTS WILL NOT BE HONORED. ALL FORMS MUST BE SIGNED** BEFORE THE REQUEST WILL BE PROCESSED. ONLY VIDEOS THAT ARE CLEARLY DEFINED AS PUBLIC RECORDS WILL BE RELEASED. YOU WILL BE CONTACTED WITHIN FIVE (5) BUSINESS DAYS TO ACKNOWLEDGE RECEIPT OF YOUR REQUEST AND TO ARRANGE AN INSPECTION APPOINTMENT. **YOU WILL BE CONTACTED IN WRITING IF THE REQUESTED VIDEO CANNOT BE LOCATED, NO LONGER EXISTS, OR IS NOT A PUBLIC RECORD.**

IN WRITING:

TYPE OR USE BLACK INK ONLY. YOU MAY:

1. FAX TO (702) 828-2688 QB
2. MAIL TO:
BWC DISSEMINATION MANAGER
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
BUILDING "C", 4th FLOOR
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

VIA EMAIL:

AFTER COMPLETING THE INTERACTIVE FORM ON YOUR COMPUTER, SAVE IT FOR YOUR RECORDS AND ADDRESS AN EMAIL TO BWCRECORDSREQUEST@LVMPD.COM WITH YOUR COMPLETED FORM AS AN ATTACHMENT.

IN PERSON:

BRING THE COMPLETED FORM TO LVMPD HEADQUARTERS
RECEPTION DESK, BUILDING C
400 S. MARTIN LUTHER KING BLVD.
LAS VEGAS, NEVADA 89106

BY PHONE:

(702) 828-8947

NOTE: TELEPHONIC REQUESTS MUST BE FOLLOWED BY VERIFICATION OF SUBMITTED INFORMATION AND A SIGNATURE, IN PERSON, AT THE ADDRESS SHOWN ABOVE BEFORE PROCESSING.

REQUESTOR INFORMATION (Information with an asterisk (*) is required.)

Your Name:* <input checked="" type="radio"/> Mr. <input type="radio"/> Mrs. <input type="radio"/> Ms. <input type="radio"/> Other _____ Kristopher Anderson		Your Phone Number:* 206.999.7227		Your Fax Number:	
Email Address: kris@prospectstrategic.com		Business Name: Prospect Strategic Communications			
Your Mailing Address:* (Number and Street) 3033 Wilson Blvd., Ste. E-116		City* Arlington		State:* VA	Zip Code:* 22201

BWC VIDEO REQUESTED

Identify the video you are requesting. Please be as specific as possible (i.e., event number, date, time, location, officer's name or badge number, etc.) to assist staff in locating the video. Define the content and narrow the scope as much as possible since videos can be lengthy. The Dissemination Manager may have to contact you for clarification or additional information.

--See Attached Letter--

By signing below, I certify that the information above is true and correct to the best of my knowledge. I understand that I must inspect the video at LVMPD Headquarters for verification prior to a copy being made (if a copy is desired). I also understand that there is a fee for redacting and copying the video and that its release is contingent upon full payment. By Nevada law, some videos may not be a public record.

Date: 05/17/2018

X

JK-2

Requester Signature Required.

(If submitting this form via email, the Requester's typed name on the line above will serve as a valid signature.)

LVMPD STAFF USE ONLY

Assigned To	Receipt of Request (Date)	Acknowledgement or Follow-up Contact (Date)
Inspection Appointment (Date)	Cost Estimate (Amount)	
Request Status (Check one) Authorization to Proceed Request Withdrawn Record Confidential by Law	Customer Signature	
Payment Received (Amount)	Receipt Number	

DESCRIPTION OF RELEASED VIDEO

NOTES

Date Request Closed: _____ By: _____
Name and P#

Reviewed By: _____
Name and P#

EXHIBIT 1-J

EXHIBIT 1-J

JA000047

From: BWC Records Request <BWCRecordsRequest@LVMPD.COM>
Date: June 15, 2018 at 2:21:07 PM PDT
To: "Kris@prospectstrategic.com" <Kris@prospectstrategic.com>
Subject: NPRA request # 443

Mr. Kristopher Anderson,

Your request to view or obtain body camera video is denied.

The Las Vegas Metropolitan Police Department's Office of General Counsel reviewed your request dated May 17, 2018 and disagrees with your broad interpretation of NRS 62H.025 and 62H.030.

Any documents involving the arrests of juveniles is confidential pursuant to NRS 62H.025 and 62H.030. Therefore, you should direct your request to the juvenile courts.

Sincerely,

Las Vegas Metropolitan Police Department
Body Camera Detail
Office: (702)828-1905



CLERK OF THE COURT

For Court Use Only

Steven D. Grierson

Attorney or Party without Attorney: Clark Hill, PLC Deanna L. Forbush (SBN 6646) 3800 Howard Hughes Parkway, Suite 500 Las Vegas, NV 89169 Telephone No: (702) 862-8300				
Attorney For: Petitioner	Ref. No. or File No.: 56943-338431			
Insert name of Court, and Judicial District and Branch Court: District Court Clark County Nevada				
Plaintiff: REPUBLICAN ATTORNEYS GENERAL ASSOCIATION, Defendant: LAS VEGAS METROPOLITAN POLICE DEPARTMENT,				
AFFIDAVIT OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number: A-18-780538-W

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons; Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus
3. a. Party served: Las Vegas Metropolitan Police Department
b. Person served: Teresa Walter, Risk Management, a person of suitable age and discretion authorized to accept at address shown in item 4.
4. Address where the party was served: c/o General Counsel
400 S. Martin Luther King Blvd., Building B
Las Vegas, NV 89106
5. I served the party:
a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Fri, Sep 07 2018 (2) at: 11:22 AM

Fee for Service: \$0.00

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. Person Who Served Papers:

- a. Leidy Serna (R-029907, Clark)
- b. FIRST LEGAL
NEVADA PI/PS LICEN5E 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
- c. (702) 671-4002

9.10.18

(Date)

[Signature]

(Signature)

7. STATE OF NEVADA, COUNTY OF Clark 10 day of Sept., 2018 by Leidy Serna (R-029907, Clark)
Subscribed and sworn to (or affirmed) before on this 10 day of Sept., 2018 by Leidy Serna (R-029907, Clark)
proved to me on the basis of satisfactory evidence to be the person who appeared before me.

[Signature]

(Notary Signature)

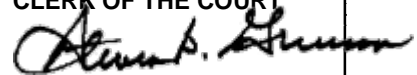


AFFIDAVIT OF SERVICE

2611206
(55090024)



JA000049



DISTRICT COURT
CLARK COUNTY, NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION, PLAINTIFF(S)
VS.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, DEFENDANT(S)

CASE NO.: A-18-780538-W

DEPARTMENT 4

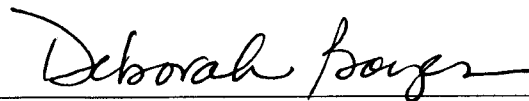
NOTICE OF HEARING

TO: Deanna Forbush
Colleen E. McCarty

Please be advised that the above-entitled matter has been scheduled for **Petition Hearing**, to be heard by the Honorable KERRY EARLEY, at the Regional Justice Center, 200 Lewis Ave, Las Vegas, Nevada 89155, on the 17th day of October, 2018, at the hour of 9:00 AM, in RJC Courtroom 12D, Department 4.

YOUR PRESENCE IS NECESSARY

HONORABLE KERRY EARLEY



By: Deborah Boyer
Judicial Executive Assistant

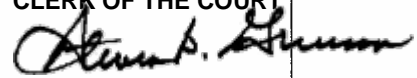
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

☐ by causing the original of the same to be deposited in the United States Mail, postage prepaid, addressed as follows:

Deanna Forbush
Clark Hill PLLC
c/o: Deanna L. Forbush
3800 Howard Hughes Parkway, Suite 500
Las Vegas, NV 89169

Deborah Bayer

Deborah Boyer
Judicial Executive Assistant
Department 4



1 **SAO**
2 DEANNA L. FORBUSH
3 Nevada Bar No. 6646
4 Email: dforbush@clarkhill.com
5 COLLEEN E. MCCARTY
6 Nevada Bar No. 13186
7 Email: cmccarty@clarkhill.com
8 **CLARK HILL PLLC**
9 3800 Howard Hughes Parkway, Suite 500
10 Las Vegas, Nevada 89169
11 Telephone: (702) 862-8300
12 Facsimile: (702) 862-8400
13 Attorneys for Petitioner
14 Republican Attorneys General Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

11 REPUBLICAN ATTORNEYS GENERAL
12 ASSOCIATION,

13 Petitioner,

14 vs.

15 LAS VEGAS METROPOLITAN POLICE
16 DEPARTMENT,

17 Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

**STIPULATION AND ORDER
REGARDING BRIEFING SCHEDULE**

18 Petitioner Republican Attorneys General Association ("RAGA") and Respondent Las
19 Vegas Metropolitan Police Department ("Metro") wish to pursue a briefing and hearing
20 schedule in this matter that allows for full briefing of the legal issues but also expedites this
21 matter as quickly as feasible in accordance with NRS. § 239.011(2) ("[t]he court shall give this
22 matter priority over other civil matters to which priority is not given by other statutes).

23 Accordingly, the parties hereby stipulate and agree as follows:

24
25 ///

26 ///

27 ///

1 1. On September 6, 2018, RAGA filed its Public Records Act Application Pursuant
2 to NRS § 239.001/Petition for Writ of Mandamus ("Application") Against Metro.

3 2. For purposes of accommodating RAGA's request for expeditious review and
4 priority, pursuant to NRS 239.011(2) and to allow the parties time to fully and concisely brief
5 all pertinent matters, RAGA shall have until September 26, 2018, to file its memorandum
6 detailing the supporting points and authorities in support of its Application.
7

8 3. Metro shall then have up to and until October 10, 2018, to file its response to
9 Application and any supporting memorandum.

10 4. RAGA shall have up to and until October 15, 2018, to file a reply to any
11 response and any supporting memorandum filed by Metro.

12 5. The parties respectfully request that the Court set a hearing on the Application
13 on October 17, 2018.
14

15 6. No previous extension of any dates has been granted in this matter. This
16 stipulation is submitted in good faith, is reasonably necessary, and is not sought for any
17 purposes of delay. Rather, it sought to expedite this matter in accordance with the Nevada
18 Public Records Act and present issues to the Court for its consideration efficiently.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

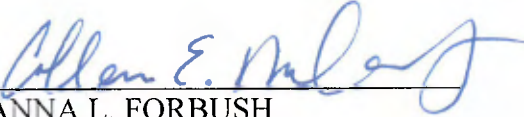
27 ///

1 7. By entering this stipulation neither party waives any rights, responses, defenses,
2 or arguments concerning the Application filed by RAGA, other than any arguments regarding
3 the timeliness of the Application and any related supporting briefing, response, or reply should
4 the parties comply with the deadlines set forth herein.

5 DATED this 14th day of September, 2018. DATED this _____ day of September, 2018.

7 **CLARK HILL PLLC**

7 **MARQUIS AURBACH COFFING**

8
9 By: 
10 DEANNA L. FORBUSH
11 Nevada Bar No. 6646
12 COLLEEN E. MCCARTY, ESQ.
13 Nevada Bar No. 13186
14 3800 Howard Hughes Parkway, Suite 500
15 Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Petitioner
Republican Attorneys General
Association

By: _____
JACKIE V. NICHOLS, ESQ.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 207-6091
Attorney for Respondent
Las Vegas Metropolitan Police
Department

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 7. By entering this stipulation neither party waives any rights, responses, defenses,
2 or arguments concerning the Application filed by RAGA, other than any arguments regarding
3 the timeliness of the Application and any related supporting briefing, response, or reply should
4 the parties comply with the deadlines set forth herein.


5 DATED this ____ day of September, 2018.

DATED this 17 day of September, 2018.

6 **CLARK HILL PLLC**

MARQUIS AURBACH COFFING

7
8
9 By: _____
10 DEANNA L. FORBUSH
11 Nevada Bar No. 6646
12 COLLEEN E. MCCARTY, ESQ.
13 Nevada Bar No. 13186
14 3800 Howard Hughes Pkwy., #500
15 Las Vegas, Nevada 89169
16 Telephone: (702) 862-8300
17 Attorneys for Petitioner,
18 Republican Attorneys General
19 Association

By:  8996
JACKIE V. NICHOLS, ESQ.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 207-6091
Attorney for Respondent,
Las Vegas Metropolitan Police
Department

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

///

///

ORDER

IT IS SO ORDERED this 19th day of September, 2018.

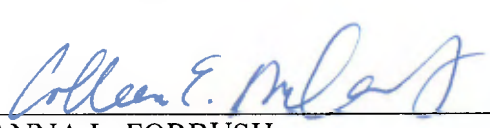
IT IS SO FURTHERED ORDERED that the hearing on the Application shall be set for

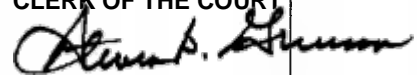
9 a.m./p.m. on the 17th day of October, 2018.


DISTRICT COURT JUDGE

Submitted by:

CLARK HILL PLLC

By: 
DEANNA L. FORBUSH
Nevada Bar No. 6646
COLLEEN E. MCCARTY, ESQ.
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Petitioner
Republican Attorneys General Association



1 **NEO**
2 DEANNA L. FORBUSH
3 Nevada Bar No. 6646
4 Email: dforbush@clarkhill.com
5 COLLEEN E. MCCARTY
6 Nevada Bar No. 13186
7 Email: cmccarty@clarkhill.com
8 **CLARK HILL PLLC**
9 3800 Howard Hughes Parkway, Suite 500
10 Las Vegas, Nevada 89169
11 Telephone: (702) 862-8300
12 Facsimile: (702) 862-8400
13 Attorneys for Petitioner
14 Republican Attorneys General Association

**DISTRICT COURT
CLARK COUNTY, NEVADA**

11 REPUBLICAN ATTORNEYS GENERAL
12 ASSOCIATION,

13 Petitioner,

14 vs.

15 LAS VEGAS METROPOLITAN POLICE
16 DEPARTMENT,

17 Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

**NOTICE OF ENTRY OF STIPULATION
AND ORDER REGARDING BRIEFING
SCHEDULE**

18 PLEASE TAKE NOTICE that on the 21st day of September, 2018, the above-entitled
19 Court entered its Stipulation and Order Regarding Briefing Schedule. A copy of this Stipulation
20 and Order is attached hereto as Exhibit "1."

21 Dated this 25th of September, 2018.

23 **CLARK HILL PLLC**

24 By: 

25 DEANNA L. FORBUSH
26 Nevada Bar No. 6646
27 COLLEEN E. MCCARTY, ESQ.
28 Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Petitioner
Republican Attorneys General Association

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of Clark Hill PLLC, and that on
3 this 25th day of September, 2018, I served a true and correct copy of the foregoing
4 **NOTICE OF ENTRY OF STIPULATION AND ORDER REGARDING BRIEFING**
5 **SCHEDULE** by electronic means by operation of the Court's electronic filing system, upon
6 each party in this case who is registered as an electronic case filing user with the Clerk.
7

8 Nick D. Crosby, Esq.
9 Jackie V. Nichols, Esq.
10 MARQUIS AURBACH COFFING
11 10001 Park Run Drive
12 Las Vegas, NV 89145
13 ncrosby@maclaw.com
14 jnichols@maclaw.com
15 Attorneys for Respondent
16 Las Vegas Metropolitan Police Department
17
18
19
20
21
22
23
24
25
26
27
28

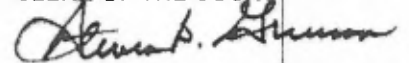


An Employee of Clark Hill PLLC

EXHIBIT 1

EXHIBIT 1

JA000059



1 **SAO**

2 DEANNA L. FORBUSH

3 Nevada Bar No. 6646

4 Email: dforbush@clarkhill.com

5 COLLEEN E. MCCARTY

6 Nevada Bar No. 13186

7 Email: cmccarty@clarkhill.com

8 **CLARK HILL PLLC**

9 3800 Howard Hughes Parkway, Suite 500

10 Las Vegas, Nevada 89169

11 Telephone: (702) 862-8300

12 Facsimile: (702) 862-8400

13 Attorneys for Petitioner

14 Republican Attorneys General Association

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **REPUBLICAN ATTORNEYS GENERAL**
18 **ASSOCIATION,**

19 **Petitioner,**

20 **vs.**

21 **LAS VEGAS METROPOLITAN POLICE**
22 **DEPARTMENT,**

23 **Respondent.**

Case No.: A-18-780538-W

Dept. No.: IV

24 **STIPULATION AND ORDER**
25 **REGARDING BRIEFING SCHEDULE**

26
27
28
Petitioner Republican Attorneys General Association ("RAGA") and Respondent Las Vegas Metropolitan Police Department ("Metro") wish to pursue a briefing and hearing schedule in this matter that allows for full briefing of the legal issues but also expedites this matter as quickly as feasible in accordance with NRS. § 239.011(2) ("[t]he court shall give this matter priority over other civil matters to which priority is not given by other statutes).

Accordingly, the parties hereby stipulate and agree as follows:

///

///

///

1 1. On September 6, 2018, RAGA filed its Public Records Act Application Pursuant
2 to NRS § 239.001/Petition for Writ of Mandamus ("Application") Against Metro.

3 2. For purposes of accommodating RAGA's request for expeditious review and
4 priority, pursuant to NRS 239.011(2) and to allow the parties time to fully and concisely brief
5 all pertinent matters, RAGA shall have until September 26, 2018, to file its memorandum
6 detailing the supporting points and authorities in support of its Application.
7

8 3. Metro shall then have up to and until October 10, 2018, to file its response to
9 Application and any supporting memorandum.

10 4. RAGA shall have up to and until October 15, 2018, to file a reply to any
11 response and any supporting memorandum filed by Metro.

12 5. The parties respectfully request that the Court set a hearing on the Application
13 on October 17, 2018.
14

15 6. No previous extension of any dates has been granted in this matter. This
16 stipulation is submitted in good faith, is reasonably necessary, and is not sought for any
17 purposes of delay. Rather, it sought to expedite this matter in accordance with the Nevada
18 Public Records Act and present issues to the Court for its consideration efficiently.
19

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 7. By entering this stipulation neither party waives any rights, responses, defenses,
2 or arguments concerning the Application filed by RAGA, other than any arguments regarding
3 the timeliness of the Application and any related supporting briefing, response, or reply should
4 the parties comply with the deadlines set forth herein.

5 DATED this 14th day of September, 2018.

DATED this _____ day of September, 2018.

7 **CLARK HILL PLLC**

MARQUIS AURBACH COFFING

8
9 By: Colleen E. McCarty
10 DEANNA L. FORBUSH
Nevada Bar No. 6646
11 COLLEEN E. MCCARTY, ESQ.
Nevada Bar No. 13186
12 3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
13 Telephone: (702) 862-8300
Attorneys for Petitioner
14 Republican Attorneys General
Association
15

By: _____
JACKIE V. NICHOLS, ESQ.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 207-6091
Attorney for Respondent
Las Vegas Metropolitan Police
Department

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 7. By entering this stipulation neither party waives any rights, responses, defenses,
2 or arguments concerning the Application filed by RAGA, other than any arguments regarding
3 the timeliness of the Application and any related supporting briefing, response, or reply should
4 the parties comply with the deadlines set forth herein.

5 DATED this ____ day of September, 2018.

6 DATED this 17 day of September, 2018.

7 **CLARK HILL PLLC**

MARQUIS AURBACH COFFING

8
9 By: _____

10 DEANNA L. FORBUSH
11 Nevada Bar No. 6646
12 COLLEEN E. MCCARTY, ESQ.
13 Nevada Bar No. 13186
14 3800 Howard Hughes Pkwy., #500
15 Las Vegas, Nevada 89169
16 Telephone: (702) 862-8300
17 Attorneys for Petitioner,
18 Republican Attorneys General
19 Association

By: _____

20 JACKIE V. NICHOLS, ESQ.
21 Nevada Bar No. 14246
22 10001 Park Run Drive
23 Las Vegas, NV 89145
24 Telephone: (702) 207-6091
25 Attorney for Respondent,
26 Las Vegas Metropolitan Police
27 Department
28

ORDER

IT IS SO ORDERED this 19th day of September, 2018.

IT IS SO FURTHERED ORDERED that the hearing on the Application shall be set for

9 a.m./p.m. on the 17th day of October, 2018.


DISTRICT COURT JUDGE

Submitted by:

CLARK HILL PLLC

By: 

DEANNA L. FORBUSH

Nevada Bar No. 6646

COLLEEN E. MCCARTY, ESQ.

Nevada Bar No. 13186

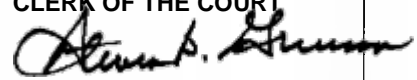
3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

Attorneys for Petitioner

Republican Attorneys General Association



PTOB

DEANNA L. FORBUSH

Nevada Bar No. 6646

Email: dforbush@clarkhill.com

COLLEEN E. MCCARTY

Nevada Bar No. 13186

Email: cmccarty@clarkhill.com

CLARK HILL PLLC

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

Facsimile: (702) 862-8400

Attorneys for Petitioner

Republican Attorneys General Association

DISTRICT COURT

CLARK COUNTY, NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Case No.: A-18-780538-W

Dept. No.: IV

**REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION'S OPENING BRIEF
IN SUPPORT OF PUBLIC RECORDS ACT
APPLICATION PURSUANT TO NRS
239.001/PETITION FOR WRIT OF
MANDAMUS**

Hearing Date: October 17, 2018

Hearing Time: 9:00 a.m.

Petitioner, Republican Attorneys General Association ("RAGA" or "Petitioner"), by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of the law firm of Clark Hill PLLC, hereby submits the instant Opening Brief in Support of Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus (the "Petition"), pursuant to the Court's order setting briefing schedule entered September 20, 2018.

///

///

///

1 This Opening Brief is made and based on the following Memorandum of Points and
2 Authorities, the Declaration of Colleen E. McCarty, Esq. attached hereto as **Exhibit 2** and the exhibits
3 thereto, the papers and pleadings already on file herein, and any argument the Court may permit at the
4 hearing of this matter.

5 Dated this 26th of September, 2018.

6 CLARK HILL PLLC

7
8
9 By: Colleen E. McCarty

10 DEANNA L. FORBUSH

11 Nevada Bar No. 6646

12 COLLEEN E. MCCARTY, ESQ.

13 Nevada Bar No. 13186

14 3800 Howard Hughes Parkway, Suite 500

15 Las Vegas, Nevada 89169

16 Telephone: (702) 862-8300

17 Attorneys for Petitioner

18 Republican Attorneys General Association

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 I.

21 INTRODUCTION

22 Early voting begins in Nevada on October 20, 2018. And, unless this Court intervenes, and
23 quickly, voters will go to the polls without information contained in public records that may
24 determine their choice of candidate. There is no dispute that one or more police officer body worn
25 cameras recorded sitting State Senate Majority Leader and Democratic candidate for the Office of
26 Nevada Attorney General; Aaron Ford ("Senator Ford"), during a law enforcement encounter with
27 Las Vegas Metropolitan Police Department ("Metro") officers on November 13, 2017. Information
28 provided to RAGA suggests that Senator Ford used his position of authority as an elected official to
influence the outcome of the encounter. Senator Ford's campaign offered a different version of
events, stating publicly that it was Metro that contacted Senator Ford to ensure that the matter, which

1 involved several juveniles, would be dealt with privately. See **Exhibit 2-A**¹, attached hereto. As
2 objective evidence of the encounter exists in public records, voters should not be left to wonder where
3 the truth lies.

4 Accordingly, to provide the public with the information it deserves and to fulfill the
5 NPRA's important purpose, RAGA respectfully requests this Court grant the Petition and enter
6 an Order in its favor and against Metro including, but not limited to the following relief:

- 7 • Injunctive relief ordering Metro to immediately make available complete copies
8 of all requested records;
- 9 • Reasonable attorney's fees and costs, as required by NRS 239.011(2); and
- 10 • Any other relief this Court deems appropriate.

11 RAGA also requests that this Court address this matter on an expedited basis. This is vital
12 because the NPRA provides for expeditious access to public records, including priority over all other
13 civil matters to which priority is not given by other statutes. NRS 239.011(2). And, in addition to the
14 right of voters to be informed regarding the public actions of its elected officials, this case clearly
15 implicates the right of the media to report on public figures, which right is guaranteed by the First
16 Amendment, especially with regard to a public figure running for Nevada Attorney General, an office
17 deserving of the highest level of public trust.

18 II.

19 STATEMENT OF FACTS AND PROCEDURAL HISTORY

20 As detailed in the Petition, RAGA has been attempting for over nine months to obtain its
21 limited request for audio and video from body worn camera(s) in operation during an interaction
22 between Senator Ford and Metro officers that took place at approximately 3:00 p.m. on November 13,
23 2017. RAGA made its first request on December 5, 2017, seeking body camera audio and video
24

25 ¹ Exhibits 1-A through 1-J attached to the Petition are incorporated by reference as stated herein. All Exhibits
26 attached to this Opening Brief are numbered sequentially thereafter beginning with Exhibit 2.

relating to any police interactions with Senator Ford occurring during a narrowly specified time frame. *See Exhibit 1-A.* At Metro's request, and without conceding its entitlement to the entirety of the records requested, RAGA made clear that it would accept body camera audio and video depicting only Senator Ford's interactions with the officers. *See Exhibit 1-I.* Metro, in turn, failed to respond in a timely manner to any of RAGA's requests and continues to fail to produce any records, changing its stated basis for the refusal to comply on multiple occasions. *See Exhibits 1-B, 1-E and 1-H,* respectively.

For ease of reference, the table below provides the date of each RAGA public record request, the specific request made, and the date and reason given by Metro for its denial:

DATE	REQUEST	METRO RESPONSE
<u>12/5/17</u> – RAGA First Request (<i>See Exhibit 1-A</i>)	“[A]ll body camera footage and or audio from body camera footage relating to an incident with LVMPD concerning minor child [redacted] and/or [redacted] Aaron D. Ford (State Senator) between on or about 1 October 2017 to December 5, 2017.”	<u>12/14/17</u> – Metro issued an untimely denial and request for additional information stating “Please provide additional information, (LVMPD event number or officer’s badge number, date and time of the occurrence).” (<i>See Exhibit 1-B</i>)
<u>1/25/18</u> – RAGA Second Request (<i>See Exhibit 1-C</i>)	“[A]ll body camera footage and or audio from body camera footage (if visual images do not exist), the police or investigative report or summary, witness and or victim statements, all computer aided dispatch (CAD) between all LVMPD personnel at the scene and with dispatch, or any other statements by officers or witnesses relating to an incident with LVMPD Officer Zarkowski concerning minor child [redacted] and/or [redacted] Aaron D. Ford (State Senator) at approximately 3:00PM on November 13, 2017 at [redacted].”	<u>2/6/18</u> – Metro issued an untimely and incomplete denial stating “Your request for body camera video is denied. Research shows there is an active criminal investigation occurring for the requested event number. As a result, the body camera video recording(s) is considered evidence according to the Nevada Public Records Act.” (<i>See Exhibit 1-E</i>)
<u>3/19/18</u> – RAGA Third Request (<i>See Exhibit 1-F</i>)	“[A]ll body camera footage and or audio from body camera footage (if visual images do not exist), the police or investigative	<u>5/15/18</u> – Metro issued an untimely and incomplete denial stating “Your request to obtain or view body camera video is

	report or summary, witness and or victim statements, all computer aided dispatch (CAD) between all LVMPD personnel at the scene and with dispatch, or any other statements by officers or witnesses relating to an incident with LVMPD Officer Zarkowski concerning minor child [redacted] and/or [redacted] Aaron D. Ford (State Senator) at approximately 3:00PM on November 13, 2017 at [redacted]."	denied. Research shows the investigation involved juvenile suspects. Therefore, because it involves juveniles arrested our Office of General Counsel has determined that it is confidential pursuant to Nevada Revised statutes NRS 62H.025 and 62H.030." (See Exhibit 1-H)
5/17/18 – RAGA Fourth Request ² (See Exhibit 1-I)	"[A]ll body camera footage and or audio from body camera footage (if visual images do not exist), the police or investigative report or summary, all computer aided dispatch (CAD) between all LVMPD personnel at the scene and with dispatch, or any other statements by officers or witnesses, relating to or depicting Aaron D. Ford's (State Senator) interactions with LVMPD Officer Zarkowski or other LVMPD personnel at approximately 3:00PM on November 13, 2017.... To clarify, this request excludes any information that may be confidential pursuant to Nevada Revised Statutes 62H.025 and 62H.030."	6/15/18 – Metro issued an untimely and incomplete denial stating "Your request to view or obtain body camera video is denied.... Any documents involving the arrests of juveniles is confidential pursuant to NRS 62H.025 and 62H.030. Therefore, you should direct your request to the juvenile courts." (See Exhibit 1-J)

III.

LEGAL ARGUMENT

Pursuant to the NPRA, all governmental records are presumed to be public unless explicitly deemed confidential by law. NRS 239.010. To overcome this presumption, a governmental entity seeking to withhold public records "has the burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential." NRS 239.0113(2). The NPRA

² A clerical error resulted in RAGA's Fourth Request being entitled "Third Request for Public Records."

1 further mandates that, if a governmental entity intends to withhold records on the basis of
2 confidentiality, it must provide written notice of that fact within five business days and provide "[a]
3 citation to the specific statute or other legal authority that makes the public book or record, or a part
4 thereof, confidential." NRS 239.0107(1)(d)(1) and (2). In the instant case, Metro did not provide
5 timely notice of the legal bases for its assertion that the records requested as early as December 5,
6 2017, and as late as May 17, 2018, are confidential, and it has yet to respond substantively to any of
7 RAGA's outstanding requests. Moreover, Metro cannot meet its heavy burden of proving that the
8 withheld records are confidential. As such, Metro has waived its right to assert that it is entitled to
9 withhold any of the records in question.

11 **A. Metro Waived Any Entitlement to Withhold Public Records That It Did Not**
12 **Timely Assert.**

13 The Court need look no further than Metro's failure to respond within five business days to
14 any of RAGA's four public records requests in order to grant RAGA's Petition. The NPRA's
15 response time frame stated in NRS 239.0107(1) is crystal clear, and its provisions are mandatory. By
16 failing to assert any claim of confidentiality within five business days of any of RAGA's four public
17 records requests, the Court would be well within its discretion to find Metro has waived its right to
18 assert any entitlement to withhold the requested documents based upon a statute or other legal
19 authority.
20

21 The NPRA specifically provides that a governmental entity must provide timely and specific
22 notice if it is denying a request because the entity determines the documents sought are confidential.
23 Specifically, NRS 239.0107(1) outlines the actions a governmental entity may take in responding to a
24 public records request:
25

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

1 (a) Except as otherwise provided in subsection 2, allow the person to
2 inspect or copy the public book or record or, if the request is for the
3 person to receive a copy of the public book or record, provide such a
4 copy to the person.

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

(1) Notice of that fact; and

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

(c) Except as otherwise provided in paragraph (d), if the governmental
entity is unable to make the public book or record available by the end
of the fifth business day after the date on which the person who has
legal custody or control of the public book or record received the
request, provide to the person, in writing:

(1) Notice of that fact; and

(2) A date and time after which the public book or record will be
available for the person to inspect or copy or after which a copy of the
public book or record will be available to the person. If the public
book or record or the copy of the public book or record is not available
to the person by that date and time, the person may inquire regarding
the status of the request.

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

(1) Notice of that fact; and

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

(Emphases added.). Thus, an entity that withholds records must provide timely and specific notice,
and it must do so within five business days.

Prior District Court Judges who have addressed this issue, although their decisions are not
binding precedent, have made rulings this Court may find persuasive. In each case, the District Court
in question held that when a government agency fails to follow this mandate, it is thereby barred from
raising any non-cited statute or legal authority in responding to a filed lawsuit. First, in the matter
styled *Las Vegas Review-Journal v. Clark County School District*, District Court Case No. A-17-
750151-W, the District Court found that the Clark County School District failed to timely respond to
requests and failed to assert any claims of confidentiality within the period mandated by NRS
239.0107(1), in response to a request from the Review-Journal seeking records about Trustee Kevin
Child. See **Exhibit 2-B**, attached hereto. In granting the Review-Journal's writ petition, the District

1 Court cited the failure to timely assert any claim of confidentiality as a basis for its determination that
2 CCSD failed to meet its burden of demonstrating the existence of any claim of confidentiality that
3 justified withholding the requested records. *Id.* at 6:26-27.

4 Second, in the matter styled *Las Vegas Review-Journal v. Clark County Office of the*
5 *Coroner/Medical Examiner*, District Court Case No. A-17-758501-W, the Review-Journal sent a
6 public records request to the Coroner's Office requesting copies of certain autopsy reports. *See*
7 **Exhibit 2-C**, attached hereto. Although the Coroner's Office timely responded, it failed to cite
8 binding legal authority within five business days as required, and the District Court explained that the
9 Coroner's Office "cannot rely on privileges, statutes, or other authorities that it failed to assert within
10 five (5) business days to meet its burden of establishing that privilege attaches to any of the requested
11 records." *Id.*, at 7:1-3 and 9:23-26.

12 Because it failed to respond to any of RAGA's records requests in the time and manner
13 prescribed by the NPRA, Metro has waived the ability to rely on legal authority it failed to timely
14 assert. Moreover, Metro simply ignored RAGA's requests for investigative records, witness and/or
15 victim statements, computer aided dispatch communications and other statements related to the
16 incident, made in conjunction with the requests for body camera footage. Thus, Metro has waived the
17 right to rely on any legal authority to justify withholding the requested public records and should be
18 directed to release those records immediately.

19
20
21
22 **B. Metro Cannot Meet Its Burden to Overcome the Open Records Presumption**
23 **Based Upon Statutory Confidentiality.**

24 The NPRA clearly states that public records are to be made available to the public for
25 inspection or copying. NRS 239.010(1); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873,
26 882, 266 P.3d 623, 628 (2011). The purpose of the NPRA is to "foster democratic principles by
27 providing members of the public with access to inspect and copy public books and records to the
28 extent permitted by law[.]" NRS 239.001(1). To that end, the NPRA must be construed liberally;

1 government records are presumed public records subject to the act; and any limitation on the public's
2 access to public records must be construed narrowly. NRS 239.001(2) and 239.001(3); *see also*
3 *Gibbons*, 127 Nev. at 882, 266 P.3d at 629 ("the provisions of the NPRA place an unmistakable
4 emphasis on disclosure") (emphasis added).

5
6 If a statute explicitly makes a record confidential, the public entity may not be required to
7 produce it. NRS 239.0107(1)(d). The burden, however, rests with the entity to establish, by a
8 preponderance of the evidence, the existence of the entitlement not to produce based upon
9 confidentiality. NRS 239.0113; *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev.
10 616, 621, 6 P.3d 465, 468. "It is well settled that privileges, whether creatures of statute or the
11 common law, should be interpreted and applied narrowly." *See DR Partners*, 116 Nev. at 621, 6 P.3d
12 at 468. If a government entity denies a request on the basis of confidentiality, it must provide the
13 requesting party with notice and a citation to legal authority that justifies nondisclosure. NRS
14 239.0107(1)(d); *see also Gibbons*, 127 Nev. at 885, 266 P.3d at 631. "[M]erely pinning a string of
15 citations to a boilerplate declaration of confidentiality" fails to satisfy the government's obligation
16 under the NPRA. *See Gibbons*, 127 Nev. at 885, 266 P.3d at 631. Further, if a public record contains
17 confidential information only in part, in response to a request for access to the record, a governmental
18 entity shall redact the confidential information and produce the record in redacted form. NRS
19 239.010(3).
20
21

22 In the instant case, after first denying RAGA's request on the basis that it involved an "active
23 criminal investigation," Metro inexplicably changed its position to assert that the requested body
24 camera video involved "juvenile suspects" and "juveniles arrested" and was, therefore, confidential
25 under NRS 62H.025 and 62H.030. Metro provided no explanation whatsoever as to how the statutes
26 it cited supported its claim of confidentiality or even how they were applicable to the requested
27 records involving Senator Ford, an adult. Moreover, even after RAGA further clarified the scope of
28 its request, provided a detailed analysis regarding the inapplicability of NRS 62H.025 and 62H.030 to

1 records involving Senator Ford, an adult, and reminded Metro of its obligation to disclose, with
2 redactions, any such confidential information, Metro offered nothing more than a nonsensical
3 response. The email from Metro dated June 15, 2018, a full six months after RAGA's initial request,
4 stated that Metro's General Counsel "disagrees with your broad interpretation of NRS 62H.025 and
5 62H.030" and directed RAGA to request the body camera video of Senator Ford from the juvenile
6 courts. See **Exhibit 1-J**. Not only has Metro wholly failed to establish that the requested body
7 camera footage and other related records are confidential by a preponderance of the evidence, as
8 required under the NPRA, it has not even demonstrated that it reviewed the records in question, or,
9 for that matter, fairly considered or even fully understood, RAGA's request.

11 **C. Metro Cannot Meet Its Burden to Overcome the Open Records Presumption**
12 **Under the *Donrey* Balancing Test.**

13 In the absence of a statutory basis to assert confidentiality, Metro bears the burden in this case
14 of establishing that the interest in withholding documents outweighs the interest in disclosure
15 pursuant to the balancing test first articulated in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798
16 P.2d 144 (1990); see also *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. at 621, 6 P.3d
17 at 468 ("Unless a statute provides an absolute privilege against disclosure, the burden of establishing
18 the application of a privilege based upon confidentiality can only be satisfied pursuant to a balancing
19 of interests."), which it cannot do.

21 In applying the *Donrey* balancing test, the Court held that the burden remains squarely on the
22 governmental entity:

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

1 *Id.* (quoting *MacEwan v. Holm*, 226 Or. 27, 46, 359 P.2d 413, 422 (1961) and citing *Donrey*, 106
2 Nev. at 635-36, 798 P.2d at 147-48. Further, if a public record contains confidential information only
3 in part, in response to a request for access to the record, a governmental entity shall redact the
4 confidential information and produce the record in redacted form. NRS 239.010(3). In addition, a
5 governmental entity cannot rely on conjecture or hypothetical concerns to justify nondisclosure of
6 public records. *DR Partners*, 116 Nev. at 628, 6 P.3d at 472-73 (County cannot meet "its burden by
7 voicing non-particularized hypothetical concerns") (citation omitted).

9 Following its application of the balancing test, the Supreme Court in *Donrey* concluded that
10 the investigative report in question should be released to the media entities. *Donrey*, 106 Nev. at 636,
11 798 P.2d at 147. This conclusion was based on the facts that no criminal proceeding was pending or
12 anticipated, no confidential sources or investigative techniques were contained in the report, there was
13 no possibility of denying anyone a fair trial, and disclosure did not jeopardize law enforcement
14 personnel. *Id.*; see also *Reno Newspapers v. Sheriff*, 126 Nev. 211, 219, 234 P.3d 922, 927 (2010) ("A
15 mere assertion of possible endangerment does not 'clearly outweigh' the public interest in access to
16 these records.") (quotation omitted).

18 Applying this guidance to the instant case, Metro cannot meet its burden to show that the body
19 camera footage and other related records should not be released. Metro has never asserted that any
20 criminal proceeding related to the incident that took place on November 13, 2017 is pending. Second
21 Metro has not established, nor can it based on RAGA's understanding of what occurred, that any
22 confidential sources or investigative techniques exist within the requested records. And, based on the
23 statement from Senator Ford's campaign, there is no possibility that someone could be denied a fair
24 trial or law enforcement personnel jeopardized should the requested records be released.

26 As discussed above, Metro cannot rely on conjecture or speculation about the contents of the
27 body camera footage and related records to justify withholding them. Instead, Metro can only meet
28 its burden by providing specific information about what, if any, aspects of the requested records that

1 contain information that would jeopardize an ongoing case, the fairness of a pending trial, the safety
2 of law enforcement personnel, or other compelling reason that would outweigh the public's
3 fundamental right to access. Metro has not, and indeed cannot, articulate any such interest and must
4 be required to immediately release the records in their un-redacted form.

5
6 **D. Metro Was Obligated to Provide a Privilege Log of Any Records Withheld.**

7 As the Nevada Supreme Court stated in *Gibbons*, after the commencement of a lawsuit
8 pursuant to the NPRA, to continue to support the claims Metro has asserted, a government entity
9 withholding requested records is generally required to provide the requesting party with a log which
10 details the records and sufficient information about the bases for withholding. *Gibbons*, 127 Nev. at
11 882-83, 266 P.3d at 629 ("[A] claim that records are confidential can only be tested in a fair and
12 adversarial manner, and in order to truly proceed in such a fashion, a log typically must be provided
13 to the requesting party.").
14

15 Accordingly, as an additional basis to grant its Petition, RAGA respectfully asserts Metro's
16 wholesale failure to timely produce a log identifying the documents being withheld and setting forth
17 the specific bases for withholding, which could have given the Court a foundation for review of the
18 propriety of the withholding, precludes the Court from exercising any discretion in Metro's favor.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 IV.

2 CONCLUSION

3 For all of the reasons set forth above, RAGA respectfully requests this Court grant the relief
4 requested in the Petition in its entirety and issue an Order requiring that Metro immediately release to
5 RAGA any and all body camera footage and other related records resulting from the interaction
6 between State Senator Aaron Ford and Metro officers on November 13, 2017 and pay all of the
7 attorney's fees and costs incurred by RAGA in bringing the Petition.
8

9 Dated this 26th of September, 2018.

10 CLARK HILL PLLC

11
12 By: Colleen E. McCarty

13 DEANNA L. FORBUSH

14 Nevada Bar No. 6646

15 COLLEEN E. MCCARTY, ESQ.

16 Nevada Bar No. 13186

17 3800 Howard Hughes Parkway, Suite 500

18 Las Vegas, Nevada 89169

19 Telephone: (702) 862-8300

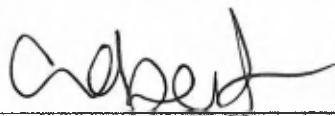
20 Attorneys for Petitioner

21 Republican Attorneys General Association
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on this 26th day of September, 2018, I served a true and correct copy of the foregoing **OPENING BRIEF IN SUPPORT OF PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS 239.001/ PETITION FOR WRIT OF MANDAMUS** by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk.

Nick D. Crosby, Esq.
Jackie V. Nichols, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
jnichols@maclaw.com
Attorneys for Respondent
Las Vegas Metropolitan Police Department



An Employee of Clark Hill PLLC

EXHIBIT 2

EXHIBIT 2

JA000079

1 **DECLARATION OF COLLEEN E. MCCARTY, ESQ. IN SUPPORT OF OPENING**
2 **BRIEF IN SUPPORT OF PUBLIC RECORDS ACT APPLICATION PURSUANT TO**
3 **NRS 239.001/PETITION FOR WRIT OF MANDAMUS**

4 I, Colleen E. McCarty, depose and declare as follows:

5 1. I am an attorney licensed to practice law in the State of Nevada and am an
6 associate in the law firm of Clark Hill PLLC, attorneys for Petitioner Republican Attorneys
7 General Association (“RAGA” or “Petitioner”).

8 2. I am competent to testify to the matters asserted herein, of which I have personal
9 knowledge, except as to those matters stated upon information and belief. As to those matters
10 stated upon information and belief, I believe them to be true.

11 3. I make this Declaration in support of RAGA’s Opening Brief in Support Of
12 Public Records Act Application Pursuant To NRS 239.001/Petition For Writ of Mandamus.

13 4. Attached hereto as **Exhibit 2-A** is a true and correct copy an article from the
14 Nevada Independent entitled “Republican AG Group Files Lawsuit Seeking Police Footage of
15 Interaction with Democratic Candidate Aaron Ford and His Child,” dated September 6, 2018.

16 5. Attached hereto as **Exhibit 2-B** is a true and correct copy of the Order Granting
17 Writ of Mandate in the matter styled *Las Vegas Review Journal v. Clark County School District*,
18 Eighth Judicial District Court Case No. A-17-750151-W, dated February 22, 2017.

19 6. Attached hereto as **Exhibit 2-C** is a true and correct copy of the Order Granting
20 Petitioner LVRJ’s Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition
21 for Writ of Mandamus in the matter styled *Las Vegas Review Journal v. Clark County Office of*
22 *the Coroner/Medical Examiner*, Eighth Judicial District Court Case No. A-17-758501-W, dated

23 ///

24 ///

1 November 8, 2017.

2 Executed this 26th day of September, 2018.

3
4 
5 COLLEEN E. MCCARTY¹
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ¹ NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose
28 existence or truth may be established by an affidavit or other sworn declaration may be established with the same
effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury.

EXHIBIT 2-A

EXHIBIT 2-A

JA000082

REPUBLICAN AG GROUP FILES LAWSUIT SEEKING POLICE FOOTAGE OF INTERACTION WITH DEMOCRATIC CANDIDATE AARON FORD AND HIS CHILD



RILEY SNYDER

SEPTEMBER 6TH, 2018 - 3:04PM

The Republican Attorneys General Association has filed a lawsuit against Las Vegas police over thwarted attempts to obtain body camera footage that involves Democratic candidate for attorney general, Aaron Ford.

The lawsuit, which was filed against the Las Vegas Metropolitan Police Department on Thursday, alleges that Metro repeatedly—and improperly—refused to turn over body camera footage of Ford, the Democratic state Senate majority leader, related to an incident with a Metro officer and a minor child on Nov. 13, 2017.

Ford did not immediately return a call seeking comment. In a statement, his campaign manager Jessica Adair called the suit a “low and desperate” move by his general election opponent, Wes Duncan, and said the police were the ones who initially called Ford.

“It was a minor incident on private property involving one of their pre-teen children,” she said in an emailed statement. “Metro called the parents of all the kids involved so that they could deal with the issue privately. Wes Duncan should be ashamed of himself for trying to use this in his political campaign.”

JA000083

Zack Roday, a spokesman with RAGA, said in a conference call with reporters on Thursday that the organization had received information from a “credible” anonymous source that Ford tried to “influence an outcome” with a law enforcement officer and minor child in November 2017, and that the organization wanted to know more about the event. Roday declined to give more details on the identity of the minor or the circumstances of the police encounter and said the organization only wanted to know what Ford may have said to law enforcement officers.

“The focus is on the public official that showed up on the scene and tried to impact an outcome, based on the source,” he said. “The lawsuit, and the public records request, is very specific to Aaron Ford’s involvement at that scene. Nothing else is of concern to us. We want to know exactly why he was there.”

A Metro spokeswoman said in an email that the agency doesn’t comment on pending litigation.

According to the lawsuit, RAGA submitted at least four public records requests for police body camera footage between December 2017 and May 2018, all of which were denied by the Las Vegas police agency. The suit alleges that Metro missed statutory deadlines to respond to the records requests, and then refused to release the footage, first claiming that it was part of an active investigation, and then stating that it couldn’t because the footage involved a minor.

RAGA states in the lawsuit that it tailored its request to omit any footage of the minor and that state law didn’t allow the agency to withhold the records for that purpose.

In a statement sent Friday, the Democratic Attorneys General Association called the filing of a lawsuit a “racist” attack, and noted that several of the

records requests did not specifically a request to exclude any footage not including Ford.

“Using someone’s child as a vehicle to get footage that would undoubtedly be used in ads to push a false narrative about Senator Ford is disgusting, and now they are lying about the requests they made, claiming they did not request information about a minor,” DAGA Executive Director Sean Rankin said in a statement.

Nevada law generally holds that any footage from a portable recording device worn by a law enforcement officer is considered a “public record,” as long as its requested on a per incident basis and can be made available for inspection at the location where the record is held if it contains confidential information that cannot be redacted. Metro’s own body camera policy contains similar provisions.

Colleen McCarty, an attorney with Clark Hill PLLC and the attorney representing RAGA in the case, said that the “wholesale withholding” of records by Metro wasn’t permitted under state law and expected a hearing on the case to occur before the start of early voting in October.

“Litigation, really, is always the last resort, and it’s unfortunate that RAGA had to take this step, but it’s the only mechanism available to address the department’s refusal to turn over these records,” she said.

As a lawmaker, Ford sponsored a 2015 bill requiring Nevada Highway Patrol officers be outfitted with body cameras, and authored a 2017 bill expanding the requirement to all public-facing law enforcement officers in the state.

Sheriff Joe Lombardo has endorsed Ford’s Republican opponent, Wes Duncan. The Duncan campaign is not a party to the suit.

Disclosure: Joe Lombardo has donated to The Nevada Independent. You can see a full list of donors here.

RAGA Final Petition With Exhibits by Riley Snyder on Scribd

1	PET	
2	DEANNA L. FORBUSH	
3	Nevada Bar No. 6646	
4	Email: dforbush@clarkhill.com	
5	COLLEEN E. MCCARTY	
6	Nevada Bar No. 13186	
7	Email: cmccarty@clarkhill.com	
8	CLARK HILL PLLC	
9	3800 Howard Hughes Parkway, Suite 500	
10	Las Vegas, Nevada 89169	
11	Telephone: (702) 862-8300	
12	Facsimile: (702) 862-8400	
13	Attorneys for Petitioner	
14	Republican Attorneys General Association	
15		
16	DISTRICT COURT	
17	CLARK COUNTY, NEVADA	
18	REPUBLICAN ATTORNEYS GENERAL	Case No.:
19	ASSOCIATION,	Dept. No.:
20	Petitioner,	
21	vs.	PUBLIC RECORDS ACT APPLICATION
22	LAS VEGAS METROPOLITAN POLICE	PURSUANT TO NRS 239.001/PETITION
23	DEPARTMENT,	FOR WRIT OF MANDAMUS
24	Respondent.	EXPEDITED MATTER PURSUANT TO
25		NRS 239.011
26		
27	COMES NOW Petitioner, Republican Attorneys General Association ("RAGA" or	
28	"Petitioner"), by and through its undersigned counsel of record, Deanna L. Forbush, Esq. and	
	Colleen E. McCarty, Esq. of the law firm of Clark Hill PLLC, and hereby brings this Petition	
	for Writ of Mandamus seeking an Order requiring the Las Vegas Metropolitan Police	
	Department ("Metro") to provide Petitioner access to public records. Petitioner also requests an	
	award for all fees and costs associated with its efforts to obtain the withheld public records as	
	provided for by NRS 239.011(2). Further, Petitioner respectfully asks that this matter be	
	expedited pursuant to NRS 239.011(2). Petitioner hereby alleges as follows:	
	///	
	Page 1 of 13	
	CLK010047455-137094-221012162 v1-09/2018	

Updated at 5:06 p.m. to include responses from Metro and DAGA.

FROM THE EDITOR

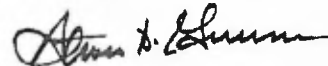
The Nevada Independent is a 501(c)3 nonprofit. We need help to attain the elusive goal of sustainability. We depend on recurring donations from you, the readers who believe in our mission of nonpartisan, transparent journalism. I know you are busy. I know you have many commitments. But

JA000086

EXHIBIT 2-B

EXHIBIT 2-B

JA000087



CLERK OF THE COURT

1 **ORDR**

2 MARGARET A. MCLETCHE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLETCHE 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 **ORDER GRANTING WRIT OF**

16 CLARK COUNTY SCHOOL DISTRICT,

17 **MANDATE**

18 Respondent.

19 The Las Vegas Review-Journal's Petition for Writ of Mandamus having come on
20 for hearing on February 14, 2017, the Honorable Timothy C. Williams presiding, Petitioner
21 LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its
22 attorneys, MARGARET A. MCLETCHE and ALINA M. SHELL, and Respondent CLARK
23 COUNTY SCHOOL DISTRICT ("District Attorney"), appearing by and through his
24 attorneys, CARLOS M. MCDADE and ADAM HONEY, and the Court having read and
25 considered all of the papers and pleadings on file and being fully advised, and good cause
26 appearing therefor, the Court hereby grants the Petition and makes the following findings of
27 fact and conclusions of law:

28 ///

///

///

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

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 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.

2. On behalf of CCSD's Office of Community and Government Relations, Cynthia Smith-Johnson confirmed receipt on December 9, 2016.

3. The Reporter supplemented the Request on December 9, 2016 ("Supplemental Request"). The Supplemental Request asked CCSD to produce "any written complaints the Clark County School District has received regarding Trustee Kevin Child."

4. 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.

5. CCSD subsequently produced thirty six (36) pages of documents but asserted that there were twenty-three (23) additional pages that required redactions (the "Redacted Records"). After informal efforts to set a briefing schedule and/or obtain copies the Redacted Records sought failed, the Review-Journal submitted an *ex parte* motion for order shortening time and requesting an expedited hearing on February 8, 2017.

6. On February 8, 2017, this Court ordered that CCSD either fully produce all requested records (in unredacted form) by 12 p.m. on Friday, February 14, 2017 or that the matter would proceed to hearing.

7. On February 8, 2017, CCSD provided the Redacted Records, as well as an unredacted corresponding set of records, to the Court. It did not provide a copy of the Redacted Records to the Review-Journal.

8. Then, later on February 8, 2017, in response to the February 8, 2017 Order, CCSD provided a copy of the Redacted Records to the Review-Journal.

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

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

11. On February 13, 2017, CCSD also provided ten (10) additional pages not previously identified (the "Additional Redacted Records"). CCSD also provided a new log ("Revised Log") including the Additional Redacted Records and additionally asserting the following bases for the redactions:

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

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

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

12. Nev. Rev. Stat § 239.010 " does not explicitly provide that the records are confidential, and provides that, unless expressly provided for in the NPRA or other listed statutes, Nev. Rev. Stat § 239.010, or "unless otherwise declared by law to be confidential,"

1 all public books and public records of a governmental entity must be open
2 at all times during office hours to inspection by any person, and may be
3 fully copied or an abstract or memorandum may be prepared from those
4 public books and public records. Any such copies, abstracts or memoranda
5 may be used to supply the general public with copies, abstracts or
6 memoranda of the records or may be used in any other way to the advantage
7 of the governmental entity or of the general public. This section does not
8 supersede or in any manner affect the federal laws governing copyrights or
9 enlarge, diminish or affect in any other manner the rights of a person in any
10 written book or record which is copyrighted pursuant to federal law.

11 13. Nev. Rev. Stat § 386.230 ("General powers; exceptions") provides:

12 Each board of trustees is hereby given such reasonable and necessary
13 powers, not conflicting with the Constitution and the laws of the State of
14 Nevada, as may be requisite to attain the ends for which the public schools,
15 excluding charter schools and university schools for profoundly gifted
16 pupils, are established and to promote the welfare of school children,
17 including the establishment and operation of schools and classes deemed
18 necessary and desirable.

19 14. CCSD Regulation 1212 ("CONFIDENTIAL INFORMATION: ALL
20 EMPLOYEES") provides that "Confidential information concerning all personnel will be
21 safeguarded.

22 15. CCSD Regulation 4110 pertains to "EMPLOYMENT
23 DISCRIMINATION, HARASSMENT, AND SEXUAL HARASSMENT: ALL
24 EMPLOYEES."

25 16. The Redacted Records and Additional Records consist of various records
26 regarding Trustee Child.

27 17. On February 14, 2017, the Court heard oral arguments on the Review-
28 Journal's Petition for Writ of Mandamus.

18 18. The Court has also performed an in-camera review of the Redacted
19 Records, the Additional Redacted Records, and the unredacted version of both sets of
20 records.

21 ///

22 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

ORDER

19. 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). To that end, 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).

20. Unless explicitly confidential, public records are to be made available to the public for inspection or copying. NRS 239.010(1); *Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Rep. 79, 12 266 P.3d 623, 628 (2011). If a statute explicitly makes a record confidential or privileged, the public entity need not produce it. *Id.* “

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

22. A petition for Writ of Mandamus is the appropriate vehicle by which to pursue production under the NPRA, where a governmental entity has refused it. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, n.4, 266 P.3d 623, 630, n.4 (2011); citing *DR Partners v. Board of County Comm’rs*, 116 Nev. 616, 620, 6 P.3d 465, 468, citing NRS 34.160.

23. A governmental entity seeking to withhold or redact records must prove by a preponderance of evidence that the records are confidential or privileged. *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citations omitted).

24. “[I]n the absence of a statutory provision that explicitly declares a record to be confidential, any limitations on disclosure must be based upon a broad balancing of the interests involved, . . . and the state entity bears the burden to prove that its interest in

1 nondisclosure clearly outweighs the public's interest in access" *Id.* (citing *DR Partners*, 116
2 Nev. at 622, 6 P.3d at 468).

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

6 26. In *Reno Newspapers, Inc. v. Gibbons*, the Nevada Supreme Court held that
7 a Vaughn index is not required when the party that requested the documents has enough
8 information to fully argue for the inclusion of documents. 127 Nev. 873, 881-82 (Nev. 2011).
9 The Nevada Supreme Court has also held that if a party has enough facts to present "a full
10 legal argument," a Vaughn index is not needed. *Id.* at 882. However, the Nevada Supreme
11 Court held that a party requesting documents under NPRA is entitled to a log, unless the state
12 entity demonstrates that the requesting party has enough facts to argue the claims of
13 confidentiality. *Id.* at 883. A log provided by a governmental entity should contain a general
14 factual description of each record and a specific explanation for nondisclosure. *Id.* In a
15 footnote, the Nevada Supreme Court notes that a log should provide as much detail as
16 possible, without compromising the alleged secrecy of the documents. *Id.* at n. 3. Finally,
17 attaching a string cite to a boilerplate denial is not sufficient under the NPRA. *Id.* at 885.

18 27. The Review-Journal does not contest redacting the names of direct victims
19 of sexual harassment or alleged sexual harassment, or the name of students and staff persons
20 that are not administrators being redacted.

21 28. With regard to CCSD's other proposed redactions, which include the names
22 of schools, teachers, administrators, and program administrators, the Court finds that CCSD
23 failed to meet its burden in demonstrating the existence of an applicable privilege.

24 29. First, CCSD failed to assert any claim of confidentiality within five (5) days
25 as required by Nev. Rev. Stat. § 239.0107(d).

26 30. Second, the Revised Log does not sufficiently articulate that the information
27
28

1 redacted by CCSD is protected by confidentiality. CCSD Regulation 1212 pertains to
2 personnel records, and the parties agree that the records produced are not personnel records.
3 CCSD Regulation 4110 pertains to protections from sexual harassment. To the extent that it
4 is applicable, the parties have agreed that the names of victims of sexual harassment, or
5 alleged sexual harassment, shall be redacted. This also addresses any chilling effect that may
6 occur. Nev. Rev. Stat. § 239.010 and § 386.230 do not provide that the records are
7 confidential.

8
9 31. Third, even if CCSD did assert an applicable privilege by a preponderance
10 of the evidence, it failed to articulate the application to each piece of information it sought
11 to redact. *Gibbons*, 127 Nev. at 883, 266 P.3d at 629.

12 32. Thus, CCSD failed to prove by a preponderance of evidence that the records
13 are confidential or privileged. *Gibbons*, 127 Nev. at 880, 266 P.3d at 628.



14 33. Fourth, even if it met its burden of establishing the existence of an
15 applicable privilege, CCSD has failed to establish that the interests in secrecy outweigh the
16 interests in disclosure. *See, e.g., Gibbons*, 127 Nev. at Adv. Rep. at 881, 66 P.3d at 628.
17 (citing *DR Partners*, 116 Nev. at 622, 6 P.3d at 468). “[I]n the absence of a statutory
18 provision that explicitly declares a record to be confidential, any limitations on disclosure
19 must be based upon a broad balancing of the interests involved, . . . and the state entity bears
20 the burden to prove that its interest in nondisclosure clearly outweighs the public’s interest
21 in access”

22 34. Accordingly, both because CCSD did not timely assert any claim of
23 confidentiality and because it still has not met its burden in redacting public records, the
24 Court orders CCSD to provide the Review-Journal with new versions of the Redacted
25 Records and Additional Redacted Records, with only the following redactions: *the names of*
26 *direct victims of sexual harassment or alleged sexual harassment, students, and support*
27 *staff.*
28

1 35. CCSD may not make any other redactions, and must unredact the names
2 of schools, all administrative-level employees, including but not limited to deans, principals,
3 assistant principals, program coordinators), and teachers.

4 36. CCSD must comply with this Order within two (2) days.

5
6 IT IS SO ORDERED this 22nd day of February, 2017.

7
8
9
10
11 
HONORABLE JUDGE TIMOTHY C. WILLIAMS
12 

13 Respectfully submitted,
14
15
16 

17 Margaret A. McLetchie, Nevada State Bar No. 10931
18 Alina M. Shell, Nevada State Bar No. 11711
19 MCLETCHE SHELL, LLC.
20 701 E. Bridger Avenue, Suite 520
21 Las Vegas, NV 89101
22 Counsel for Petitioner, Las Vegas Review-Journal
23
24
25
26
27
28

EXHIBIT 2-C

EXHIBIT 2-C

Steven D. Grierson

1 **ORDR**
2 MARGARET A MCLETCHE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLETCHE SHELL LLC**
5 701 East Bridger Ave., Suite 520
6 Las Vegas, Nevada 89101
7 Telephone: (702) 728-5300; Fax: (702) 425-8220
8 Email: maggie@nvlitigation.com
9 *Counsel for Petitioner*

DISTRICT COURT

CLARK COUNTY NEVADA

9 LAS VEGAS REVIEW-JOURNAL,

10 Petitioner,

11 vs.

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

14 Respondent.

Case No.: A-17-758501-W

Dept. No.: XXIV *11/8/17*

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

17 The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev.
18 Rev. Stat. § 239.001/Petition for Writ of Mandamus, having come on for hearing on
19 September 28, 2017, the Honorable Jim Crockett presiding, Petitioner Las Vegas Review-
20 Journal (the "LVRJ") appearing by and through its counsel, Margaret A. McLetchie and
21 Alina M. Shell, and Respondent Clark County Office of the Coroner/Medical Examiner
22 ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court
23 having read and considered all of the papers and pleadings on file and being fully advised,
24 and good cause appearing therefor, the Court hereby makes the following findings of fact
25 and conclusions of law:

26 ///

27 ///

28 ///

1 ☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

JA000097

INVESTIGATION
ATTORNEYS AT LAW
701 EAST BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101
(702)738-5500 (T) / (702)425-8220 (F)
WWW.INVESTIGATION.COM

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

1. On April 13, 2017, the LVRJ sent the Coroner's Office a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPRA").

2. The LVRJ's request sought all autopsy reports of autopsies conducted of anyone under the age of 18 from 2012 through the date of the request.

3. The Coroner's Office responded via email on April 13, 2017. It provided a spreadsheet with information consisting of the Coroner case number, name of decedent, date of death, gender, age, race, location of death, and cause and manner of death, but refused to provide "autopsy reports, notes or other documents."

4. In its April 13, 2017 email, the Coroner's Office stated it would not disclose the autopsy reports because they contain medical information and confidential information about a decedent's body. The Coroner's Office relied on Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 ("AGO 82-12") as the basis for non-disclosure.

5. The LVRJ followed up by emailing the Clark County District Attorney's Office on April 13, 2017, requesting legal support for the refusal to provide records.

6. The District Attorney's Office, Civil Division, on behalf of the Coroner's Office, responded via email on April 14, 2017, again relying on AGO 82-12 and also relying on Assembly Bill 57, 79th Sess. (Nev. 2017) (a bill then pending consideration in the 2017 session of the Nevada Legislature and proposing changes to Nevada law regarding a coroner's duty to notify next-of-kin of the death of a family member but not addressing public records) as the bases for its refusal to disclose the requested records.

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

8. On May 9, 2017, following a meeting between the Coroner and the LVRJ, the Coroner mailed a second spreadsheet to the LVRJ listing child deaths dating back to 2011 in which the Coroner conducted autopsies.

1 decedent's mother, could be marked with stigmata or considered an invasion of privacy.
2 Statements of diagnosis or opinion that were medical or health related that went to the cause
3 of death were not redacted.

4 18. On July 11, 2017, the Coroner's Office also demanded that the LVRJ
5 commit to payment for further work in redacting files for production, and declined to
6 produce records without payment. The Coroner's Office indicated it would take two persons
7 10-12 hours to redact the records it was willing to produce, and that the LVRJ would have
8 to pay \$45.00 an hour for the two reviewers, one of which would be an attorney. The
9 Coroner's Office contended that conducting a privilege review and redacting autopsy
10 reports required the "extraordinary use of personnel" under Nev. Rev. Stat. § 239.055. The
11 Coroner's Office stated it did not intend to seek fees for the work associated with the
12 previously provided spreadsheets and redacted reports.

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

17 20. On August 17, 2017, the LVRJ submitted a Memorandum in support of its
18 Application. The Coroner's Office submitted its Response on August 30, 2017, and the
19 LVRJ submitted its Reply on September 7, 2017. The LVRJ also submitted a Supplement
20 on September 25, 2017 that included autopsy records the LVRJ had received from White
21 Pine County and Lander County in response to public records requests.

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

24 II.

25 CONCLUSIONS OF LAW

26 22. The purpose of the NPRA is to foster democratic principles by ensuring
27 easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) ("The purpose
28 of this chapter is to foster democratic principles by providing members of the public with

1 access to inspect and copy public books and records to the extent permitted by law”); *see*
2 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011)
3 (holding that “the provisions of the NPRA are designed to promote government transparency
4 and accountability”).

5 23. To fulfill that goal, the NPRA must be construed and interpreted liberally;
6 government records are presumed public records subject to the Act, and any limitation on the
7 public’s access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2)
8 and 239.001(3); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada
9 legislature intended the provisions of the NPRA to be “liberally construed to maximize the
10 public’s right of access”).

11 24. The Nevada Legislature has made it clear that—unless they are explicitly
12 confidential—public records must be made available to the public for inspection or copying.
13 Nev. Rev. Stat. § 239.010(1); *see also Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,
14 266 P.3d 623, 627 (2011).

15 **A. The Coroner’s Office Has Not Met Its Burden in Withholding or Redacting**
16 **Records.**

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

21 26. If a statute explicitly makes a record confidential or privileged, the public
22 entity need not produce it. *Id.*

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

1 29. In balancing those interests, "the scales must reflect the fundamental right
2 of a citizen to have access to the public records as contrasted with the incidental right of the
3 agency to be free from unreasonable interference." *DR Partners v. Bd. of Cty. Comm'rs of*
4 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.
5 27, 359 P.2d 413, 421-22 (1961)).

6 30. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court
7 hereby finds that the Coroner's Office has not established by a preponderance of the evidence
8 that the withheld records are confidential or privileged such that withholding the autopsy
9 records pertaining to cases that were subsequently handled by a child death review team
10 pursuant to Nev. Rev. Stat. § 432B.407(6) in their entirety is justified, nor has it established
11 by a preponderance of the evidence that any interest in nondisclosure outweighs the strong
12 presumption in favor of public access.

13 31. Further, with regard to the proposed redactions to the autopsy reports the
14 Coroner's Office was willing to disclose, the Court finds that the Coroner's Office has not
15 established by a preponderance of the evidence that the redacted material is privileged or
16 confidential.

17 *The Coroner's Office Did Not Comply With the NPRA's Mandate to Provide*
18 *Legal Authority in Support of Its Decision to Withhold or Redact Records*
19 *Within Five Days.*

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

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

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

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

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

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

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

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

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

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

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

1 establishing that the records are confidential and that the interest in non-disclosure
2 outweighs the presumption in favor of access.

3 *Nev. Rev. Stat. § 432B.407 Does Not Justify Non-Disclosure.*

4 37. On July 9, 2017, in a response to a further email from the LVRJ inquiring
5 on the status of the records, the Coroner's Office indicated it would not produce any records
6 that pertained to any case that was subsequently handled by a child death review team
7 pursuant to Nev. Rev. Stat. § 432B.403, *et. seq.* The Coroner's Office specifically cited Nev.
8 Rev. Stat. § 432B.407, a statute which pertains to information acquired by child death
9 review teams, as a basis for refusing to produce the records.

10 38. In addition to not being timely cited, Nev. Rev. Stat. § 432B.407 does not
11 satisfy the Coroner's Office's burden of establishing that any interest in nondisclosure
12 outweighs the public's interest in the records.

13 39. Pursuant to Nev. Rev. Stat. § 432B.403, the State can organize child death
14 review teams to review the records of selected cases of children under the age of 18 to assess
15 and analyze the deaths, make recommendations for changes to law and policy, support the
16 safety of children, and a prevent future deaths.

17 40. Under Nev. Rev. Stat. § 432B.407(1), a child death review team may
18 access, inter alia, "any autopsy and coroner's investigative records" relating to the death of
19 a child. Nev. Rev. Stat. § 432B.407(1)(b). Section 432B.407(6) in turn provides that
20 "information acquired by, and the records of, a multidisciplinary team to review the death
21 of a child are confidential, must not be disclosed, and are not subject to subpoena, discovery
22 or introduction into evidence in any civil or criminal proceeding."

23 41. However, the Court finds that nothing in the language of Nev. Rev. Stat. §
24 432B.407(6) indicates that records obtained by child death review teams are automatically
25 confidential simply because the Coroner's Office transmitted those records at some point in
26 time to a child death review team.

27 42. Moreover, to the extent that Nev. Rev. Stat. § 432B.407 renders any
28 records confidential, nothing in the language of Nev. Rev. Stat. § 432B.407 indicates

1 records obtained by a child death review team must be kept confidential in perpetuity.
2 Instead, the records of a child death review team must be kept confidential only during a
3 child death review team's review of a child fatality.

4 43. Thus, the Coroner's Office's reliance on Nev. Rev. Stat. § 432B.407 does
5 not meet its burden of establishing that the records are confidential and that the interest in
6 non-disclosure outweighs the presumption in favor of access.

7 *HIPAA Does Not Justify Non-Disclosure.*

8 44. In addition to its reliance on Nev. Rev. Stat. § 432B.407, the Coroner's
9 Office in its September 7, 2017 Response also pointed to privacy protections for medical
10 data under the Health Insurance Portability and Privacy Act (HIPAA) and NRS Chapter
11 629, as persuasive authority for its position that the requested records should be kept
12 confidential.

13 47. However, in addition to that fact that the Coroner's Office failed to timely
14 cite HIPAA as a basis for withholding or redacting the requested records, the Coroner's
15 Office, it is not a covered entity under HIPAA.

16 48. Pursuant to 45 C.F.R. § 160.103, a covered entity is defined as: (1) a health
17 plan; (2) a "health care clearinghouse;" or (3) "[a] health care provider who transmits any
18 health information in electronic form in connection with a transaction covered by
19 [HIPAA]." Moreover, 42 C.F.R. § 160.102 specifically states that HIPAA only applies to
20 those three categories of health care entities. Thus, by its plain language, HIPAA is not
21 intended to apply to autopsy records, and cannot be used by the Coroner's Office to withhold
22 the requested records.

23 49. Accordingly, both because the Coroner's Office did not timely assert any
24 legal or statutory authority to meet its burden in withholding the records, and because it has
25 not met its burden in withholding or redacting the requested records, the Court finds that the
26 Coroner's Office must disclose the requested records to the LVRJ in unredacted form.

27 ///
28

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

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

5 51. The Coroner's Office relied on Nev. Rev. Stat. § 239.055(1) for fees for
6 "extraordinary use." That statute provides that "... if a request for a copy of a public record
7 would require a governmental entity to make extraordinary use of its personnel or
8 technological resources, the governmental entity may, in addition to any other fee
9 authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such
10 extraordinary use...." In its Responding Brief, even the Coroner's Office acknowledged that
11 in 2013, the Nevada Legislature modified Nev. Rev. Stat. § 39.055 to limit fees for the "
12 extraordinary use of personnel" to 50 cents per page.

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

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

24 54. Moreover, the Court finds that no provision within the NPRA allows a
25 governmental entity to charge a requester for a privilege review. Rather, the NPRA provides
26 that a governmental entity may charge for providing a copy of a record, (Nev. Rev. Stat. §
27 239.052(1)), for providing a transcript of an administrative proceeding, (Nev. Rev. Stat. §
28 239.053), for information from a geographic information system (Nev. Rev. Stat. §

1 239.054), or for the "extraordinary use" of personnel or technology. Nev. Rev. Stat. §
2 239.055. A privilege review does not fall within any of these provisions.

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

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

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

13 III.

14 ORDER

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

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

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

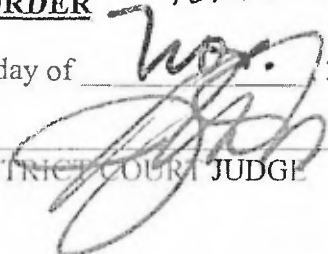
23 61. At the hearing, the Coroner's Office stated it would be able to produce CDs
24 with electronic copies of the requested records at a cost of \$15.00 per CD, and the LVRJ
25 stated it was willing to pay such a fee or provide its own CD. In producing the requested
26 records, the Coroner's Office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

28 ///


AT58501 - ORDER GRANTING
PETITIONER LVRT'S PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NRS 239.001
PETITION FOR WRIT OF
MANDAMUS

ORDER

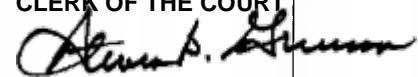
It is so ORDERED this 8 day of Nov. 2017.


DISTRICT COURT JUDGE

Prepared and submitted by:


Margaret A. McLetchie, NBN 10931
Alina M. Shell, NBN 11711
McLetchie Shell, LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Petitioner

McLetchie Shell
ATTORNEYS AT LAW
701 EAST BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101
(702) 728-5300 (T) / (702) 425-8220 (F)
WWW.NV.LITIGATION.COM



MEXM

DEANNA L. FORBUSH

Nevada Bar No. 6646

Email: dforbush@clarkhill.com

COLLEEN E. MCCARTY

Nevada Bar No. 13186

Email: cmccarty@clarkhill.com

CLARK HILL PLLC

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

Facsimile: (702) 862-8400

Attorneys for Petitioner

Republican Attorneys General Association

DISTRICT COURT

CLARK COUNTY, NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Case No.: A-18-780538-W

Dept. No.: IV

**REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION'S EMERGENCY
MOTION FOR EXAMINATION OF
WITHHELD RECORDS ON ORDER
SHORTENING TIME**

Date:

Time:

Petitioner, Republican Attorneys General Association ("RAGA" or "Petitioner"), by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of the law firm of Clark Hill PLLC, hereby submits its Emergency Motion for Examination of Withheld Records on Order Shortening Time ("Emergency Motion"), which pertains to the video and audio recordings made by police-worn body cameras Metro has identified as responsive to RAGA public records requests, in order to ensure that the claim said records are confidential and unable to be redacted is tested in a fair and adversarial matter. *See e.g. Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882-83, 266 P.3d 623, 629 (2011).

1 This Emergency Motion is made and based on the following Memorandum of Points
2 and Authorities; the Declaration of Colleen E. McCarty, Esq., included therein; the papers and
3 pleadings already on file; and any argument the Court may permit at the hearing of this matter.

4 Dated this 25th of September, 2018.

5 CLARK HILL PLLC

6
7
8 By: Colleen E. McCarty

DEANNA L. FORBUSH

Nevada Bar No. 6646

COLLEEN E. MCCARTY, ESQ.

Nevada Bar No. 13186

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

Attorneys for Petitioner

Republican Attorneys General Association

9
10
11
12
13
14 **ORDER SHORTENING TIME**

15 Having considered the Declaration of Counsel in Support of Order Shortening Time, and
16 good cause appearing:

17 IT IS HEREBY ORDERED that the time to hear the instant Emergency Motion for
18 Examination of Withheld Records is shortened and set on the 5 day of October
19 2018, at 9:00 a.m., in Dept. IV of the Eighth Judicial District Court. Petitioner shall
20 file and electronically serve Respondents the same day the OST is returned signed by the Court.

21 ///

22 ///

23 ///

24 ///

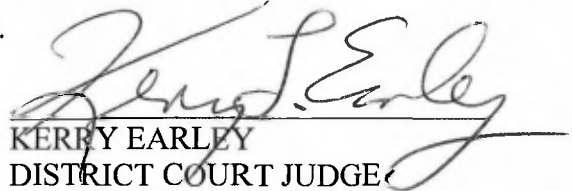
25 ///

26 ///

27 ///

Respondent shall have until the 3 day of Oct., 2018 to file a written
Opposition. Petitioner shall be permitted to reply orally at the time set for the hearing, above.

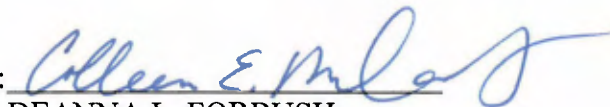
Dated this 26 day of September, 2018.


KERRY EARLEY
DISTRICT COURT JUDGE

Respectfully submitted by:

CLARK HILL PLLC

By:



DEANNA L. FORBUSH

Nevada Bar No. 6646

COLLEEN E. MCCARTY, ESQ.

Nevada Bar No. 13186

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

Attorneys for Petitioner

Republican Attorneys General Association

DECLARATION OF COLLEEN E. MCCARTY IN SUPPORT OF

EMERGENCY MOTION ON ORDER SHORTENING TIME

I, COLLEEN E. MCCARTY, attest and declare as follows:

1. I am an attorney licensed to practice before all the courts of the State of Nevada, and I am admitted to practice before this Court. I am one of the attorneys for the Republican Attorneys General Association ("RAGA"), the Petitioner in the instant matter.

2. I have personal knowledge of the facts stated in this Declaration. If called upon to testify to the same, I am competent to do so.

3. The purpose of RAGA's Emergency Motion is to ensure that Respondent, Las Vegas Metropolitan Police Department ("Metro"), provides opposing counsel and the Court a fair opportunity to argue and ultimately determine whether disclosure of the video and audio recordings made by police-worn body cameras at the time of the encounter between Metro

1 police officers and State Senator Aaron Ford ("Senator Ford") on November 13, 2017 will be
2 made, with or without redaction.

3 4. In an effort to determine whether this matter might be resolved informally, I
4 initiated a teleconference with counsel of record for Metro, Jackie V. Nichols, Esq. of the law
5 firm Marquis Aurbach Coffing, which took place on Monday, September 24, 2018. The
6 purpose of the call was to confirm the published statement by Senator Ford's campaign in
7 response to the instant lawsuit that "[I]t was a minor incident on private property involving one
8 of their pre-teen children," and that "Metro called the parents of all the kids involved so that
9 they could deal with the issue privately,"¹ In such case, RAGA believed the video and audio
10 recording made by police-worn body cameras would not be confidential under the provisions of
11 NRS 62H.025 and NRS 62H.030 pertaining to juvenile justice records, and Metro would be in a
12 position to stipulate to disclosure.
13
14

15 5. Contrary to Senator Ford's campaign statement, however, Ms. Nichols disclosed
16 for the first time on behalf of Metro that there is substantial body camera video of the encounter
17 in question, that the juveniles at the scene were arrested, and that there was no way to provide
18 redacted versions of any of the videos because the entirety of the encounter concerned juveniles
19 being arrested.
20

21 6. In light of the complete disparity between Senator Ford's campaign statement
22 and the claim of Metro's counsel concerning the substance of the body camera videos, I emailed
23 Ms. Nichols to request that her client stipulate to a temporary protective order for an attorneys'
24 eyes only viewing of the videos as soon as possible. I explained that, absent the opportunity to
25 view the videos, we would have insufficient information with which to meaningfully contest
26

27 ¹ Riley Snyder, "Republican AG Group Files Lawsuit Seeking Police Footage of Interaction With Democratic
28 Candidate Aaron Ford and His Child, *The Nevada Independent*, September 6, 2018;
<https://thenevadaindependent.com/article/republican-ag-group-files-lawsuit-seeking-police-footage-of-interaction-with-democratic-candidate-aaron-ford-and-his-child>.

1 Metro's claim of confidentiality and would have no alternative but to seek Court intervention.

2 7. In response, Ms. Nichols explained that pursuant to NRS 62H.025, Metro did not
3 have the authority to enter into an agreement to allow for attorney's eyes only viewing of the
4 video in question and denied RAGA's request. Ms. Nichols asserted that because the videos
5 ostensibly contain juvenile justice information the body camera footage in its entirety is
6 confidential and may not be redacted.
7

8 8. Ms. Nichols also advised that the body worn camera video of the event at issue is
9 encompassed in some 16 hours of unrelated video because the officers left their body cameras
10 rolling continuously. Such continuous activation is contrary to Metro's body worn cameras
11 policy, which generally requires officers to activate the cameras at the beginning of an event
12 and to deactivate the cameras when the event concludes. Further, Ms. Nichols did not confirm
13 what quantity of footage actually relates to the event at issue, only to state that it was less than
14 16 hours' worth.
15

16 9. The Court previously entered the parties' Stipulation and Order Regarding
17 Briefing Schedule on September 21, 2018 and set RAGA Public Records Act Application
18 Pursuant to NRS 239.001/Petition for Writ of Mandamus ("Petition") on for expedited hearing
19 on October 17, 2018. If there is to be any reasonable opportunity for counsel and the Court to
20 receive and view the videos in question, RAGA's Emergency Motion must be heard by the
21 Court at the very earliest opportunity, preferably no later than Monday, October 1, 2018.
22

23 10. As a former investigative journalist for KLAS-TV, I am well versed in video
24 editing and am uniquely qualified to review the videos in question to assist the Court in
25 determining whether the videos may, in fact, be redacted or otherwise edited to separate the
26 confidential information from the information that is not confidential, as required pursuant to
27 NRS 239.010(3).
28

11. This request for Order Shortening Time is made in good faith and without

1 dilatory motive, and is meant to assist the Court in the timely disposition of all pending matters.

2 I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)²,
3 that the foregoing is true and correct.

4 Dated this 25th day of September, 2018.

5 
6 COLLEEN E. MCCARTY

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 I.
9

10 **STATEMENT OF RELEVANT FACTS**

11 The facts relevant to the instant Emergency Motion are contained within the Declaration
12 of Colleen E. McCarty, Esq., supra, and are incorporated by reference herein.

13 II.

14 **RESPONDENT SHOULD BE REQUIRED TO PROVIDE THE WITHHELD RECORDS**
15 **TO PETITIONER'S COUNSEL AND THE COURT FOR EXPEDITED REVIEW**
16

17 Under Nevada law, all video and audio recordings made by police-worn body cameras
18 are public records subject to inspection. NRS 289.830(2) states in pertinent part:

19 *Any record made by a portable event recording device³ pursuant to*
20 *this section is a public record which may be:*

- 21 (a) Requested only on a per incident basis; and
22 (b) Available for inspection only at the location where the record is
23 held if the record contains confidential information that may
24 not otherwise be redacted.

25
26 ² NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose
27 existence or truth may be established by an affidavit or other sworn declaration may be established with the same
effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and
dated, in substantially the prescribed form.

28 ³ "'Portable event recording device' means a device issued to a peace officer by a law enforcement agency to be
worn on his or her body and which records both audio and visual events occurring during an encounter with a
member of the public while performing his or her duties as a peace officer." NRS 289.830(3)(b).

1 (Emphasis added.) *See also* Metro Form LVMPD 556 (entitled “Body-Worn Camera Video
2 Public Records Request, Pursuant to NRS 239”), [https://www.lvmpd.com/en-us/Documents/
3 LVMPD556_BWC_10-15v2_07-2017.pdf](https://www.lvmpd.com/en-us/Documents/LVMPD556_BWC_10-15v2_07-2017.pdf).

4 The Nevada Public Records Act (“NPRA”) reflects that records of governmental
5 entities belong to the public in Nevada. NRS 239.010(1) requires that, unless a record is
6 confidential, “all public books and public records of a governmental entity must be open at all
7 times during office hours to inspection by any person, and may be fully copied[.]” The NPRA
8 also contains specific legislative findings and declarations that “[its] purpose . . . is to foster
9 democratic principles by providing members of the public with access to inspect and copy
10 public books and records to the extent permitted by law” and that its provisions “must be
11 construed liberally to carry out this important purpose[.]” NRS 239.001(1)-(2). Further, “[a]ny
12 exemption, exception or balancing of interests which limits access to public books and
13 records....must be construed narrowly.” NRS 239.001(3).

14 Beyond the general provisions of NRS 239.001, the NPRS contains the specific mandate
15 that a governmental entity:

16 “....shall not deny a request....to inspect or copy a public book or
17 record on the basis that the public book or record contains
18 information that is confidential if the governmental entity can
19 redact, delete, conceal or separate the confidential information
20 from the information included in the public book or record that is
21 not otherwise confidential.”

22 NRS 239.010(3) (emphasis added).

23 In the instant case, Metro’s counsel has taken the firm position that redaction of the
24 videos in question is impossible. In light of the contrary position advanced by Senator Ford’s
25 campaign, RAGA’s counsel and the Court are left in the untenable position of guessing at the
26 truth of the matter. Even now, some nine months after RAGA’s initial public records request,
27 Metro still cannot or will not provide even the most basic information regarding the body
28

1 camera footage at issue. RAGA does not know how many videos exist, what quantity of video
2 is relevant to RAGA's request for records involving Senator Ford, or what efforts, if any Metro
3 has undertaken to identify the potential for redaction.

4 There is, however, a simple way for RAGA's counsel to test the veracity of Metro's
5 claim, and for the Court to have the information and arguments it needs to make the necessary
6 findings regarding the Petition, and that is to require Metro to provide a copy of the videos in
7 question to RAGA's counsel, who is extremely well versed in video editing, for an attorney's
8 eyes only review, and to provide a copy to the Court for its own in camera inspection, in
9 advance of the October 17, 2018 hearing.
10

11 As the Supreme Court stated clearly in *Reno Newspapers, Inc. v. Gibbons*, "[E]qually
12 unmistakable is the emphasis that our NPRA jurisprudence places on adequate adversarial
13 testing. Indeed, the framework established in *Bradshaw*, *DR Partners* and *Reno Newspapers v.*
14 *Sheriff* exemplifies an intensely adversarial method for determining whether requested records
15 are confidential." 127 Nev. at 882-83, 266 P.3d at 629. RAGA is entitled to, and hereby
16 respectfully requests, the opportunity to engage in just such adequate adversarial testing.
17

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

CONCLUSION

For all of the reasons set forth above, RAGA respectfully requests this Court grant its Emergency Motion and require Metro to provide copies of all audio and video recordings of police-worn body cameras related to the encounter between Metro officers and Senator Ford on November 13, 2017 to the Court and to RAGA's counsel for its attorney's eyes only review, in order to allow Metro's claim of confidentiality to be tested and decided in a fair and adversarial manner.

Dated this 25th of September, 2018.

CLARK HILL PLLC

By: 

DEANNA L. FORBUSH

Nevada Bar No. 6646

COLLEEN E. MCCARTY, ESQ.

Nevada Bar No. 13186

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

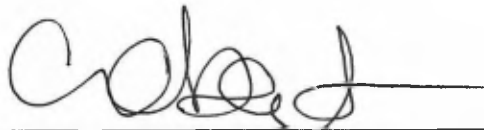
Attorneys for Petitioner

Republican Attorneys General Association

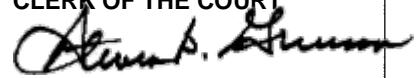
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of Clark Hill PLLC, and that on
3 this 27th day of September, 2018, I served a true and correct copy of the foregoing
4 **REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S EMERGENCY MOTION**
5 **FOR EXAMINATION OF WITHHELD RECORDS ON ORDER SHORTENING TIME**
6
7 by electronic means by operation of the Court's electronic filing system, upon each party in this
8 case who is registered as an electronic case filing user with the Clerk.

9 Nick D. Crosby, Esq.
10 Jackie V. Nichols, Esq.
11 MARQUIS AURBACH COFFING
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 ncrosby@maclaw.com
15 jnichols@maclaw.com
16 Attorneys for Respondent
17 Las Vegas Metropolitan Police Department
18
19
20
21
22
23
24
25
26
27
28



An Employee of Clark Hill PLLC

**Marquis Aurbach Coffing**

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
ncrosby@maclaw.com
jnichols@maclaw.com

*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

DISTRICT COURT**CLARK COUNTY, NEVADA**

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

**RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S
OPPOSITION TO REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S
EMERGENCY MOTION FOR EXAMINATION OF WITHHELD RECORDS ON
ORDER SHORTENING TIME**

Respondent Las Vegas Metropolitan Police Department ("LVMPD" or the
"Department"), by and through its attorneys of record, Nicholas Crosby, Esq. and Jackie Nichols,
Esq., of the law firm of Marquis Aurbach Coffing, hereby files an Opposition to Republican
Attorneys General Association's Emergency Motion for Examination of Withheld Records on
Order Shortening Time.

///

///

///

///

///

1 This Opposition is made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities, and any oral argument allowed by the Court at a hearing
3 on this matter.

4 Dated this 3 day of October, 2018.

MARQUIS AURBACH COFFING

By: 

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

15 The Court is charged with making a simple determination: Whether the records requested
16 pertain directly to a child subject to the jurisdiction of the juvenile court. If the Court determines
17 that the incident involves a child subject to the jurisdiction of the juvenile court, this Court must
18 dismiss the instant Petition because the juvenile court retains exclusive jurisdiction over this
19 matter. It is undisputed that the records sought pertain to a minor child or children, as
20 demonstrated by RAGA's own requests. Thus, it is LVMPD's position that the records sought
21 contain juvenile justice information, placing subject matter jurisdiction over this case in the
22 hands of the juvenile court. Nevertheless, if the Court retains jurisdiction over this matter, then
23 the Court must decide this case on the merits and determine whether the production of the
24 records is required. Importantly, prior to an order requiring the dissemination of records,
25 including to opposing counsel, this Court must notify Juvenile Justice Services and afford it an
26 opportunity to be heard.

27 ///

28 ///

Should this Court determine that the Nevada Public Records Act applies, RAGA's Emergency Motion is premature. While the burden is on the government to demonstrate confidentiality, LVMPD has not yet been afforded the opportunity to prove its case on the merits. The Supreme Court has specifically addressed similar situations where the requester contends it does not have sufficient information to argue against confidentiality. In those scenarios, the court must first entertain the Petition for Writ of Mandamus to determine whether the government has met its burden. If the government's response is deficient, the court may order the agency to provide a *Vaughn* Index—not an examination of the records. Under no circumstances is an agency required to turn over the records it deems confidential prior to the matter being heard on the merits.

In sum, the actual footage from the videos is entirely irrelevant to LVMPD's objections to disclosure and RAGA's request that counsel be permitted to review the records is unprecedented and wholly improper prior to this matter being heard on the merits.

II. STATEMENT OF FACTS

A. RAGA'S REQUEST FOR JUVENILE JUSTICE INFORMATION.

Republican Attorneys General Association ("RAGA") has sought records pertaining to juveniles. See Petition for Writ of Mandamus ("Petition") at Exhibits 1-A, 1-C, 1-F, and 1-I. While RAGA claims it only seeks the Body Worn Camera ("BWC") footage from a particular event involving juveniles, its request specifically seeks the following information:

[W]e request all body camera footage and or audio from body camera footage (if visual images do not exist), the police or investigative report or summary, witness and or victim statements, all computer aided dispatch (CAD) between all LVMPD personnel at the scene and with dispatch or any other statements by officers or witnesses related to an incident with LVMPD Officer Zarkowski concerning minor child and/or, Aaron D. Ford (State Senator) at approximately 3:00 p.m. on November 13, 2017 at 7008 Connor Cove Street, Las Vegas, NV 89118.

Id. at Exhibit 1-C, I-F, and 1-I (emphasis added). Notably, RAGA redacted the minor child's name(s) in its Petition with Court because it recognized that juvenile information is protected under NRS 62H.020 and 62H.025. Nevertheless, it cannot be any clearer that RAGA's request directly relates to a minor child. *Id.*

1 **B. RAGA’S IMPROPER AND FLAWED EMERGENCY MOTION.**

2 In its Emergency Motion, RAGA argues that it seeks information related to Senator Ford
3 and not the minor child. In support of disclosure, RAGA argues that statements between Senator
4 Ford and the police officers do not directly relate to a child. *See* Petition at Exhibit 1-I. RAGA,
5 however, continues to ignore the simple fact that the footage requested directly pertains to a
6 juvenile incident. Any communications between the officers and any other individual regarding
7 the subject incident directly relates to the juveniles and is deemed confidential. *See* NRS
8 62H.025.

9 RAGA’s Emergency Motion is also factually flawed. Counsel claims that the first time it
10 learned that the juveniles were arrested was through a phone call with LVMPD’s counsel. *See*
11 Emergency Motion at p.4, ¶ 5. To the contrary, on May 15, 2018, LVMPD informed RAGA that
12 the juveniles had been arrested. *See* Petition at Exhibit 1-I. LVMPD further explained that NRS
13 62H.025 and NRS 62H.030 governed dissemination of the requested records. *Id.* In response,
14 RAGA claimed that LVMPD’s interpretation was too broad and “does not encompass all
15 situations ‘involving juveniles arrested[.]’” *See* Petition at Exhibit 1-I. Whether by mistake, or
16 misrepresentation, RAGA’s claim that it recently learned of the arrests is simply not true.
17 Indeed, RAGA learned that the juveniles involved in the subject incident had been arrested
18 nearly four months prior to Senator Ford’s campaign press release.

19 RAGA’s Motion also misstates the communication between counsel. On September 24,
20 2018, Ms. McCarty contacted the undersigned to discuss LVMPD’s position on the requested
21 records. *See* Declaration of Jackie V. Nichols, Esq., attached hereto as **Exhibit A**. It was
22 explained to Ms. McCarty that LVMPD maintained the same position—the requested records
23 were subject to NRS 62H.025 and NRS 62H.030 and not subject to disclosure given that the
24 juveniles had been arrested. *Id.* Redaction of the footage was not discussed. *Id.* Ms. McCarty
25 also inquired into facts regarding the video footage including how many videos regarding the
26 incident existed and how many hours of footage existed. *Id.* At the time, counsel for LVMPD
27 had not yet reviewed the records and estimated approximately either 24 hours of footage or 24
28 videos. *Id.*

1 The following day, Ms. McCarty followed up with an email to LVMPD's counsel
2 claiming that this was the first time she had heard of the juveniles being arrested. *See* a true and
3 correct copy of the emails between counsel attached hereto as **Exhibit B**. Quite tellingly, Ms.
4 McCarty later acknowledged that the arrest of the juveniles would implicate the confidentiality
5 provisions set forth in NRS 62H.025 and prohibit disclosure. *Id.* Ms. McCarty also requested,
6 without any supporting authority, that she be provided copies of the footage prior to the matter
7 being heard on the merits. *Id.*

8 In response, the undersigned clarified that there were 16 total hours of footage associated
9 with the incident and explained that the officers involved had their cameras activated prior to
10 responding to the incident subject to RAGA's request, resulting in continuous footage. *Id.*
11 Counsel for LVMPD also indicated that LVMPD does not manipulate the footage, but associates
12 the entire video with the incident, despite the fact that entire video(s) may not be relevant to the
13 incident. *Id.* Nevertheless, in the event the Court orders production, the footage not relevant to
14 RAGA's request would be redacted. *Id.*

15 C. THE NOVEMBER 13, 2017 INCIDENT.

16 On November 13, 2017, LVMPD investigated an incident involving certain juveniles.
17 *See* Declaration of Officer Zarkowski attached hereto as **Exhibit C**. As a result of the
18 investigation, the juveniles were arrested for an alleged violation of law. *Id.* The incident did
19 not involve an arrest of any adult. *Id.* As a result of the arrest of the juveniles, LVMPD
20 provided its investigative file, including Body Worn Camera footage, to relevant personnel
21 within the juvenile justice system. *Id.*

22 III. LEGAL ARGUMENT

23 A. LEGAL STANDARD.

24 Under the Nevada Public Records Act ("NPRA"), a person may request to inspect or
25 have a copy made of a public record from a governmental entity. *See* NRS 239.010. A
26 governmental agency may deny a public records request if the public record sought is deemed
27 confidential. NRS 239.0107(1)(d). In doing so, the governmental entity must inform the
28 requester that the requested records are confidential and cite to the legal authority that renders

1 the records confidential. *Id.* Upon denial of a request to inspect or copy records, the requester
2 may apply to the district court for an order requiring the disclosure or inspection of records.
3 NRS 239.011(1). Generally, a court is to presume that all public records are open to disclosure
4 unless either: (1) a statute has expressly created an exemption or exception to disclosure; or (2)
5 after balancing the interests for nondisclosure against the general policy of access, the court
6 determines restriction of public access is appropriate. *See City of Sparks v. Reno Newspapers,*
7 *Inc.*, 399 P.3d 352, 355 (2017). During a *judicial proceeding* regarding the confidentiality of
8 records, the governmental entity has the burden of proving by a preponderance of the evidence
9 that the requested record is confidential. NRS 239.0113 (emphasis added).

10 **B. THE RECORDS SOUGHT ARE DIRECTLY RELATED TO JUVENILES.**

11 Nevada maintains statutes that directly address juveniles and dissemination of related
12 records. *See* NRS Chapters 62 and 63. In its Petition, RAGA justifies its request under NRS
13 Chapter 179A, claiming that the record being sought pertains to criminal history information.
14 NRS 179A.070(2)(b), however, specifically excludes juveniles records from criminal history
15 information. Rather, NRS Chapter 62H governs the confidentiality and dissemination of juvenile
16 records. In particular, NRS 62H.025 provides:

17 Juvenile justice information is confidential and may only be released in
18 accordance with the provisions of this section or as expressly authorized by other
federal or state law.

19 The statute further defines “juvenile justice information” as “any information which is directly
20 related to a child in need of supervision, a delinquent child or any other child who is otherwise
21 subject to the jurisdiction of the juvenile court.” NRS 62H.025(6)(b). A child living or found
22 within the county who is alleged to have committed a delinquent act, is subject to the jurisdiction
23 of the juvenile court. NRS 62B.330. With respect to this particular statute, a child commits a
24 delinquent act when such an act violates the law. NRS 62B.330(2)(a)-(b).

25 Here, the juveniles were arrested for allegedly committing a delinquent act, rendering the
26 child subject to the jurisdiction of the juvenile court. Whether the footage depicts Senator Ford,
27 or any other adult, is of no consequence. The focus must be on the information being recorded.
28 In this instance, the information recorded and sought, concerns an incident involving the arrest of

1 juveniles. It follows that any communication between victims, witnesses, and officers regarding
2 the arrest of the juveniles on the body worn camera footage is directly related to the incident
3 involving a child subject to the jurisdiction of the juvenile court, i.e., juvenile justice
4 information. Thus, any record directly related to the juvenile incident at issue would be deemed
5 juvenile justice information and subject to the provisions in NRS 62H.025 and not the NPRA.

6 **C. JUVENILE RECORDS ARE NOT GOVERNED BY THE NPRA.**

7 In 2013, the Legislature made significant changes to the NPRA, and specifically to NRS
8 239.010 based upon recent Supreme Court decisions. *See* Assembly Bill 31, 77 Nev. Leg.,
9 *generally*. Today, NRS 239.010 provides:

10 Except as otherwise stated in this section and . . . NRS 62H.025, NRS 62H.030 . .
11 . and unless otherwise declared by law to be confidential . . . all public books and
12 public records of a governmental entity must be [subject to inspection] and may
be fully copied . . .

13 There is no doubt that the lists of statutes now enumerated within NRS 239.010 serve as
14 exceptions from the NPRA. In fact, the entire purpose of codifying statutes was to provide
15 clarity to both the public and government in determining what records were exempt from the
16 NPRA. *See* Hearing on AB 31 Before the Assembly Committee on Government Affairs, 77 Leg.
17 (Nev. Feb. 7, 2013).

18 Based on the inclusion of NRS 62H.025 and NRS 62H.030 within the set of statutes
19 exempted from the NPRA, it is clear that the Legislature recognized an exception to the NPRA
20 for juvenile records. In determining whether the instant juvenile records are required to be
21 disclosed, the Court must rely on NRS 62H.025 and NRS 62H.030—not the NPRA. However,
22 because this matter involves juvenile records, the juvenile court retains exclusive jurisdiction.
23 NRS 62B.310 and NRS 62B.410. Thus, this Court lacks jurisdiction to enter an order providing
24 for the dissemination of the subject juvenile records.

25 **D. THE JUVENILE COURT RETAINS EXCLUSIVE JURISDICTION OVER**
26 **THE RECORDS BEING REQUESTED.**

27 As indicated above, the records at issue pertain to a child subject to the jurisdiction of the
28 juvenile court. Because the records stem from the incident that placed the juvenile within the

1 juvenile court's jurisdiction, the juvenile court retains exclusive jurisdiction over the instant case.
2 A juvenile court retains exclusive jurisdiction over the juvenile and related records until the
3 juvenile court terminates its jurisdiction. NRS 62B.310 and NRS 62B.410; *see also Montesano*
4 *v. Donrey Media Group*, 99 Nev. 644, n.4, 868 P.2d 1081 (1983) (recognizing that although a
5 juvenile court loses jurisdiction over an individual who is 21 years old, publication of juvenile
6 records after the child reaches 21 years old is wholly without merit given the protective goals of
7 the Juvenile Court Act, which seeks to encourage rehabilitation of the youthful offenders).
8 Because the records being sought pertain to the very incident that placed the child within the
9 jurisdiction of the juvenile court, the juvenile court maintains jurisdiction to determine whether
10 the requested records may be disseminated.

11 In 2002, the Attorney General issued an opinion related to the dissemination of juvenile
12 records. *See Juveniles; Sex offenders; Parole and Probation*, Op. Att'y Gen. No. 2002-47
13 (December 31, 2002). The Attorney General addressed whether the Nevada Department of
14 Public Safety's Division of Parole and Probation ("Division") was prohibited from disseminating
15 unsealed juvenile record information, related to a violent crime or sex offense, to a third party
16 such as an employer, spouse, or potential victim. *Id.* at *1. While the Attorney General
17 ultimately determined that the Division is not prohibited from releasing violent crime or sex
18 offense information under certain circumstances, it also indicated that the Division should defer
19 to the juvenile court and NRS Chapter 62 for guidance. *Id.* at *5. Indeed, the Attorney General
20 recommended that the Division refer the requester to the juvenile court to demonstrate a
21 legitimate interest in the records. *Id.* Furthermore it is the juvenile court that may order the
22 records to be disseminated. *Id.*

23 Despite amendments to NRS Chapter 62 since 2002, the purpose and policy of the
24 Juvenile Court Act has remained intact. Juvenile records, including juvenile justice information,
25 must be sought from the juvenile court, as it is in the best position to determine whether or not
26 dissemination of such records is appropriate pursuant to NRS 62H.025. Thus, the juvenile court
27 retains exclusive jurisdiction to hear matters concerning the juvenile and related records.
28

1 Because this Court lacks jurisdiction, the Petition must be dismissed. Alternatively, this Court
2 should enter an order directing this case to the juvenile court.

3 **E. LVMPD IS NOT THE PROPER PARTY TO THIS CASE.**

4 NRS Chapter 62 makes clear that the Juvenile Justice Agency is responsible for releasing
5 records related to juveniles. The Juvenile Justice Agency may only release juvenile justice
6 information in certain circumstances outlined in NRS 62H.025. Generally, a request for juvenile
7 justice information must be directed at the Juvenile Justice Agency, not the law enforcement
8 agency. NRS 62H.025(3). A Juvenile Justice Agency may deny a request for information if the
9 request does not demonstrate good cause or the release of information would cause material
10 harm to the child or prejudice a court proceeding. *Id.* It is the Juvenile Justice Agency, not
11 LVMPD, in the position to make the determination whether the juvenile records are appropriate
12 for release. Not only are the subject records not governed by the NPRA, but a request for the
13 records must be directed to the Juvenile Justice Agency and not LVMPD.

14 Even if this Court determines that LVMPD is a proper party to this action, the Juvenile
15 Justice System is an indispensable party. *See* NRCP 19(b). To be sure, a Court that orders
16 juvenile justice information to be released must provide the Juvenile Justice Agency with notice
17 and an opportunity to be heard before the issuance of such order. NRS 62H.025(2)(r). Thus,
18 prior to ordering LVMPD to disseminate the requested records, including to opposing counsel,
19 this Court must notify the Juvenile Justice Agency¹ and give the agency an opportunity to be
20 heard on the matter.

21 **F. THE NPRA DOES NOT SUPPORT RAGA'S REQUEST FOR**
22 **EXAMINATION OF RECORDS.**

23 The NPRA does not permit records to be pre-disclosed prior to the case being heard on
24 the merits. RAGA improperly relies on NRS 239.010(3) to support its position that the records
25 should be provided to counsel. An agency is required to redact confidential information within
26

27 ¹ It is LVMPD's understanding that the Juvenile Justice Services is the proper Juvenile Justice Agency to
28 be notified.

1 public records as it relates to disclosure to the requester—not counsel. NRS 239.010(3).
2 Notably, RAGA’s counsel is not seeking to examine redacted versions of the records, but
3 requests to review all 16 hours of footage. More importantly, no language within the NPRA
4 requires, or even permits, records to be provided to counsel prior to the case being heard on the
5 merits. The Supreme Court has established the proper procedural vehicle for addressing the very
6 issue RAGA raises. The NPRA places the burden on the government agency to demonstrate that
7 the records at issue are confidential. NRS 239.0113. LVMPD has not yet been given this
8 opportunity. If LVMPD demonstrates that the records are, in fact, confidential, the inquiry ends.
9 RAGA, however, may argue that it was not given an opportunity to argue against confidentiality.
10 If the Court determines that LVMPD did not meet its burden and RAGA was not given an
11 opportunity to rebut confidentiality, the Court may order LVMPD to produce a *Vaughn* Index.
12 *Reno Newspapers v. Gibbons*, 127 Nev. 873, 882-84, 266 P.3d 623, 629-631 (2011). In
13 *Gibbons*, the court determined that the agency had failed to meet its burden and the in camera
14 proceeding was improper. *Id.* The court further explained that to preserve the adversarial
15 process the requester should have been provided the log that was given to the court, or at least
16 been provided a factual explanation of the emails and the privilege asserted. *Id.* The court
17 remanded the case to the lower court with instructions to direct the agency to provide the
18 requester with a log. *Id.*

19 This case does not require a *Vaughn* Index. RAGA’s request specifically outlines that it
20 seeks the BWC footage related to the incident involving minor children. Despite requesting
21 footage that depicts Senator Ford, the information within the videos explicitly pertains to
22 juvenile justice information which is deemed confidential per statute.² Moreover, when a per se
23 exemption exists, like NRS 62H.025 provides, a *Vaughn* Index is not required. *See Lewis v.*
24 *Internal Revenue Service*, 823 F.2d 375, 380 (9th Cir. 1987) (determining that a *Vaughn* Index
25 was not required because the documents requested were *per se* exempt from disclosure,

26
27 ² As counsel for LVMPD indicated previously, footage not related to the incident would be redacted as it
28 is not responsive to RAGA’s request. Nevertheless, the footage responsive to RAGA’s request, directly
concerns the incident involving the juveniles, who are subject to the jurisdiction of the juvenile court.

1 regardless of the content of the records, and the government did not gain an advantage by access
2 to material facts that the requester lacked).

3 The question in this case pertains to whether NRS 62H.025 and NRS 62H.030 prohibit
4 disclosure of the requested information. In other words, this Court must determine whether or
5 not the records are considered juvenile justice information. Neither a privilege log nor a cursory
6 review of the footage will assist RAGA in arguing against confidentiality pursuant to NRS
7 62H.025. More importantly, it is the Court—not Ms. McCarty herself—who must apply the law
8 and test the veracity of LVMPD's confidentiality arguments. This, however, is done after
9 LVMPD has had an opportunity to argue the merits of the case. There is simply no legal
10 authority that supports RAGA's request for examination of records prior to LVMPD being given
11 the opportunity to meet its burden.

12 **IV. CONCLUSION**

13 Based on the foregoing, LVMPD requests that this Court deny RAGA's Emergency
14 Motion for examination of the body worn camera footage and dismiss the Petition for lack of
15 jurisdiction. If this Court determines it has jurisdiction, prior to ordering disclosure, it must
16 notify Juvenile Justice Services and provide it an opportunity to be heard on the matter. Finally,
17 neither a privilege log nor review of the records is proper in this case because the records are *per*
18 *se* exempt pursuant to NRS 62H.025 and NRS 62H.030 and would not assist RAGA in arguing
19 against confidentiality.

20 Dated this 3 day of October, 2018.

21
22 MARQUIS AURBACH COFFING

23
24 By: 

25 Nick D. Crosby, Esq.
26 Nevada Bar No. 8996
27 Jackie V. Nichols, Esq.
28 Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S OPPOSITION TO REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S EMERGENCY MOTION FOR EXAMINATION OF WITHHELD RECORDS ON ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 3rd day of October, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:³

Deanna L. Forbush, Esq. .
Colleen E. McCarty, Esq.
CLARK HILL, PLLC
3800 Howard Hughes Pkwy., Suite 500
Las Vegas, NV 89169
dforbush@clarkhill.com
cmccarty@clarkhill.com
Counsel for Petitioner,
Republican Attorneys General Association

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

³ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT “A”

JA000131

**DECLARATION OF JACKIE V. NICHOLS, ESQ. IN SUPPORT OF OPPOSITION
TO EMERGENCY MOTION FOR EXAMINATION OF WITHHELD RECORDS**

JACKIE V. NICHOLS, ESQ., declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am duly licensed to practice law in the State of Nevada and have personal knowledge of and I am competent to testify concerning the facts herein.

3. I make this declaration in support of Respondent Las Vegas Metropolitan Police Department's Opposition to Republican Attorneys General Associate's Emergency Motion for Examination of Withheld Records on Order Shortening Time filed on behalf of the Respondent, Las Vegas Metropolitan Police Department ("LVMPD"), in the case Republican Attorneys General Association v. Las Vegas Metropolitan Police Department, District Court Case No. A-18-780538-W.

4. I am the attorney for the Respondent, LVMPD in the above-referenced matter.

5. On September 24, 2018, Ms. McCarty contacted me to discuss LVMPD's position on the requested records.

6. I explained to Ms. McCarty that LVMPD maintained the same position—that the records requested are subject to NRS 62H.025 and NRS 62H.030 and not subject to disclosure given that the juveniles had been arrested.

7. Neither redaction nor examination of the body worn camera footage was discussed.

8. Ms. McCarty also inquired into facts regarding the video footage including how many videos regarding the incident there were and how many hours of footage existed.

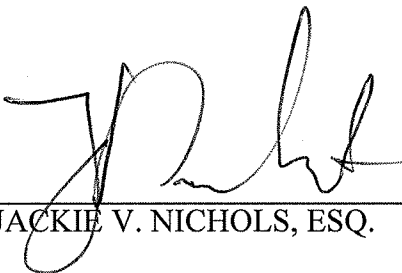
9. At the time, I had not yet reviewed the records but had an understanding that there may be approximately either 24 hours of footage or 24 videos.

1 10. On September 25, 2018, Ms. McCarty followed up with an email requesting that
2 the body worn camera footage be provided for her review prior to this matter being heard on the
3 merits. *See* a true and correct copy of the email exchange between counsel attached to the
4 Opposition to Emergency Motion for Examination of Withheld Records as **Exhibit B**.

5 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
6 of Nevada that the foregoing is true and correct.

7 Dated this 3 day of October, 2018.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



JACKIE V. NICHOLS, ESQ.

EXHIBIT “B”

JA000134

Jackie V. Nichols

From: McCarty, Colleen E. <cmccarty@clarkhill.com>
Sent: Tuesday, September 25, 2018 12:13 PM
To: Jackie V. Nichols
Cc: Nick Crosby; Forbush, Deanna L.; Robertson, Cristina P.
Subject: RE: RAGA v. LVMPD
Attachments: image001.jpg

Ms. Nichols,

Thank you for your prompt response. For clarification, RAGA's request is solely for records involving Senator Aaron Ford, an adult. As we have stated, we have no interest in obtaining records regarding juveniles. And, until we spoke yesterday, based on the statements from Senator Ford's campaign, we were under the impression that no juveniles had actually been arrested, negating the applicability of NRS 62H.025.

Further, the recording you describe, i.e. 16 hours of continuous recording, is contrary to Metro policy which requires generally that officers activate the body camera when they respond to a call and deactivate it when the call concludes. I am unfamiliar with any scenario wherein an office would simply record all day as that would render labeling and categorizing the videos nearly impossible. Such inconsistencies make it all that more necessary for counsel to view the videos as soon as possible.

Finally, NRS 239.010(3) requires redaction of confidential information from information that is not otherwise confidential. Any records involving Senator Ford, an adult, are in no way confidential and should be produced. In order to ensure that we are able to have adequate adversarial testing of Metro's claims regarding the video, we believe your client's response leaves my client with no alternative but to seek a court order to view the video in question and we will proceed accordingly.

Colleen

Colleen E. McCarty

Associate

CLARK HILL PLLC

3800 Howard Hughes Parkway, Suite 500 | Las Vegas, Nevada 89169
(702) 697-7502 (direct) | (702) 862-8400 (fax)
CMccarty@ClarkHill.com | www.clarkhill.com

From: Jackie V. Nichols [mailto:jnichols@maclaw.com]
Sent: Tuesday, September 25, 2018 8:57 AM
To: McCarty, Colleen E.
Cc: Nick Crosby; Forbush, Deanna L.; Robertson, Cristina P.
Subject: RE: RAGA v. LVMPD [IWOV-iManage.FID1042505]

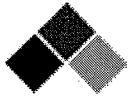
Ms. McCarty,

For clarification, there is approximately 16 hours of video. The reason for 16 hours is that the officers involved had their body worn cameras running for hours prior to the event that you are seeking records for. Because the cameras were continuously recording, the entire video is associated with incident. In other words, LVMPD does not manipulate the recording to only include the subject incident if the officer's video includes other unrelated footage. Nonetheless, this information does not pertain to your client's request. The request at issue specifically identifies the incident involving **minor children** on November 13, 2017, at 7008 Connor Cove Street. The actual footage related to the incident is less than the total 16 hours of footage. Thus, the information contained within

JA000135

those videos, such as traffic stops, would be redacted in the event of production because they are not subject to your request and entirely unrelated.

However, as I explained on the phone, and as recognized by your client's request, this incident involves juveniles. Indeed, the request asks for records related to the minor children. In accordance with NRS 62h.025, this information contains juvenile justice information which is only to be released to certain individuals or entities under certain circumstances. Nothing within that statute provides for redaction given the sensitive information. Given the provisions of NRS 62h.025, LVMPD does not have authority to enter into any agreement to allow you to review records that are clearly confidential.



MARQUIS AURBACH
COFFING

Jacqueline V. Nichols, Esq.

10001 Park Run Drive
Las Vegas, NV 89145

t | 702.207.6091

f | 702.856.8991

jnichols@maclaw.com

maclaw.com

 Please consider the environment before printing this e-mail!

Pursuant to IRS Circular 230, any tax information or written tax advice contained herein (including any attachments) is not intended to be and can neither be used by any person for the purpose of avoiding tax penalties nor used to promote, recommend or market any tax-related matter addressed herein.

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you.
Marquis Aurbach Coffing - Attorneys at Law

From: McCarty, Colleen E. [mailto:cmccarty@clarkhill.com]

Sent: Monday, September 24, 2018 1:29 PM

To: Jackie V. Nichols

Cc: Nick Crosby; Forbush, Deanna L.; Robertson, Cristina P.

Subject: RAGA v. LVMPD

Ms. Nichols,

Thank you for taking the time to speak with me this morning. In follow-up to our conversation, I was surprised to learn, based on my understanding of the facts and circumstances at issue (albeit limited) that there are 24 to 26 hours of videos, or 24 to 26 videos at play. I was also surprised to learn that the entirety of the video involved juvenile arrests such that redactions would be unavailable.

Accordingly, it seems clear to me that in order to provide the Court with a clear picture of the public records at issue, and the potential for redaction, counsel will need to view the videos. To that end, would your client agree to a stipulated temporary protective order for attorney's eyes only viewing of the videos as soon as possible? Absent that, counsel will have insufficient information with which to meaningfully contest Metro's claim of confidentiality and my client will have no alternative but to seek Court intervention.

JA000136

Given the time sensitivity of this matter, if I do not receive a response from you by noon tomorrow, September 25, 2018, I will assume your client is unable and/or unwilling to agree to our request.

In an effort to accommodate any logistical concerns, counsel is willing to view the videos at Metro HQ at your earliest convenience. Should you wish to discuss this matter further, please do not hesitate to contact me.

Colleen

Colleen E. McCarty

Associate

CLARK HILL PLLC

3800 Howard Hughes Parkway, Suite 500 | Las Vegas, Nevada 89169

(702) 697-7502 (direct) | (702) 862-8400 (fax)

CMccarty@ClarkHill.com | www.clarkhill.com

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify us immediately by reply email and destroy all copies of this message and any attachments. Please do not copy, forward, or disclose the contents to any other person. Thank you.

JA000137

EXHIBIT “C”

JA000138

DECLARATION OF SEBASTIAN ZARKOWSKI, POLICE OFFICER II
LAS VEGAS METROPOLITAN POLICE DEPARTMENT

I, Sebastian Zarkowski, hereby declare under the penalty of perjury:

1. I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and, as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. That I am employed by the Las Vegas Metropolitan Police Department (LVMPD) as a Police Officer II.

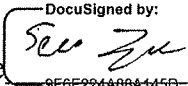
3. That on November 13, 2017 at approximately 1600 hours I was dispatched to a call involving juveniles under LVMPD Event No. 17113-2462.

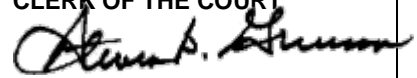
4. That the juveniles were arrested for an alleged violation of law. The incident did not involve an arrest of any individual adult.

5. As a result of the arrest of the juveniles, LVMPD provided its investigative file to relevant personnel within the juvenile justice system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 2nd day of October, 2018.

DocuSigned by:

Signature _____
9F6E224A00A145D...
Sebastian Zarkowski



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

REPUBLICAN ATTORNEYS GENERAL)	
ASSOCIATION,)	CASE NO. A-18-780538
)	
Plaintiff,)	
)	DEPT. NO. IV
vs.)	
)	
LAS VEGAS METROPOLITAN POLICE)	Transcript of Proceedings
DEPARTMENT,)	
)	
Defendant.)	

BEFORE THE HONORABLE KERRY EARLEY, DISTRICT COURT JUDGE

ORDER SHORTENING TIME

FRIDAY, OCTOBER 5, 2018

APPEARANCES:

For the Plaintiff: COLLEEN E. MCCARTY, ESQ.
DEANNA FORBUSH, ESQ.

For the Defendants: JACQUELINE NICHOLS, ESQ.
NICHOLAS D. CROSBY, ESQ.

RECORDED BY: SHARON NICHOLS, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FRIDAY, OCTOBER 5, 2018 AT 9:00 A.M.

THE COURT: 780538. Counsel, give your appearance for the record.

MS. MCCARTY: Good morning, Your Honor.

THE COURT: Yes.

MS. MCCARTY: Colleen McCarty on behalf of the Republican Attorneys General Association, joined by Deanna Forbush.

THE COURT: Okay.

MS. FORBUSH: Good morning.

THE COURT: Good morning.

MS. NICHOLS: Good morning, Your Honor. Jackie Nichols on behalf of the Las Vegas Metropolitan Police Department.

THE COURT: Okay.

MR. CROSBY: Good morning, Your Honor. Nick Crosby on behalf of the Las Vegas Metropolitan Police Department.

THE COURT: Okay. All right. I've reviewed everything. I'm trying a little bit to figure out what the plaintiff wants. As you know, I did give an earlier date on the Petition for 10/17 and that's confirmed. A lot -- sorry. That's horrible. A lot of the argument in here is the substance and I know some of it overlaps. It's kind of

1 similar. I did a lot of criminal law.

2 Are what you asking me is basically that the judge
3 looking at some -- the body cam footage to prepare for the
4 hearing? Because, obviously, I can't have you look at --
5 that's -- I'm not going to -- that's waiving the privilege.
6 I've never heard of a counsel saying, well, let me look at
7 it. I mean, if what you're saying -- and I'm just trying
8 to figure it out. So you can correct this crazy voice,
9 but, I mean, I needed to -- I had sexual assault cases and
10 there was some footage of some things that you can imagine
11 that they felt were privileged. The defense would say,
12 hey, DA or Metro, you're telling us it's this, this, and
13 this. We don't know that. We want you, Judge. We
14 understand privileges.

15 So, I kind of equated it to that. If I
16 misunderstood, help me. What is it that you want today for
17 relief? That would help me out.

18 MS. MCCARTY: Absolutely, Your Honor.

19 THE COURT: Okay.

20 MS. MCCARTY: You, obviously, have read response,
21 Opposition, and --

22 THE COURT: I --

23 MS. MCCARTY: -- so have we.

24 THE COURT: I've read everything.

25 MS. MCCARTY: And --

1 THE COURT: I actually even went to the Petition.

2 MS. MCCARTY: Right. And, respectfully, --

3 THE COURT: To be on -- the arguments.

4 MS. MCCARTY: Respectfully, the Petition is not
5 offered today.

6 THE COURT: No. Absolutely not. I could not --

7 MS. MCCARTY: What is offered today --

8 THE COURT: -- give an order shortening time. I
9 just try to work with people when I -- if I think there is
10 something that may help facilitate the Petition, is how I
11 reviewed it.

12 MS. MCCARTY: Correct.

13 What we are asking for is an order from this Court
14 for attorneys' eyes only viewing of the video in question.

15 THE COURT: Okay.

16 MS. MCCARTY: And we believe that not only do you
17 have the authority to order such a review, the case law
18 demands such a review.

19 Just for the point of clarification because this
20 point keeps getting misstated, what we are asking for is
21 the videotape that involves Senator Aaron Ford, an adult.
22 That is what we have asked for. That is all we have asked
23 for is the videotape and the records that relate to Senator
24 Ford, the adult.

25 THE COURT: Okay. And so why is there a

1 miscommunication here? Because they mentioned -- they
2 have actually said they would get -- I mean, I read
3 everything. Right? That's not the issue. You -- at least
4 when I read it, tell us what you want, if there is a
5 separate part that just shows Aaron Ford in the body cam
6 that does not contain any footage of the -- any juvenile.
7 Do you have any problem with that?

8 MS. NICHOLS: Yes, Your Honor, because --

9 THE COURT: Okay.

10 MS. NICHOLS: -- our --

11 THE COURT: In what way?

12 MS. NICHOLS: Our argument is that the footage
13 pertains to a juvenile incident. So, for example, --

14 THE COURT: Pertains to a juvenile incident?

15 MS. NICHOLS: Correct.

16 THE COURT: Okay. So, by that general umbrella,
17 even if a juvenile is not in the footage, it's still
18 protected under the privilege?

19 MS. NICHOLS: That's correct. Under 62H.025.

20 THE COURT: No. I know the privilege. How do you
21 have cases that make it that broad? Are you saying that
22 the body cam footage would contain -- because I haven't
23 seen it. As you know, I'm just trying to reason through --

24 MS. NICHOLS: Yes, Your Honor.

25 THE COURT: -- what might -- that the body cam

1 footage, because of the substance within it, it would
2 pertain to privileged information regarding juveniles?

3 MS. NICHOLS: That's correct, Your Honor.

4 THE COURT: Okay. All right. I'm just trying to
5 figure it out.

6 MS. NICHOLS: Just -- for an example, if they're
7 discussing the actual incident that the juveniles were
8 arrested for, that is pertaining --

9 THE COURT: That is -- because that is pertained -
10 -

11 MS. NICHOLS: -- to the juvenile incident.

12 THE COURT: Okay. Okay. All right. So, -- all
13 right.

14 MS. MCCARTY: So, Your Honor, we're not here,
15 again, to argue the Petition today.

16 THE COURT: No, we're not. I know and I felt like
17 I'm --

18 MS. MCCARTY: But, you know, when we do that --

19 THE COURT: Yeah, last night I was doing it.

20 MS. MCCARTY: -- we will certainly --

21 THE COURT: Okay. You tell me. I have never,
22 ever heard that an attorney who is trying to get a video
23 from an entity saying, well, we can look at it, eyes only,
24 and we can decide whether it's -- or we can look at it and
25 we can decide better to argue whether it's privileged, I

1 guess is kind of what you've said in your thing. We need -
2 - here's how I read it. I apologize for my voice. I hope
3 it doesn't -- it's irritating me.

4 How I read what you said is: Hey, we need to
5 prepare for the Petition and so we need to look at it so we
6 can better prepare our argument for the Petition.

7 MS. MCCARTY: That is absolutely --

8 THE COURT: Okay.

9 MS. MCCARTY: -- correct.

10 THE COURT: Now, you stood up and said to me I
11 must give it. What --

12 MS. MCCARTY: Correct.

13 THE COURT: -- case says that?

14 MS. MCCARTY: *Gibbons. Gibbons versus Reno*
15 *Newspapers.*

16 THE COURT: Oh, no -- okay. That --

17 MS. MCCARTY: It is 127 --

18 THE COURT: No. I read *Reno*. You -- it's -- I
19 read that case.

20 MS. MCCARTY: And what it says -- let me first
21 give you a broad --

22 THE COURT: Yeah. No. Help me with the quotes
23 because --

24 MS. MCCARTY: -- overview. All right.

25 First of all, when we do argue the Petition, we're

1 most certainly going to argue that 62H is inapplicable
2 here.

3 THE COURT: Of course. I get --

4 MS. MCCARTY: 62H is inapplicable --

5 THE COURT: -- all that because otherwise --

6 MS. MCCARTY: -- here because --

7 THE COURT: Yeah.

8 MS. MCCARTY: -- NRS 289.830, which is the body
9 cam statute, says without qualification, any record made by
10 a portable event recording device pursuant to this section
11 is a public record.

12 THE COURT: I'm not even going to argue --

13 MS. MCCARTY: Period.

14 THE COURT: Listen, I -- I've heard -- I've had
15 body cam footage in a lot of my criminal -- this isn't my
16 first round of body cam footage -- usually it's the DA --

17 MS. MCCARTY: Right.

18 THE COURT: -- to be very honest or the lady in-
19 house for Metro, not you, because it's usually not involved
20 civilly. Believe me, I've heard this statute. I've looked
21 at body cams -- a lot of body cams to decide whether
22 something is or is not privileged.

23 MS. MCCARTY: Okay.

24 THE COURT: It's usually under a sexual assault
25 where there's -- there are statutes on privilege. I agree.

1 If there's not a privilege then you -- it -- you know, it
2 is a public record. No question. But my -- what I'm
3 trying to figure out is the authority to say you -- I'm not
4 waiving their privilege by giving it to you. Because what
5 are you going to do with it? You're going to make the
6 determination whether it's privileged or not? Because I
7 think I'm supposed to do that.

8 MS. MCCARTY: Actually, --

9 THE COURT: So, --

10 MS. MCCARTY: -- because it says it must be both.

11 THE COURT: It must be what?

12 MS. MCCARTY: Both. You and I.

13 THE COURT: Oh, I did not read that case -- I've
14 never --

15 MS. MCCARTY: Okay.

16 THE COURT: -- heard of that. So, tell me where
17 it says --

18 MS. MCCARTY: Sure.

19 THE COURT: -- both in the case. I have the case.

20 MS. MCCARTY: Absolutely.

21 THE COURT: I know I pulled the case. Wallah.

22 MS. MCCARTY: If you can turn to --

23 THE COURT: Tell me where.

24 MS. MCCARTY: If you turn to page 7. I don't know
25 what your printout looks like but it would be --

1 THE COURT: My printout -- okay. Hold on just a
2 minute.

3 MS. MCCARTY: -- 883.

4 THE COURT: My printout is 127 Nevada 873.

5 MS. MCCARTY: Paragraph 6 begins --

6 THE COURT: Hold on. Paragraph 6. Okay. It's by
7 -- hold on. I'll find it. I read it three -- ah. Two,
8 three -- okay. Para -- in and of itself?

9 MS. MCCARTY: In and of itself, --

10 THE COURT: Correct.

11 MS. MCCARTY: -- an in-camera review is not
12 improper.

13 THE COURT: Right.

14 MS. MCCARTY: In parenthesis, in-camera review
15 reinforces the notion that the courts, rather than
16 government officials, are the final arbiter of what
17 qualifies as a public record. An in-camera review,
18 however is not a replacement for a log when a log is
19 necessary to preserve a fair adversarial proceeding.
20 It must be --

21 THE COURT: Correct. You haven't asked for an in-
22 camera log, which I think they would have a difficult time
23 -- on these body cams, logs usually apply when you have a
24 lot of records, you know, and they're trying to say there's
25 a privilege because I even starred where you -- I don't

1 know. I started what you were talking about because I
2 thought I'm not sure a log -- I don't even --

3 MS. MCCARTY: Well, --

4 THE COURT: -- think we could do a log and I
5 agree. I read it and it says a log doesn't necessarily
6 substitute for an in-camera review. My question is: What -
7 - I've looked at -- I have no problem. My thoughts were
8 I'll do an in-camera review. I've looked at more footage
9 than some days I would like to look at, but I totally agree
10 that that would be my job. I don't mind -- I mean, I have
11 no problem at all looking at -- but I'm not going to look
12 at 16 hours. Okay.

13 I assume, right, because there's a 16 hours
14 reference because they didn't -- the officer didn't turn
15 off the body cam. Because that happens sometimes. You
16 know, they're supposed to turn it off when an event -- no.
17 I don't know their policy.

18 MS. MCCARTY: That is their policy.

19 THE COURT: It is -- okay. It is my experience --
20 it is my experience, from the body cams that have come into
21 this courtroom that when an event is concluded that it is
22 turned off. Okay.

23 MS. MCCARTY: Correct.

24 THE COURT: Okay. I guess -- and I agree with you
25 on the log. I read that. I would -- I have never, ever,

1 and that's my -- had any attorney from opposing side ask to
2 review a privileged -- what the other side is claiming a
3 privilege. I want to be careful. I'm not -- I haven't
4 real -- I mean, the in-camera review, I get. I'm a little
5 -- the basis to say that you should be able -- an attorney
6 for your side should be able to be it is what kind of --
7 I'm not used to or I've never seen.

8 MS. MCCARTY: I think perhaps -- let me try to
9 reorient you. Rather than thinking of this as a criminal
10 matter, --

11 THE COURT: It's not. It's the same issue though.

12 MS. MCCARTY: -- this is a civil matter.

13 No. but it's not. I mean, essentially, my
14 opinion --

15 THE COURT: Wait a minute. A body cam, whether it
16 is or is not privileged, how is it different for a criminal
17 case than a civil case?

18 MS. MCCARTY: Because in a civil case,
19 effectively, if I am not allowed to see this video, I will
20 be coming into argue on the 17th on what is essentially a
21 dispositive motion not having seen any of the evidence.

22 THE COURT: All --

23 MS. MCCARTY: And that is not what our rules
24 provide for, that is not what --

25 THE COURT: Well, --

1 MS. MCCARTY: -- *Gibbons* provides for. *Gibbons*
2 stands for --

3 THE COURT: No. Under NRCP -- I mean, you can
4 either get a privilege log or as for in-camera. I have
5 never seen a Discovery Commissioner or myself in a civil
6 matter, if they're -- if the other side is claiming a
7 privilege, they're -- I've seen the log or asking for the -
8 - an in-camera review. I've -- I don't see -- and maybe
9 I'm wrong. I don't know. I've never seen -- I have not
10 treated it differently whether it's a civil matter or -- I
11 mean, I understand whether it's a civil or criminal matter
12 a privilege is a privilege. Now, I agree, many times in
13 the criminal situation, they don't want to do a log. They
14 just want the Judge to look, honestly, because those cases
15 -- well, yours is a little bit that way, it goes very
16 quickly. I mean, there's more that -- which is why I took
17 your Motion. More of a sense of urgent -- sorry. More of
18 a sense of urgency to get the documents. As, in civil, as
19 you and I know, they'll fight for months over what the
20 privilege log says. Right? Not disparaging any civil
21 attorneys, but they will. I used to do it, too.

22 MS. MCCARTY: Your Honor, --

23 THE COURT: Okay. Okay. But I --

24 MS. MCCARTY: -- *Gibbons* doesn't stand for the
25 proposition that a log must be provided. *Gibbons* stands

1 for the proposition that a disclosure must be provided that
2 allows for adequate adversarial testing. *Gibbons* case was
3 about a log, but that's not --

4 THE COURT: No. I know.

5 MS. MCCARTY: -- what the decision is. The
6 decision is --

7 THE COURT: I agree.

8 MS. MCCARTY: -- that they have to have adequate,
9 adversarial testing. It says: --

10 THE COURT: Adequate --

11 MS. MCCARTY: -- In view of the emphasis placed
12 on the --

13 THE COURT: Where are you? Let me -- because I
14 have it in front of me.

15 MS. MCCARTY: I'm sorry. Absolutely. I'm at --

16 THE COURT: I'm sorry. I wrote --

17 MS. MCCARTY: -- 882, the paragraph that begins:
18 In view of.

19 THE COURT: Okay. I can't look at the pages --
20 okay. What are you -- are you still on paragraph 6?

21 MS. MCCARTY: No. I'm back -- would be --
22 paragraph 4.

23 THE COURT: Okay.

24 MS. MCCARTY: Yes. 4.

25 THE COURT: 4 and 5? All right. In front of that

1 is in view of the emphasis.

2 MS. MCCARTY: That's the -- yes. That's the one.

3 THE COURT: Okay. I've got it.

4 MS. MCCARTY: In view of the emphasis placed on
5 disclosure and the importance of testing claims of
6 confidentiality in an adversarial setting, we agree
7 with the Vaughn court that it is anomalous and
8 inequitable to deny the requesting party basic
9 information about the withheld records, thereby
10 relegating it to advocating from a nebulous position
11 where it is powerless to contest a claim of
12 confidentiality.

13 Furthermore, requiring a requesting party to
14 blindly argue for a disclosure, not only runs contrary
15 to the spirit to the Nevada Public Records Act and our
16 NRPA jurisprudence, but it seriously distorts the
17 traditional adversary nature of our legal system's form
18 dispute resolution.

19 THE COURT: Okay. And then keep reading.

20 MS. MCCARTY: In such a claim, the records are
21 confidential and can only be tested in a fair and
22 adversarial manner, and in order to truly proceed in
23 such a fashion, a log typically must be provided by the
24 requesting party.

25 THE COURT: Not an in-camera review by the

1 adversarial side, but a log.

2 MS. MCCARTY: *Gibbons* was a valid log, but it
3 doesn't stand for the proposition that you only get a log.
4 It stands for the proposition that --

5 THE COURT: I'm not --

6 MS. MCCARTY: -- you get the information you need
7 to make an argument. There is no log here that's going to
8 provide me the information I need to make an argument.

9 THE COURT: And I agree with you there because I
10 tried to figure out -- if -- a way, in fairness, to both --
11 if I can do a log. I cannot -- I could not come up with a
12 way that -- and I actually looked at cases on when they do
13 or do not provide a log and I -- I'm not going to disagree
14 with you there. I could not think of a way to do a log
15 that would provide the information. I agree with you
16 there.

17 MS. MCCARTY: And, Your Honor, I'm an Officer of
18 the Court. I understand what my ethical obligations are
19 and I'm asking to view this video for the sole purposes of
20 being able to have adequate adversarial testing. Metro
21 doesn't get to come in and say: We have 16 hours of video
22 that's confidential and even though the Nevada Public
23 Records Act requires us to redact, if you were to find that
24 16H applies, which it does not, we say it's confidential,
25 we say it all involves juveniles, too bad, so sad, you

1 lose. That's not fair. That's not what the Nevada Public
2 Records Act requires.

3 THE COURT: Okay.

4 MS. NICHOLS: Thank you.

5 THE COURT: What about if I do the in-camera
6 review?

7 MS. MCCARTY: I think *Gibbons* is clear it must be
8 both.

9 THE COURT: Okay.

10 MS. NICHOLS: Thank you, Your Honor.

11 THE COURT: Thank you. That's an interesting
12 argument. Now, I've heard that one before.

13 MS. NICHOLS: In going back to the *Gibbons* case,
14 if you -- I don't have it in front of me and so --

15 THE COURT: I do, but if --

16 MS. NICHOLS: -- I'm going to kind of summarize
17 it.

18 But, in essence, when you're talking about the
19 privilege log, first, the government entity was afforded
20 the opportunity to make its case before they even got to
21 the privilege log.

22 THE COURT: No. I know. She's smart -- but my
23 thought is she's -- I get that. But I think this is a --
24 the reason I review -- I think it's fair we're just -- she
25 -- and I get it. The plaintiff wants to make sure that

1 when they do have the Petition, that they have the most
2 information. Because what happens on some of this, and
3 I'll be honest, you argue it, and then I do an in-camera
4 review. I'm going to be very honest and I looked at this
5 after I looked at her ex parte and the case law thinking
6 that she was just -- that the plaintiffs were trying to get
7 one step ahead. I'll be honest. And I don't find fault
8 with that, to be very honest. I don't. So, I don't -- I
9 thought it was ripe to argue. Okay. I'm not -- not the
10 whole privilege, but ripe to argue what remedy, if
11 anything, is available for them to be prepared for the
12 Petition on October 17th. That's how I looked at it.

13 MS. NICHOLS: Sure.

14 THE COURT: Hopefully. And that's how you want
15 it. That's what *Reno* --

16 MS. MCCARTY: Right. We're just asking for a
17 level playing field.

18 THE COURT: No. I --

19 MS. MCCARTY: They know the information. WE do
20 not.

21 THE COURT: I know that.

22 MS. MCCARTY: And I can't dispute their argument
23 without it.

24 THE COURT: Okay. And I --

25 MS. NICHOLS: Your Honor, this case --

1 THE COURT: I understand that.

2 MS. NICHOLS: -- is about juvenile records. And
3 while they want to say that it's about Senator Ford, the
4 request was not for body cam footage pertaining to Senator
5 Ford. If you look at the request, it was for body worn
6 camera footage --

7 THE COURT: Do I have the request as any part of
8 exhibits here?

9 MS. NICHOLS: It's related --

10 MS. MCCARTY: Request Number 4 --

11 THE COURT: Okay. Hold on. It's -- she gets to
12 speak. I'm sorry.

13 MS. MCCARTY: I'm sorry. My apologies.

14 THE COURT: I tried to be fair to you. I'm --

15 MS. MCCARTY: My apologies, Your Honor.

16 THE COURT: Yeah. I -- just if you're -- if you
17 have an exhibit, I'd like to look at it so I can follow it.

18 MS. NICHOLS: It's part of the initial Petition,
19 Your Honor.

20 THE COURT: Okay. Well, I -- once again, I'm not
21 here to do the Petition.

22 MS. NICHOLS: I understand.

23 THE COURT: Okay.

24 MS. NICHOLS: But the --

25 THE COURT: Okay. So what's the -- let me ask

1 this because I -- did you give -- did -- in the request,
2 did you in any way modify it or say the sections of the
3 body cam that we feel are privileged dealing because of the
4 content is concerning juveniles and under the statute is
5 there any of what they asked that you did offer to produce
6 that just has Aaron Ford -- and I don't know. I haven't
7 seen it. So I'm not -- I'm just -- I'm giving a
8 hypothetical --

9 MS. NICHOLS: No, Your Honor --

10 THE COURT: -- okay so don't --

11 MS. NICHOLS: No, Your Honor, but --

12 THE COURT: -- anyone think I've seen it or
13 something, but Aaron Ford has footage talking separately to
14 the police officer saying, yes, this -- I don't know. I
15 don't know anything about this. Okay? So, yes, this is my
16 house or anything like that. Was that -- it -- if
17 something like that is on -- let me ask this. Would that
18 have been considered, in your viewpoint, concerning a
19 juvenile and you didn't produce it? Okay. Or not? I --

20 MS. NICHOLS: It --

21 THE COURT: -- couldn't tell by reading --

22 MS. NICHOLS: Yes, because it would be concerning
23 --

24 THE COURT: Okay.

25 MS. NICHOLS: -- the juvenile incident.

1 THE COURT: Okay.

2 MS. NICHOLS: The incident that's at issue
3 involves three juveniles. And, so, any information related
4 to that specific incident that's contained in the body cam
5 footage would be confidential.

6 THE COURT: Okay.

7 MS. NICHOLS: And now --

8 THE COURT: Okay.

9 MS. NICHOLS: -- there is 16 hours, but, as I had
10 mentioned in my e-mail to counsel, the full 16 hours is not
11 relevant to the specific --

12 THE COURT: Okay. How --

13 MS. NICHOLS: -- request.

14 THE COURT: -- much is?

15 MS. NICHOLS: I have not had a chance -- I'm in
16 the process of obtaining a declaration from an officer
17 detailing the videos, which is why we believe that this --
18 an in-camera review is not proper yet because we get the
19 chance to meet our burden and with --

20 THE COURT: Haven't they been asking you for this
21 since May or something? I mean, I did it -- just, hold on
22 just a minute. You can answer. I tried to do a timeline.
23 Haven't you -- because I'm looking: Why is this coming, no
24 offense, to me, the last minute, time sensitive, which I
25 look at order shortening time because, you know, everything

1 seems to be a catastrophe at times and I get it. That's
2 why I did do it. Have they not been asking since around
3 May or am I misinterpret -- I --

4 MS. MCCARTY: It's December, Your Honor. We've
5 been almost a year.

6 THE COURT: Last December? Last -- there's only
7 been on December. Right? That's December of 2017. It's a
8 long week. Okay. All right. So, then, your argument to
9 me is: Well, we haven't had time to look at the footage or
10 review it and you don't think an in-camera is fair because
11 you're not ready for the judge to do an in-camera?

12 MS. NICHOLS: No, Your Honor. That's not it.

13 THE COURT: Okay. Okay.

14 MS. NICHOLS: We were retained as counsel once the
15 Petition was filed.

16 THE COURT: Oh.

17 MS. NICHOLS: The Department has reviewed and they
18 --

19 THE COURT: There you go.

20 MS. NICHOLS: And they do note, which is why I am
21 getting the declaration from the officer who has reviewed
22 the body cam footage, and it's our position that the body
23 cam footage related to the juvenile incident is completely
24 confidential.

25 THE COURT: I've gotten it. I -- I'm -- I get

1 your side and I get your side. I'm just trying --

2 MS. NICHOLS: So, --

3 THE COURT: -- to figure out if -- and I
4 understand. Unfortunately, your client is Las Vegas
5 Metropolitan Police Department. So, actions they did prior
6 to retaining you, you -- that's part of what you --

7 MS. NICHOLS: I understand.

8 THE COURT: -- have obligated to do when you --
9 not obligated, but that's part of when you get a case.
10 Okay? So, I just -- I get it. I understand that. I'm not
11 finding fault with your firm or anything. Okay. I don't
12 want you to think that you --

13 MS. NICHOLS: No, Your Honor.

14 THE COURT: In May, you guys sat on it because I
15 get this is a civil case and we hear them. I'm not doing
16 that at all. I'm just trying to figure out what the -- you
17 know, if Metro -- if Las Vegas Metropolitan Police
18 Department -- did they work -- I'm sorry. I can't think of
19 the lady's name. She was in here all the time. Who's
20 their in-house. Did you look --

21 MS. NICHOLS: Charlotte Bible, Ruth Miller, Lisa
22 Freidman, Martina --

23 THE COURT: No. Martina -- her. Right. What's
24 her last name?

25 MS. NICHOLS: Geinzer.

1 THE COURT: Yes. Martina. Okay. So, Ms.
2 McCarty, were you working with someone like Martina Geinzer
3 or someone within Metro's Legal Department before it went
4 to Marquis Aurbach?

5 MS. MCCARTY: The chain of events, Your Honor, --

6 THE COURT: Okay. Just to help me on the timing.

7 MS. MCCARTY: Sure. The chain of the events,
8 based on the records, as I understand, is this.

9 THE COURT: Okay.

10 MS. MCCARTY: In December of '17, my client asked
11 for audio and video footage of Senator Ford, related to
12 this incident.

13 THE COURT: Okay. Like in a subpoena, a --

14 MS. MCCARTY: In a written public records request.

15 THE COURT: A written. Okay. Okay. That's fine.

16 MS. MCCARTY: At that time, Metro came back and
17 said: We don't have enough information. You need to give
18 us some additional information.

19 THE COURT: Okay. Okay.

20 MS. MCCARTY: Additional information was provided
21 in the second records request and my client asked for
22 records pertaining to Senator Ford and/or a minor child
23 because it wasn't sure how Metro was categorizing and
24 filing the records. So they asked for both to ensure that
25 they got what they needed.

1 THE COURT: When was that?

2 MS. MCCARTY: At that time, --

3 THE COURT: When was the second records request
4 timing wise?

5 MS. MCCARTY: I've got it right here, Your Honor.

6 [Pause in proceedings]

7 MS. MCCARTY: Actually, I'm sorry, Your Honor. I
8 don't have that with me.

9 THE COURT: That's fine. I a, -- it just -- it
10 impacts what I'm doing. I'm trying to figure out the time
11 thing and I --

12 MS. MCCARTY: I thought I had it. Oh, right here.
13 Oh, yes. I do. I'm sorry.

14 So, on 12/5 of '17, the first request was made.

15 THE COURT: I -- okay.

16 MS. MCCARTY: They came back a month later. So,
17 untimely response. And said: We need more information.

18 On March -- I'm sorry. One -- so, it was denied
19 on 12/14, asking for more info. On 1/25/28, so January, we
20 made the second request.

21 THE COURT: 1/25. Okay.

22 MS. MCCARTY: Wherein we asked for the footage and
23 some additional police records related to the incident for
24 either Senator Ford and/or the juvenile.

25 THE COURT: Juvenile.

1 MS. MCCARTY: Again, unclear as to how Metro would
2 be categorizing and filing that information. That was
3 denied on 2/6. Again, untimely. And, at that point, the
4 reason for the denial was that it was an open and active
5 criminal investigation, which, as I'm sure this Court is
6 aware, is not a basis to deny a public records request.

7 RAGA said: Okay. Fine. We'll keep checking back
8 and when the investigation is closed, we would like the
9 records.

10 THE COURT: Okay.

11 MS. MCCARTY: So they came back on March 19th of
12 2018 with the third records request, again, asking for the
13 same information from the second. On May 15th, again,
14 untimely. They came back and changed their position and
15 said: Now, you can't have it because it implicates
16 juvenile suspects or juveniles arrested and, therefore,
17 it's confidential under 62H. On 5/17, so immediately
18 thereafter, RAGA wrote a fourth request further clarifying
19 that all it was looking for was the records relating to
20 Senator Ford.

21 THE COURT: All records related to -- so they took
22 off the juvenile --

23 MS. MCCARTY: Correct.

24 THE COURT: -- to Aaron Ford. Okay.

25 MS. MCCARTY: And explained that they were not

1 looking for any records that were implicated by 62H. The
2 entire purpose of the public records request is that
3 Senator Ford is running for the office of Attorney General.

4 THE COURT: I'm aware of that.

5 MS. MCCARTY: And it's RAGA's position that the
6 public has a right to know whether or not he interfered
7 with a law enforcement activity. And, so, they made it as
8 clear as they could, hoping to --

9 THE COURT: Okay. So, what was the response to
10 that when they then limited the fourth request to in -- the
11 body cam footage regarding Aaron Ford? What -- the --

12 MS. MCCARTY: So, on 6/15. Again, untimely. They
13 came back and the response didn't even make any sense,
14 which --

15 THE COURT: Okay. Just let me have it.

16 MS. MCCARTY: Sure.

17 THE COURT: I could --

18 MS. MCCARTY: It says: Your request to view or
19 obtain the body cam is denied. Any documents involving the
20 arrest of juveniles is confidential and., therefore, you
21 should withdraw your request -- you should direct your
22 request to the juvenile court.

23 But the other thing they said is they didn't agree
24 with our broad interpretation of 62H and we, of course, are
25 arguing for the most limited --

1 THE COURT: Well, that's why you're here.
2 MS. MCCARTY: Yes.
3 THE COURT: I --
4 MS. MCCARTY: Interpretation.
5 THE COURT: I've got that. I see why you're here.
6 MS. MCCARTY: But we don't know why the --
7 THE COURT: Okay.
8 MS. MCCARTY: -- change in position, it was never
9 explained, and it is certainly --
10 THE COURT: Okay.
11 MS. MCCARTY: -- untimely.
12 THE COURT: Okay.
13 MS. MCCARTY: One more piece of information if
14 you'll indulge me.
15 THE COURT: No. Okay.
16 MS. MCCARTY: After we filed the lawsuit, Senator
17 Ford's campaign made public statements to the media and, in
18 those statements, Senator Ford's campaign said that he was
19 called to the scene, as were all the parents of these
20 juveniles, so that the matter could be resolved informally,
21 which suggests that there were no arrests, which is why we
22 have questions as to whether 62H was even implicated.
23 Metro is now saying there were arrests. Okay. Fine. But
24 that's part of our confusion is we have two different
25 reasons for denial and then we have conflicting information

1 from Senator Ford's campaign.

2 THE COURT: So you're saying that's why -- that's
3 part of the reason that -- looking at their position now,
4 you've had conflicting positions. I get that. All right.
5 All right.

6 MS. NICHOLS: Your Honor, just to clarify for the
7 record that the petitioners knew since May of 2018 that the
8 juveniles were arrested. That's what our response to them
9 was and why 62H applied was because they were, in fact,
10 arrested. Now, even though Ford -- Senator Ford's campaign
11 comes in and says something different, that doesn't mean
12 that now all of a sudden they weren't arrested. What
13 Senator Ford says in his camp --

14 THE COURT: No. I don't think it impacts that. I
15 agree.

16 MS. NICHOLS: In his campaign is completely
17 different. And, now, attached to our response was a
18 declaration from the officer that the juveniles in this
19 incident were, in fact, arrested. So there's no dispute
20 here that they were arrested.

21 If they are looking for records that pertain to
22 Senator Ford, the Department doesn't have records
23 responsive to their request because the incident did not
24 involve Senator Ford. It involved the juveniles.

25 THE COURT: Well, wait a minute. Just to say

1 whether Senator Ford is or is not on the body cam, to say
2 it didn't involve, that makes no -- I mean, I don't know
3 what that means. I'll be very honest. That's not --

4 MS. NICHOLS: Just for clarification --

5 THE COURT: I'm not going to -- I don't think I --
6 I see body cam footage all the time that doesn't involve
7 the defendant, but there's other issues that may come up,
8 whether they got certain rights and stuff. Okay. So, --

9 MS. NICHOLS: And I understand.

10 THE COURT: Okay.

11 MS. NICHOLS: And for clarification, Your Honor, -
12 -

13 THE COURT: Okay.

14 MS. NICHOLS: -- the way that the Department
15 categorizes the body cam footage is related to the specific
16 incident. It's not --

17 THE COURT: I have that. They have an event
18 number and everything goes into that event number.

19 MS. NICHOLS: Exactly.

20 THE COURT: That I am extremely familiar with.
21 I've had more testimony on -- and I get why -- it's
22 perfect. That doesn't necessarily mean for privilege
23 purposes that everything within that evidence, which it
24 should be. It all goes to an event number because that's
25 why they gather the evidence because then it's related --

1 everything. I understand that completely. I am very
2 familiar with the event numbers and that's how Metro does
3 it. I understand that.

4 What I am most concerned is now you're saying to
5 me, well, you know, we're sitting here October 5th. Right?
6 Okay. October 5th. I do want to do an in-camera review but
7 you're kind of saying: Well, we don't know what's there or
8 we're still working with our client. That is of great
9 concern to the Court because they -- I do -- I've read *Reno*
10 and I -- anything -- I understand what they're saying and I
11 understand, you know, it's almost -- and I don't mean this
12 ugly, but, you know, like trust me. And I don't mean that
13 ugly. Not you personally, but the client. You know, trust
14 what I'm saying, which is hence why cases like *Reno*, why I
15 -- you know, like if we can't do a privilege log. That's
16 our first go to. I -- do you agree? I can't think of a
17 way to possibly do a privilege log that would make any
18 sense on a body cam, at least for my experiences looking at
19 body cam because they're just random, wherever the police
20 officer happens to be pointed -- looking, because it's
21 right here. So, it only goes to where the police officer's
22 body is looking. And I assume there is an audio.
23 Sometimes they don't put the audio on. I don't know if
24 they did or not on this one.

25 MS. NICHOLS: There are -- there is audio.

1 THE COURT: There's audio. Okay. Because
2 sometimes I've seen it where they don't hit the audio, too,
3 because, you know, every -- it's not an easy situation with
4 the body cams. I mean, there's a lot of things that
5 happen. Okay.

6 My biggest concern is if you can't say to me that
7 your client is ready -- I'm not looking at 16 hours. So
8 they have to know, even though it's under that event
9 number, what is or is not related to the actual event.

10 MS. NICHOLS: That's correct, Your Honor.

11 THE COURT: Correct? Okay. So, do you have any
12 feel -- how much information that is?

13 MS. NICHOLS: I do not --

14 THE COURT: Okay. Because I'm --

15 MS. NICHOLS: -- personally know that but I do
16 know that my client knows that.

17 THE COURT: Okay. Well, so here's what I'm going
18 to do. I'm going to rule that I'm going to do an in-camera
19 review under the *Reno Newspaper versus Gibbons* case to look
20 at the footage and I want all of it. Okay? I want what
21 you say is privileged. Everything that is related to this
22 event. I don't want any of the 16 hours that's not. Don't
23 overwhelm me with footage that's not applicable. Okay?

24 Yes?

25 MS. MCCARTY: Your Honor, I do not see how that

1 provides me the information I need to make an argument on
2 the 17th. Metro's counsel is standing here making --

3 THE COURT: Well, it certainly provides me with
4 the information to understand their viewpoint. You --

5 MS. MCCARTY: But how am I supposed to defend
6 against their position if I do not know what's on the tape?
7 They haven't even seen it and they're making
8 representations to you --

9 THE COURT: Oh, don't yell. Don't yell. Don't
10 yell. Don't don't don't do that in this courtroom. I'm
11 not putting up with this. This is not appropriate
12 behavior.

13 MS. MCCARTY: Sure.

14 THE COURT: I will be able to know. I'm the one
15 that has to make the decision whether it's privileged or
16 not. You can give me the information you have as to why
17 you don't think the privilege applies. I can look at the
18 video and listen to your fact -- your argument as to why
19 you think I can listen to their argument and why it is and
20 I can make the decision. I'm very comfortable with that.
21 I've -- and that's what I'm doing.

22 What I am requiring is that you give me the video
23 because these general statements of, well, it generally
24 includes juveniles, or because it's under an event number
25 that includes juveniles -- I haven't looked at the statute,

1 but that's extremely broad. Your answer is: We don't want
2 anything that -- you know, that involves juveniles. You've
3 said it in your papers. Because you can't get it. You
4 cannot give it under the privilege. But if there's
5 information that includes Aaron Ford -- I mean, I know what
6 you're looking -- I'm educated. I mean, I have been
7 educated on your papers. I do understand why you want this
8 information and if it's not privileged, why you are
9 entitled to it. If it's privileged, you're not. I need to
10 look at it.

11 I know both sides -- so, my concern is when can
12 you get it to me because I'm not -- the hearing is the 17th.
13 And I -- once again, don't give me 16 hours. So I'm not
14 going to be buried in things that I have -- as you know, I
15 ethically do my duty, but I can't look through 16 hours, in
16 fairness. So I'm looking to you to make sure what you're
17 giving me is tailored to what the plaintiffs are asking
18 for. All right? We're all on the same page on that?

19 MS. NICHOLS: Yes, Your Honor.

20 THE COURT: Okay. It's not like I'm an attorney
21 out there and you're getting -- you know, I just had a case
22 where --

23 MS. NICHOLS: So, --

24 THE COURT: -- they gave 1,000 documents and maybe
25 two in the whole 1,000 were relevant to the request. I

1 can't do that.

2 MS. NICHOLS: So, what I propose to do, Your
3 Honor, is contact my client after this hearing and I can
4 then either send a letter or contact your JEA along with
5 opposing counsel and let you know and how quick we get it
6 to you.

7 THE COURT: Well, --

8 MS. NICHOLS: By this afternoon I can have an
9 answer for you.

10 THE COURT: Okay. I'm trying to think if you guys
11 want to come back Tues -- what's on Tuesday? I'm just -- I
12 always -- I get concerned when people start doing e-mails
13 and I have time constraints. I'm not real comfortable how
14 this e-mail has already gone in this case. So, let's do
15 this. Please do that.

16 [Colloquy at the bench]

17 THE COURT: Hold on. Let me just look at my
18 calendar.

19 [Colloquy at the bench]

20 THE COURT: Let me look -- this courtroom is being
21 updated for JAVS next week. So I can't use it. So I've
22 been requesting other courtrooms. So, I don't think we can
23 get one Wednesday. Right? I can't -- hold on just a
24 minute.

25 [Colloquy at the bench]

1 THE COURT: Hold on a minute. I'm sorry. Work
2 with me. They don't make it easy. Because I've set you on
3 the 17th, this Wednesday.

4 [Colloquy at the bench]

5 THE COURT: Well, if I set you, I want to tell you
6 what courtroom I'm in.

7 MS. MCCARTY: Well, yes.

8 THE COURT: It would help. Right? Would that
9 help?

10 MS. MCCARTY: That would.

11 [Colloquy at the bench]

12 THE COURT: Hold on and I'll tell you how I want
13 to work this the best I can. All right. We're pretty sure
14 it's 11C. Right, Liz?

15 THE JUDICIAL EXECUTIVE ASSISTANT: Yes.

16 THE COURT: All right. Okay. Okay. Here's what
17 I'm going to do. 11C. Right? Thanks.

18 I don't know who that is. 11C. Do you --
19 Department --

20 THE CLERK: Department 21.

21 THE COURT: Department 21, 11C. Just find 11C.
22 Go to the 11th floor. I'm 12D. So, it's to the right on
23 11.

24 So, what I'm going to do for next Tuesday, which
25 is October 9th, I'm going to order that we come back on a

1 status check. At that time, I'm expecting to be able to
2 review video that you are asserting is relevant to this
3 case and relevant to their request is available in some
4 kind of capacity so I can review it for the 17th hearing.
5 If it's not, I need a due diligence or a good faith reason
6 why your client can't do that. Okay?

7 MS. NICHOLS: Yes, Your Honor.

8 THE COURT: Because that's the only fair way for
9 me to look at it and be ready for the 17th because I don't
10 want to continue that. And that's why I did this. So,
11 we'll set it -- I don't know what else is on but I'll --
12 for October 9th in Department 4 but I'm going to be in
13 courtroom 11C. So don't get confused. Okay?

14 MS. NICHOLS: And at what time, Your Honor?

15 THE COURT: 9 o'clock.

16 And what I'll do -- what I try to do -- I don't
17 know how long that calendar is. If yours is a little bit
18 quicker, what I do with my marshal and my law clerk, I
19 don't go by how you are on your calendar page. I go by how
20 quickly I feel I can handle your argument or, you know, if
21 something's a big, long, you know, we had a three-hour one
22 yesterday on a summary judgment, I make sure I'm as
23 efficient as I can for you guys, too, that I do it in that
24 order. So just because I'm now putting you the last on the
25 calendar doesn't -- that does not mean that at all. Okay.

1 I try very much to be efficient that way.

2 MS. MCCARTY: And, Your Honor, just for the sake
3 of clarification, --

4 THE COURT: Sure.

5 MS. MCCARTY: -- so will you be viewing the video
6 from this entire event? I'm --

7 THE COURT: I am going to view what -- I don't
8 know what you mean by entire event. What I said to them I
9 want to review everything that is under the request, which
10 includes Aaron Ford in it and anything related to this
11 event. The event number and what's gone under that, not
12 because it happens to be on it. And I know Metro knows the
13 difference on that.

14 MS. NICHOLS: Yes, Your Honor.

15 THE COURT: Trust me they do because they know the
16 difference. Okay? So, that's what I need to review.

17 MS. NICHOLS: Understood, Your Honor.

18 THE COURT: Okay. Not even the juvenile -- what
19 they -- they're saying they whole thing is privileged.
20 Okay? I -- at least -- right?

21 MS. NICHOLS: To the -- that depicts the actual
22 event, yes. The -- there's hours beforehand, those --
23 that's not related.

24 THE COURT: Okay. Well --

25 MS. NICHOLS: And that's the hours that you don't

1 want.

2 THE COURT: I don't want to view that. I don't
3 want to review --

4 MS. NICHOLS: Yes, Your Honor.

5 THE COURT: -- anything that's not relevant.

6 MS. NICHOLS: Yes, Your Honor.

7 THE COURT: It would not help the plaintiff and it
8 will certainly will --

9 MS. NICHOLS: I understand, Your Honor.

10 THE COURT: I'm plenty busy. I have no problem
11 reviewing what's relevant.

12 So, everything that has to do with this event
13 number that's relevant to this event number.

14 MS. NICHOLS: Yes.

15 THE COURT: Which would -- so -- which, Ms.
16 McCarty, that actually gives me the whole range, which I
17 need, not just -- since I kind of thought it might be
18 piecemealed, they're going to give you some of Aaron Ford,
19 but if their position is broad, that even makes me more
20 want to do an in-camera review to do a fair ruling on this.
21 So, prefect. Okay?

22 So I'll see you back here 9 o'clock. Don't
23 forget. 11C. Make sure whoever you need to -- I mean,
24 because somebody may look it up in your office and they go
25 -- you know, maybe we could put a sign out there, too.

1 We'll do that. If for some reason somebody forgets in your
2 office or somebody else comes, we'll put a sign out here
3 where I am those days. Okay? Because I'm in three
4 different courtrooms.

5 MS. NICHOLS: Thank you, Your Honor.

6 THE COURT: All right. You're welcome.

7 MS. MCCARTY: Thank you.

8 THE COURT: So really what I'm going to do is I'm
9 going to continue this hearing until then. Right now I
10 need further information to do my in-camera review, but
11 I'll continue the hearing in case something comes then that
12 changes my perception on what I should do on this because
13 in case -- do you know where I'm going with this? In case
14 I -- I think he knows where I'm going with it. In case I'm
15 not getting what I need to do an in-camera review, then
16 we've got to figure -- then I may have to do another
17 ruling. So, let's do it that way.

18 And I'm not calling it a tentative ruling, but I
19 need that piece of information to rule what I think is
20 appropriate. I think I've clarified that. Like, you're
21 right, sometimes when I try to clarify it, I'm going -- but
22 as long -- you understand where I'm going -- your client.

23 MS. NICHOLS: Yes, Your Honor.

24 THE COURT: Okay. Because that's the most
25 important. All right. Thank you. You guys have a good

1 weekend.

2 MR. CROSBY: Thank you, Your Honor. You as well.

3 MS. MCCARTY: You too.

4 THE COURT: You too. See you in 11C

5

6 PROCEEDING CONCLUDED AT 9:42 A.M.

7 * * * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

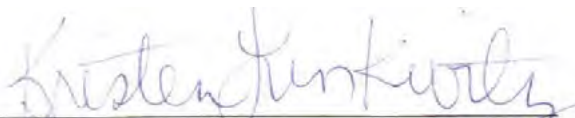
14

15

16

17

18

19 

20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

22

23

24

25

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Mandamus

COURT MINUTES

October 05, 2018

A-18-780538-W Republican Attorneys General Association, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

October 05, 2018 09:00 AM OST

HEARD BY: Earley, Kerry COURTROOM: RJC Courtroom 12D

COURT CLERK: Vargas, Elizabeth

RECORDER: Nichols, Sharon

REPORTER:

PARTIES PRESENT:

Colleen E. McCarty Attorney for Plaintiff

Deanna Forbush Attorney for Plaintiff

JOURNAL ENTRIES

Jackie Nichols, Esq. and Nick Crosby, Esq. present on behalf of Defendant. Court noted it reviewed all documents. Ms. McCarty requested an order for an attorney's eyes-only viewing of the video and records involving Senator Aaron Ford pursuant to case law. Ms. Nichols argued the body camera video footage pertains to a juvenile incident and was privileged. Court noted the interpretation of the request, and inquired what case states the Court must give counsel the video. Ms. McCarty provided and discussed case law. Court stated case law provided for a body camera log, not an in camera review. Arguments by counsel regarding the records request and case law. COURT ORDERED, Court to conduct an in camera review the video footage related to this event to determine if the footage was privileged or not; Defendant to produce all video footage pertaining to the event. COURT FURTHER ORDERED, matter CONTINUED.