

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Electronically Filed
Jul 02 2019 10:43 a.m.

Supreme Court Case No.: 78967
District Court Case No.: A-18-775378
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department 15
County Clark: Judge Honorable Joe Hardy
District Ct. Case No.: A-18-775378-W

2. **Attorney filing this docketing statement:**

Attorneys: Nick D. Crosby, Esq.; Jackie V. Nichols, Esq.
Telephone: 702-382-0711
Firm: Marquis Aurbach Coffing
Address: 10001 Park Run Drive, Las Vegas, Nevada 89145
Client: Las Vegas Metropolitan Police Department

3. **Attorneys representing respondents:**

Attorneys: Margaret McLetchie, Esq.
Telephone: 702-728-5300
Firm: McLetchie Law
Address: 701 E. Bridger Avenue, Suite 520, Las Vegas, Nevada 89101
Clients: Las Vegas Review-Journal

4. **Nature of disposition below (check all that apply):**

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify) |
- NRCP 54(b) Certification of the District Court's April 12, 2019 Order, granting, in part, Respondents' Petition for Writ of Mandamus Pursuant to Nevada's Public Records Act

5. **Does this appeal raise issues concerning any of the following:** N/A.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

LVMPD previously submitted a Petition for Writ of Mandamus or Prohibition, Case Name: Las Vegas Metropolitan Police Department v. The Eighth Judicial District Court of the State of Nevada, et al.; Docket No. 76848.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

The remaining issues of the Las Vegas Review-Journal's Petition for Writ of Mandamus Pursuant NRS 239.011 remains with the District Court, Case No. A-18-775378-W.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

This appeal involves the Las Vegas Review-Journal's ("LVRJ") Petition for Writ of Mandamus pursuant to NRS 239.011, under the Nevada Public Records Act. In particular, LVRJ sought access to officer names, badge numbers and unit assignments for a 3-year period. LVMPD produced officer names and badge numbers but determined that the unit assignments weighed in favor of non-disclosure and implicated privacy interests. The District Court ordered LVMPD to produce patrol officer unit assignments for the requested 3-year period.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Whether the District Court erred in requiring LVMPD to disclose the unit assignments of patrol officers for calendar years 2014, 2015, and 2016;
- (2) Whether the District Court erred in applying the *Donrey* balancing test in determining that LVMPD must disclose the unit assignments of patrol officers for calendar years 2014, 2015, and 2016; and

(3) Whether the District Court erred in applying the *CCSD* balancing test regarding privacy interests in determining that LVMPD must disclose the unit assignments of patrol officers for calendar years 2014, 2015, and 2016.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal presents important questions of public policy and a substantial issue of first impression regarding the Nevada Public Records Act. This case involves the disclosure of patrol officer unit assignments which implicate officer safety and privacy interests of officers.

13. **Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or

circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(13) as it raises, as a principal issue, a question of first impression involving the Nevada Public Records Act and issues of officer safety. This matter is also subject to retention by the Supreme Court under NRAP 17(a)(14) as this cases involves matters raising principal issues of statewide public importance.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A
Was it a bench or jury trial? N/A

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:** The District Court's partial granting of the Las Vegas Review-Journal's Petition for Writ of Mandamus as it relates to the production of unit assignments of patrol officers was entered on April 12, 2019. LVMPD then moved for NRCP 54(b) certification, which was granted and entered on May 29, 2019.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order was served.** Notice of Entry of NRCP 54(b) Certification was served on May 30, 2019.

Was service by: For the Order, service was effectuated by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

N/A.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCP 50(b) Date of filing
☐ NRCP 52(b) Date of filing
☐ NRCP 59 Date of filing

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____.

(c) Date written notice of entry of order resolving tolling motion was served _____.

Was service by:

- ☐ Delivery
☐ Mail

19. Date notice of appeal filed. LVMPD's Notice of Appeal was filed on June 5, 2019.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other: NRAP4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____. | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) allows for appeal of a final judgment of a district court. On April 12, 2019, the District Court entered an Order granting, in part, Las Vegas Review Journal's Public Records Act Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus, ordering the Appellant to produce unit assignments of patrol officers for a 3-year period. LVMPD moved and the District Court granted NRCP 54(b) Certification, rendering it a final judgment as to the unit assignment issue.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Petitioner: Las Vegas Review-Journal.

Respondent: Las Vegas Metropolitan Police Department.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

The Las Vegas Review-Journal filed their Petition for Writ of Mandamus on May 31, 2018 for access to various records. The Las Vegas Review-Journal filed a Supplement to its Petition for Writ of Mandamus for access to additional

records. The District Court granted, in part, the Las Vegas Review-Journal's Petition as it related to disclosure of unit assignment of patrol officers. LVMPD then sought, and the District Court granted, NRCP 54(b) Certification of the unit assignment issue. Notice of Entry of Order Granting NRCP 54(b) Certification was filed on May 30, 2019.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

- Disclosure of the following records:
 - ♦ Arrest Reports for Trespass that were produced in calendar years 2014-2016;
 - ♦ Arrest Reports for loitering, being a minor in a gambling establishment, acting as a masseuse without a permit, pandering, advertising prostitution, transporting a prostitute, attempted loitering, attempted being a minor in a gaming establishment, attempted acting as a masseuse without a permit, attempted pandering, attempted advertising prostitution, attempted transporting a prostitute, attempted soliciting, attempted trespass, sex trafficking, attempted sex trafficking, giving false information to a police officer, attempt to give false information to a police officer, obstructing an officer, attempting to obstruct an officer, aid and abetting a prostitute and attempted aid and abetting a prostitute that were produced in 2014-2016
 - ♦ Investigative files for all LVMPD pandering and accepting earnings of prostitute investigations that were closed in 2014-2016.
 - ♦ All arrest reports for Category B Grand Larcenies and attempted Category B Grand Larcenies in casinos from 2014-2016.

- ♦ All incident reports for Category B Grand Larcenies and attempted Category B Grand Larcenies in casinos from 2014-2016.
- ♦ All police reports, filed by citizens, in which the home address is listed as 1 West Owens from 2014 through present.
- ♦ All arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos related to all incidents or reports of trespassing at the Aria Resort and Casino on May 28, 2014.
- ♦ All arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos related to all incidents or reports of traffic stops involving Robert Sharpe III and Kariah Heiden in May or June of 2014.
- ♦ All reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos related to the investigation of Robert Sharpe III and Kariah Heiden, including three interviews conducted by Detective Ortega, Hui and Lucero at UMC Hospital between the dates of June 29, 2014 and July 7, 2014.
- ♦ Records relating incidents or arrests involving Braden Johnson.
- ♦ Records pertaining to incidents or arrests involving Cindy Ross, including but not limited to a check on a possible domestic violence incident at the Excalibur casino in June or July 2013 as well as any stops for ID checks for appearing to be underage in a casino.
- ♦ All and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Poppy Wellman, including her 12/7/2005 arrest.
- ♦ All and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Kariah Heiden

including her arrests on 6/11/2013, 9/23/2013, 9/23/2014, 8/24/2016, and 1/22/2017.

- ♦ All and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Brittani Stugart, including her arrest on 5/20/2011.
 - ♦ All and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Megan Lundstrom, including her arrests on 10/3/2011, 10/17/2011, 12/18/2011, 1/3/2012, 1/6/2012, 1/28/20012, 2/4/2012, and 5/16/2012.
 - ♦ Various personnel records of LVMPD employees.
- Whether LVMPD is permitted to charge for production of records pursuant to NRS 239.052 and NRS 239.055.

(b) Specify the parties remaining below:

Petitioner: Las Vegas Review-Journal.

Respondent: Las Vegas Metropolitan Police Department.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Exhibit	Document Description
1	Supplement to Public Records Act Application Pursuant to NRS § 239.001 Petition for Writ of Mandamus (filed 04/01/19)
2	Notice of Entry with Order [Granting Petition, in Part] (04/12/19)
3	Las Vegas Metropolitan Police Department's Motion for 54(b) Certification and Stay Pending Appeal (filed 04/15/19)
4	Notice of Entry with Order [Granting NRCP 54(b) Certification] (05/30/19)

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Las Vegas Metropolitan Police
Department

Name of appellant

Nick D. Crosby, Esq. and
Jackie V. Nichols, Esq.

Name of counsel of record

July 2, 2019

Date

/s/ Jackie V. Nichols

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 2nd day of July, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By electronic service in accordance with the Court's Master Service List as follows:

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
MCLETCHE LAW
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Email: maggie@nvlitigation.com
*Counsel for Petitioner,
Las Vegas Review-Journal*

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

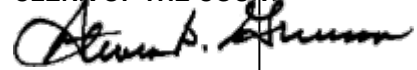
N/A

Dated this 2nd day of July, 2019.

/s/ Leah Dell

Signature

Exhibit 1



1 **SUPPL**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 MCLEATCHIE LAW

4 701 East Bridger Avenue, Suite. 520

5 Las Vegas, NV 89101

6 Telephone: (702)-728-5300

7 Email: maggie@nvlitigation.com

8 *Counsel for Petitioner*

9
10
11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-18-775378-W

14 Petitioner,

Dept. No.: XV

15 vs.

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

16 LAS VEGAS METROPOLITAN POLICE
17 DEPARTMENT,

18 Respondent.

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

19 COMES NOW Petitioner the Las Vegas Review-Journal (the “Review-Journal”),
20 by and through its undersigned counsel, and hereby submits this Supplement to its Petition
21 for Writ of Mandamus for declaratory and injunctive relief. The Review-Journal seeks a
22 writ of mandamus requiring the Las Vegas Metropolitan Police Department (“Metro”) to
23 provide Petitioner access to the public records concerning sex trafficking set forth below—
24 without delay and without requiring exorbitant costs. This Petition is brought pursuant to
25 Nev. Rev. Stat. §§ 34.160, 239.010, and 239.011. Further, the Review-Journal respectfully
26 asks that this matter be expedited pursuant to Nev. Rev. Stat. § 239.011(2). Petitioner also
27 requests an award for all fees and costs associated with its efforts to obtain withheld and/or
28 improperly redacted public records as provided for by Nev. Rev. Stat. § 239.011(2).

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Petitioner hereby alleges as follows:

I. NATURE OF ACTION

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

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

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

II. PARTIES

4. Petitioner, the Review-Journal, a daily newspaper, is the largest newspaper in Nevada. It is based at 1111 W. Bonanza Road, Las Vegas, Nevada 89125. The Review-Journal has historically engaged in investigative reporting on important matters such as Metro's use of force policies,¹ and has more recently created an investigative reporting team.² Obtaining timely access to public records is a necessary part of the Review-Journal's work and is especially important to the work of its investigative team. Mr. Brian Joseph is a reporter and part of the investigative team. He made the public records requests detailed herein on behalf of the Review-Journal and at the direction of his editor, Ms. Karisa King. Before he joined the Review-Journal, Mr. Joseph reported for several California news

¹ <https://www.reviewjournal.com/crime/courts/deadly-force-when-las-vegas-police-shoot-and-kill/> (last checked 5/29/18).

² <https://www.reviewjournal.com/local/local-las-vegas/review-journal-fields-veteran-investigative-team/> (last checked 5/29/18).

1 organizations with a special focus on systems like foster care services and workplace
2 hazards in the recycling industry. Ms. King was formerly an investigative journalist with
3 the Chicago Tribune, and has extensive experience reporting on important issues pertaining
4 to health and medical care, affordable housing programs, and other issues of public concern.

5 5. Respondent Metro is a public agency in the County of Clark,
6 Nevada, and the joint city-county police force for the City of Las Vegas and Clark County,
7 Nevada. Metro is subject to the Nevada State Public Records Act pursuant to Nev. Rev. Stat.
8 § 239.005(5)(b).

9 **III. JURISDICTION AND VENUE**

10 6. This Court has jurisdiction to issue writs of mandamus. Nev.
11 Const., Art. 6, § 6; Nev. Rev. Stat. § 34.160.

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

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

17 **IV. STANDING**

18 9. Petitioner has standing to pursue this expedited action pursuant to
19 Nev. Rev. Stat. § 239.011 because Metro has unjustifiably withheld and refused access to
20 public records requested by the Review-Journal and has improperly demanded payment for
21 costs not permitted under the NPRA, which has the effect of denying access to the records.

22 **V. FACTS**

23 **A. The February Requests (Sex Trafficking Records and Unit** 24 **Assignments)**

25 10. On February 23, 2017, Review-Journal reporter Brian Joseph sent
26 Metro a request pursuant to the NPRA, Nev. Rev. Stat. § 239.001 *et seq.* (the “February
27 Request”). (Exhibit (“Exh.”) 1.)

28 11. The request sought the following records:

- All investigative case files for all Metro sex trafficking cases that were

1 closed in calendar years 2014, 2015, and 2016;

- 2 • All Metro arrest reports for solicitation or trespass that were produced
- 3 in calendar years 2014, 2015, and 2016; and
- 4 • All names, badge numbers, and unit assignments of all Metro officers
- 5 for calendar years 2014, 2015 and 2016.

6 (*Id.*) Mr. Joseph attempted to facilitate access to the records by explicitly stating that he was
7 willing to accept copies of the records in redacted form to protect juveniles' names. (*Id.*)

8 12. Metro did not respond to the February 23, 2017 request in the
9 manner required by Nev. Rev. Stat. § 239.0107(1), which specifically mandates that, within
10 five (5) business days of a request, a governmental entity must respond to a request by
11 taking one of the four courses of action delineated—(a) providing records immediately; (b)
12 explaining in writing that another entity has the records; (c) providing written notice with a
13 future date certain by which the records will be provided; or, (d) if any records or parts
14 thereof will be withheld, providing written notice of specific authority for the reasons for
15 doing so.

16 13. Instead of responding within five (5) business days as required by
17 the NPRA, on February 28, 2017, Metro Public Information Officer (“PIO”) Laura Meltzer
18 sent an email acknowledging receipt February 23 Request. (Exh. 2.) Ms. Meltzer indicated
19 that Metro was “in the process of collecting the information” the Review-Journal requested.
20 (PIO Meltzer indicated it would take “at least 30 days to compile any public records”
21 responsive to the request. (*Id.* at p. 2.) PIO Meltzer did not cite any statute, case law, or
22 privilege which allowed Metro to withhold the requested arrest reports.

23 14. Metro subsequently told Mr. Joseph that the District Attorney’s
24 Office had legal custody of the records. (Exh. 3, p. 2 (noting that a Metro official told him
25 he needed to request records from the District Attorney’s Office).) Accordingly, on March
26 6, 2017, Mr. Joseph attempted to obtain the requested arrest records from the District
27 Attorney. (*Id.*)

28 ///

1 15. On March 8, 2017, Mr. Joseph received an email from Assistant
2 District Attorney Christopher Lalli that indicated the District Attorney's Office did not have
3 "legal custody" of the requested arrest reports and directed him back to Metro to obtain the
4 records from Metro. (Exh. 3, p. 1.)

5 16. On March 9, 2017, Mr. Joseph forwarded Mr. Lalli's email to PIO
6 Meltzer on March 9, 2017 to request clarification. (*Id.*)

7 17. PIO Meltzer emailed Mr. Joseph about his request for grand larceny
8 reports on March 23. (Exh. 4, pp. 3-4) In her email, PIO Meltzer stated she was seeking
9 legal advice. (*Id.* at p. 4.)

10 18. Mr. Joseph responded on March 23, 2017, that same day, and again
11 followed up about his request for sex trafficking records. (Exh. 4, p. 3.) He again provided
12 a copy of the email he sent on March 9, 2017, forwarding Mr. Lalli's response. Mr. Joseph
13 also asked why Metro could not identify records by charge, noted that PIO Meltzer never
14 cited any specific statute to justify its refusals to provide records and pointed out that, while
15 Metro stated that the District Attorney had custody of records, the District Attorney's Office
16 stated that it was not the legal custodian. (*Id.* at p. 1.)

17 19. In her 11:57 a.m. response to Mr. Joseph's March 23, 2017 email,
18 PIO Meltzer reiterated that Metro does not release arrest report and that Mr. Joseph needed
19 to obtain those records from the District Attorney's Office. (Exh. 4, p. 1.) In her response,
20 PIO Meltzer still did not cite any statute, case law, or privilege which authorized Metro to
21 withhold the requested arrest reports. (*Id.*)

22 20. On March 28, 2017, Mr. Joseph again followed up about the request
23 by emailing PIO Meltzer. (Exh. 5, p. 1.)

24 21. PIO Meltzer responded on March 29, 2017 by simply attaching to
25 an email a letter which contained language identical to the letter she sent to Mr. Joseph on
26 February 28, 2017. (*Compare* Exh. 5, p. 7 *and* Exh. 2, p. 2.)

27 22. On April 14, 2017, Metro sent Mr. Joseph a letter from Ms.
28 Freedman, Metro's General Counsel, regarding the three categories of documents in the

February 23 Request. (Exh. 6.)

23. Regarding arrest reports, while she failed to cite to any statute or other legal authority, Ms. Freedman also asserted that arrest reports are not considered public records until they are introduced or filed in court or become part of a closed case. (*Id.*)

24. Ms. Freedman also represented that the Review-Journal did not request the arrest reports in a manner that Metro could easily search because arrest reports “may generally be searched by event number and/or arrestee name.” (*Id.*) Ms. Freedman did admit that it could search for particular categories of crimes and calls for services by address, but that conducting a search in that manner would require “extraordinary use of resources.” (*Id.*)

25. Regarding sex trafficking investigative case files, Ms. Freedman stated Metro’s Gangs/Vice Bureau would provide an estimate of the time it would take to identify responsive files. (*Id.*, p. 1.) Ms. Freedman further indicated that once the Gangs/Vice Bureau had identified responsive files, each file would be reviewed to (1) ensure the matters had been fully adjudicated, and (2) redact confidential and personal identifying information. (*Id.*) She also stated the Review-Journal would need to pay for the costs associated with pulling, reviewing, and redacting files.

26. While Ms. Freedman speculated the sex trafficking investigative files may contain “personal and identifying information” and “identifying information for confidential informants, investigative techniques and/or intelligence,” she did not cite any statutory or legal authority for withholding the files.

27. With regard to unit assignment information, Ms. Freedman asserted Metro would not provide unit assignments because of officer safety concerns. (*Id.*, p. 3.) Again, Ms. Freedman failed to cite to any authority exempting unit assignments from disclosure under the NPRA.

28. On April 27, 2017, Metro produced three lists of officer names and personnel numbers for all officers employed by Metro on January 1 of 2014, 2015, and

1 2016. (Exh. 7.) Without officer assignments, however, the lists did not provide the Review-
2 Journal with the information it was seeking.

3 29. In a letter accompanying the April 27, 2017 production, Ms.
4 Freedman reiterated its position that investigative files and arrest reports are not public
5 records until a prosecutor has “used the investigative document[s] in court.” (Exh. 7, p. 2.)

6 30. In support of this assertion, Ms. Freedman only cited the Nevada
7 Supreme Court’s opinion in *Donrey v. Bradshaw*, 106 Nev. 360, 798 P.2d 144 (1990).
8 *Donrey* does not make any specific records confidential. It just sets forth a balancing test,
9 which has subsequently been strengthened in favor of disclosure, as detailed below.

10 31. On February 27, 2017, Mr. Joseph sent another request to Metro,
11 this time requesting access to and digital copies of “the record layout and data dictionary of
12 the LVMPD’s SCOPE (Shared Computer Operations for Protection and Enforcement)
13 database.” (Exh. 8.)

14 32. On March 1, 2017, Officer Danny Cordero responded that Metro
15 “is not the owner of the SCOPE system” and told Mr. Joseph to contact the Information
16 Technology Department for Clark County. (Exh. 9.)

17 33. After receiving this response from Officer Cordero, Mr. Joseph
18 contacted Dan Kulin with the Clark County Office of Public Communications to discuss
19 this request. (Exh. 60.) Mr. Kulin emailed Mr. Joseph on March 14, 2017 that Clark County
20 was “not the custodian of records” and directed Mr. Joseph to request the SCOPE records
21 from Metro. (*Id.*)

22 **B. The March Request**

23 34. On March 3, 2017, Mr. Joseph submitted an additional records
24 request to Metro requesting “access to and digital copies (PDFs if available) of: All LVMPD
25 arrest reports for Category B grand larcenies in casinos that were produced in calendar years
26 2014, 2015 and 2016.” (the “March Request”) (Exh. 10.)

27 35. As with the February Request, Metro failed to comply with Nev.
28 Rev. Stat. § 239.0107(1)(d). Instead, on behalf of Metro, PIO Meltzer just acknowledged

1 receipt of the March Request via an email March 8, 2017. (Exh. 11.)

2 36. While Ms. Meltzer represented that she was working on the March
3 Request in her March 8, 2017 email (Exh. 11), Metro did not actually begin compiling
4 records.

5 37. Instead of providing records, twenty (20) days after the request, on
6 March 23, 2017, PIO Meltzer informed Mr. Joseph via email that due to the scope of his
7 request, she had forwarded it to Metro's General Counsel for advice. (Exh. 4, pp. 3-4.)

8 38. On March 23, 2017 PIO Meltzer also asked Mr. Joseph to provide
9 specific addresses for the grand larceny reports he had requested. (Exh. 4, p. 4.)

10 39. Mr. Joseph provided PIO Meltzer a list of addresses on March 27,
11 2017. (Exh. 5.) PIO Meltzer responded on March 28, 2017, stating that extraordinary
12 resources would be required, and indicating that Metro would send a cost estimate. (*Id.* p.
13 1.)

14 40. On April 20, 2017, almost two months after the March Request was
15 made, Metro Assistant General Counsel Ms. Charlotte Bible sent Mr. Joseph a letter
16 addressing the March Request. (Exh. 12.) Ms. Bible stated "LVMPD does have a specific
17 document responsive to your request," and indicated that fulfilling the request would require
18 a Metro analyst to dedicate 16 hours of "dedicated effort" to compile the requested
19 information. (*Id.*) To conduct this research, Metro demanded the Review-Journal remit
20 payment in the amount of \$843.04, reflecting an hourly rate of \$52.69 per hour for 16 hours
21 of time. (*Id.*)

22 41. Unlike its April 14 correspondence, Metro did not indicate that
23 arrest reports are confidential until they are introduced in a court proceeding.

24 42. Metro did not provide a date when the requested records would be
25 available.

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27 ///

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1 **C. The Review-Journal’s Extensive Attempts to Obtain Access to the**
2 **Records Requested (February Requests, March Request)**

3 43. Counsel for the Review-Journal has repeatedly contacted and met
4 and conferred with counsel for Metro to attempt to resolve disputes over access to the
5 requested records. Counsel for the Review-Journal offered several ideas for reducing costs,
6 including asking Metro to allow the Review-Journal to conduct an in-person inspection of
7 the records. The parties have been unable to reach any resolution because Metro asserts that
8 it can charge extensive costs for just reviewing and redacting records, and that it can take
9 years to produce the requested records.

10 44. On May 9, 2017, counsel for the Review-Journal sent counsel for
11 Metro a letter summarizing the Review-Journal’s efforts to obtain the requested records at
12 issue in the February Requests and the March Request, and the issues with Metro’s
13 responses to its requests. (Exh. 13.)

14 45. In its May 9, 2017 letter, the Review-Journal asked Metro to
15 provide a “date certain for the production of each category of documents requested.” (Exh.
16 13, p. 5.)

17 46. In the year since counsel for the Review-Journal sent the May 9,
18 2017 letter, counsel for the Review-Journal has extensively endeavored to resolve the issues
19 pertaining to the Review-Journal’s records requests. The parties have been unable to reach
20 a resolution.

21 47. On June 2, 2017, counsel for the Review-Journal followed up on
22 the status of record productions. (Exh. 14.)

23 48. On June 5, 2017, counsel for Metro responded by providing a list
24 of officer names and badge numbers for 2014, 2015, and 2016. (Exh. 15.)

25 49. In response, on June 5, 2017, counsel for the Review-Journal
26 inquired whether counsel for Metro also intended to send her unit assignments. (Exh. 16.)
27 Counsel for Metro did not respond to that inquiry.

28 ///

1 50. On June 6, 2017, counsel for the Review-Journal emailed counsel
2 for Metro to request that they confer about the status of the Review-Journal's requests. (Exh.
3 17.)

4 51. On June 9, 2017, counsel for Metro emailed counsel for the
5 Review-Journal indicating that Metro had completed a review of a closed sex trafficking
6 case, and that it took approximately three hours to review a file for redaction. (Exh. 18, p.
7 1.)

8 52. Counsel for Metro also indicated Metro had identified 675 files that
9 were potentially responsive to the Review-Journal's February request regarding sex
10 trafficking cases that were closed in calendar years 2014, 2015, and 2016, and estimated it
11 would take approximately 2,000 hours to complete a redaction review of those records. (*Id.*)

12 53. On June 13, 2017, counsel for the Review-Journal called counsel
13 for Metro and sent him an email to follow up on the status of the records request. (Exh. 19.)
14 Counsel for Metro did not respond.

15 54. On July 5, 2017, counsel for the Review-Journal and counsel for
16 Metro had a phone conference. During that phone conference, counsel for Metro stated
17 Metro would not provide unit assignments or SCOPE information. (Exh. 20.)

18 55. During the same July 5, 2017 phone call, counsel for Metro agreed
19 to provide counsel for the Review-Journal a sample redacted investigative file. (*Id.*)

20 56. Counsel for Metro also indicated that Metro was unsure whether
21 arrest reports are public. (*Id.*)

22 57. On July 11, 2017, counsel for Metro provided counsel for the
23 Review-Journal the sample redacted file he had indicated Metro would provide, as well as
24 a copy of Metro's service charge schedule. (Exh. 21.)

25 58. On July 14, 2017, counsel for the Review-Journal emailed counsel
26 for Metro to request a phone conference. (Exh. 22.)

27 59. Counsel for the Review-Journal and counsel for Metro spoke over
28 the phone again on July 19, 2017. (Exh. 23.) During that call, counsel for Metro indicated

1 that Metro did not believe that the NPRA established a deadline for producing public
2 records. (*Id.*) Counsel for the Review-Journal also asked whether Metro would be willing
3 to provide some arrest reports. (*Id.*)

4 60. On August 24, 2017, counsel for the Review-Journal sent an email
5 to counsel for Metro to inquire on the status of the Review-Journal's records requests and
6 the matters counsel had discussed during their July 19, 2017 phone call. (*Id.*) Counsel for
7 the Review-Journal reiterated her offer to work with Metro to obtain the requested records,
8 including paying under protest. (*Id.*)

9 61. On August 25, 2017, counsel for the Review-Journal sent a letter
10 to counsel for Metro offering once again to work with Metro to resolve issues pertaining to
11 the Review-Journal's records requests. (Exh. 24.)

12 62. Counsel for Metro responded to this letter on September 19, 2017.
13 (Exh. 25.) Counsel for Metro stated that Metro had identified 231 potentially responsive
14 arrest reports, and that in order to process the request for those arrest reports, Metro required
15 payment of \$2,079.00. (*Id.*)

16 63. On November 14, 2017, counsel for the Review-Journal sent
17 counsel for Metro an email to follow up on the status of the records request. (Exh. 26.)
18 Counsel for Metro responded that he was out of the office and would contact counsel for
19 the Review-Journal the next day. (*Id.*) After counsel for Metro did not call, counsel for the
20 Review-Journal sent him a follow up email on November 20, 2017. (*Id.*)

21 64. On January 11, 2018, counsel for the Review-Journal and counsel
22 for Metro had a telephone conference to discuss the records request. (Exh. 27.)³ During that
23 conversation, counsel for Metro agreed to speak to Metro about obtaining the investigative
24 files that were part of the February request. (*Id.*) Counsel for both parties agreed that Metro
25 would select a single month and perform a "test run" to determine how long it would take

26 _____
27 ³ Due to the 1 October mass shooting and extensive litigation over access to records
28 pertaining to that tragic event, the parties were not able to discuss the instant records requests
for several months.

to produce the requested records. (*Id.*)

65. Counsel for the Review-Journal emailed counsel for Metro several times after the January 11, 2018 phone conversation to follow-up on the status of the records requests.

66. On January 18, 2018, counsel for the Review-Journal emailed counsel for Metro to see if Metro would perform the “test run” they had discussed during their January 11, 2018 phone call. (Exh. 28.)

67. On January 22, 2018, counsel for the Review-Journal emailed counsel for Metro follow up on the status of the records requests and the proposed test run. (Exh. 29.)

68. Counsel for Metro responded on January 22, 2018 that Metro was assessing the number of cases in December 2016 that were responsive to the requests. (Exh. 30.)

69. Counsel for the Review-Journal responded on January 22, 2018 and suggested that it might be easier for Metro to search for responsive cases from January 2016. (Exh. 31.)

70. On January 24, 2018, counsel for the Review-Journal emailed counsel for Metro to follow up on the status of the request. (Exh. 32.) Counsel for Metro did not respond to this inquiry.

71. On February 5, 2018, counsel for the Review-Journal again emailed counsel for Metro to inquire about the status of the requests. (Exh. 33.)

72. On February 6, 2018, after receiving no response from counsel for Metro, counsel for the Review-Journal again emailed to inquire about the status of the records requests. (Exh. 34.)

73. Counsel for Metro responded on February 6, 2018 that he had not heard back from Metro about the status of the Review-Journal’s requests. (Exh. 35.)

74. On February 20, 2018, counsel for the Review-Journal again emailed counsel for Metro to request a status update. (Exh. 36.)

1 75. Counsel for Metro did not respond for a week. Finally, on February
2 27, 2018, he emailed counsel for the Review-Journal that he would follow up with Metro
3 regarding the status of the records requests. (Exh. 37.)

4 76. On March 19, 2018, counsel for Metro notified counsel for the
5 Review-Journal that Metro had finally completed a review of sex trafficking cases for
6 December of 2016. (Exh. 38.) Counsel for Metro stated there were 35 closed cases for
7 December 2016 with about 2,000 pages of documents. (*Id.*) Counsel for Metro further stated
8 approximately half of the investigative files for December 2016 were juvenile cases. (*Id.*)

9 77. On May 16, 2018, counsel for the Review-Journal again emailed
10 counsel for Metro to inquire whether Metro had performed the “test run” on the documents
11 counsel had discussed during their January 11, 2018 phone call. (Exh. 39.) Counsel for the
12 Review-Journal also inquired whether counsel for Metro believed there was any way to
13 reduce costs associated with fulfilling the records requests, including allowing the Review-
14 Journal to inspect the records in person. (*Id.*)

15 **D. Other Requests**

16 78. At the same time counsel for the Review-Journal was trying to
17 work with Metro to obtain the records that were the subject of the February Request and the
18 March Request, Mr. Joseph made other public records requests, which Metro has only
19 partially fulfilled. In fact, Metro has become even less responsive to requests.

20 79. On May 19, 2017, Mr. Joseph requested “[a]ll investigative case
21 files for all LVMPD pandering and accepting earnings of a prostitute investigations that
22 were closed in calendar years 2014, 2015, and 2016;” along with arrest reports for “loitering,
23 being a minor in a gaming establishment, acting as a masseuse without a permit, pandering,
24 advertising prostitution, transporting a prostitute, attempted loitering, attempted being a
25 minor in a gaming establishment, attempted acting as a masseuse without a permit,
26 attempted pandering, attempted advertising prostitution, attempted transporting a prostitute,
27 attempted soliciting, attempted trespass, sex trafficking, attempted sex trafficking, giving
28 false information to a police officer, attempting to give false information to a police officer,

1 obstructing an officer, attempting to obstruct an officer, aid and abetting a prostitute and
2 attempted aid and abetting a prostitute” that were produced in calendar years 2014, 2015,
3 and 2016. (Exh. 40 (the “May 19, 2017 Request”).) Mr. Joseph also requested any records
4 Metro had pertaining to a particular criminal defendant. (*Id.*)

5 80. As with Mr. Joseph’s other requests, Metro did not provide a
6 specific response, instead sending him a form letter via email on May 19, 2017
7 acknowledging receipt of the request and indicating it would take “at least 30 days” to
8 compile responsive records. (Exh. 41, p. 2.)

9 81. On May 31, 2017, Mr. Joseph sent another records request to
10 Metro, this time for “[a]ll police reports, filed by citizens, in which the home address is
11 listed as 1 West Owens, North Las Vegas, NV 89030, from Jan. 1, 2014 through the
12 present.” (Exh. 42 (the “May 31, 2017 Request”).)

13 82. PIO Meltzer acknowledged receipt of the May 31, 2017 request on
14 June 2, 2017. (Exh. 43.) Ms. Meltzer’s acknowledgment did not include any information
15 about when Metro intended to produce the records.

16 83. On July 7, 2017, Mr. Joseph emailed PIO Meltzer to follow up on
17 the May 19, 2017 Request and May 31, 2017 Request. (Exh. 44.) PIO Meltzer responded
18 that she had “sent for a status check.” (*Id.*)

19 84. On July 12, 2017, Mr. Joseph sent another records request to Metro
20 asking for “[a]ll LVMPD arrest reports for attempted Category B grand larcenies in casinos
21 that were produced in calendar years 2014, 2015 and 2016” and “[a]ll LVMPD incident
22 reports for Category B grand larcenies and attempted grand larcenies in casinos that were
23 produced in calendar years 2014, 2015 and 2016[.]” (Exh. 45 (the “July Request”).)

24 85. On July 27, 2017, Mr. Joseph emailed Metro’s PIO to inquire
25 regarding the status of his many outstanding records requests. (Exh. 46.)

26 86. On August 2, 2017, PIO Meltzer told Mr. Joseph that another PIO
27 officer she identified as “Officer Rodriguez” was working on one of Mr. Joseph’s May
28 requests—although she did not specify which one. (Exh. 47.) Ms. Meltzer also included in

1 her response a letter acknowledging receipt of the July 27, 2017 inquiry and stating that it
2 would take “at least 30 days” for Metro to compile responsive records. (*Id.* at pp. 2-3.)

3 87. Meanwhile, on July 28, 2017, Metro General Counsel Charlotte
4 Bible sent Mr. Joseph a letter regarding the May 19, 2017 Request. (Exh. 48.)

5 88. In her July 28, 2017 letter, Ms. Bible indicated Metro had located
6 304 closed cases for 2014 that were responsive to his request for “[a]ll investigative case
7 files for all LVMPD pandering and accepting earnings of a prostitute investigations that
8 were closed in calendar years 2014, 2015, and 2016,” but did not indicate whether Metro
9 had determined how many responsive closed cases it had for 2015 or 2016. (*Id.*) Ms. Bible
10 also indicated that with regard to Mr. Joseph’s request for arrest reports for a number of
11 offenses, Metro had researched only four of the offenses and determined it had thousands
12 of responsive arrest reports, each of which would cost \$9.00 pursuant to Metro’s fee
13 schedule. (*Id.* at p. 2.)

14 89. On August 18, 2017, Mr. Joseph sent another records request to
15 Metro, this time requesting copies of “arrest reports, audio and video records, interview
16 transcripts, investigatory records, incidents reports, notes, records, documents and memos
17 related to all incidents or reports of trespassing at the Aria Resort and Casino on May 28,
18 2014,” as well as the same records related to the arrest and investigation of Robert Sharpe,
19 III and Kariah Heiden. (Exh. 49 (the “August Request”).)

20 90. PIO Meltzer responded via letter on August 23, 2017. (Exh. 50.)
21 As with her other responses, PIO Meltzer only indicated that it would “take at least 30 days”
22 for Metro to compile responsive records. (*Id.*)

23 91. On September 7, 2017, Mr. Joseph sent another records request to
24 Metro for records pertaining to an individual named Branden Johnson. (Exh. 51 (the
25 “September 7, 2017 Request”).)

26 92. On September 15, 2017, Mr. Joseph sent a records request for
27 statistical information pertaining to the total numbers of men and women arrested for
28 engaging in prostitution, soliciting for prostitution, and sex trafficking for 2014, 2015, and

1 2016. (Exh. 52.)

2 93. Metro never responded to this records request.

3 94. Mr. Joseph sent another records request on September 15, 2017
4 asking for “arrest reports, audio and video recordings, interview transcripts, investigatory
5 records, incident reports, records, documents and memos” for two individuals: Poppy
6 Wellman and Kariah Heiden. (Exh. 53.) (Exh. 52 and 53 are collectively referred to as the
7 “September 15, 2017 Requests”)

8 95. PIO Meltzer emailed Mr. Joseph on September 21, 2017. (Exh. 54,
9 p. 2.) PIO Meltzer did not address Mr. Joseph’s latest request but indicated that with respect
10 to the multiple records requests Mr. Joseph had requested a status report for on July 27,
11 2017, Metro General Counsel was forwarding a response to undersigned counsel. (*Id.* at p.
12 2.)

13 96. Mr. Joseph responded via email on September 21, 2017, noting that
14 Metro had not responded to several of his records requests, and asking for a status update
15 on multiple pending requests. (*Id.*, p. 1.)

16 97. Subsequently, on November 15, 17, and 28, 2017, Mr. Joseph sent
17 emails to the PIO requesting an update on his multiple pending requests. (Exh. 55.)

18 98. Between December 4, 2017 and December 15, 2017, Mr. Joseph
19 exchanged multiple emails with PIO Jennifer Knight inquiring about the status of multiple
20 pending requests. (Exh. 56.)

21 99. On December 12, 2017, Mr. Joseph sent another request asking for
22 “arrest reports, audio and video recordings, interview transcripts, investigatory records,
23 incident reports, records, documents and memos” for two individuals: Brittani Stugart and
24 Megan Lundstrom. (Exh. 57 (the “December Request”).)

25 100. On January 23, 2018, Mr. Joseph sent another email to PIO Knight
26 to inquire about the status of multiple requests. (Exh. 58, pp. 2-3.)

27 101. On January 26, 2018, PIO Knight responded that she had forwarded
28 his request to legal counsel. (*Id.*, p. 2.)

E. November 5, 2018 Request

102. On November 5, 2018, the Review-Journal sent counsel for Metro a written request for public records that overlapped with the instant litigation. (*See* Exh. 68⁴ (“November 5 Request”).) The Review-Journal requested the following:

Request No.	Records Requested	Status
1	All memos, reports, white papers, e-mails and filled-out forms submitted to the LVMPD Office of Governmental Affairs commenting on pending or proposed legislation regarding prostitution, pimping, pandering or sex trafficking created from January 1, 2013 through the date this request is fulfilled	1/18/19 - Metro provided records
2	All memos, e-mails and other correspondence, including text messages, between LVMPD leadership and hotel/casino leadership, including security staffers, regarding prostitution, pandering, pimping, sex trafficking and john arrests from January 1, 2013 through the date this request is fulfilled	Metro has not provided responsive records
3	All documents regarding policies and practices for how arrest reports for solicitation are completed (including but not limited to when generic addresses such as “the 3600 block of Las Vegas Boulevard” should be used rather than specific property addresses)	12/12/18 – Metro provided responsive records

⁴ The Review-Journal submitted Exhibits 61-67 with the Opening Brief and Reply filed in this matter.

Request No.	Records Requested	Status
4	All contact reports (write-ups by supervisors) and statements of performance that mention john arrests and/or officer(s) not following directions from the Vice Section from January 1, 2013 through the date this request is fulfilled. For this item, I voluntarily agree to the redaction of officer names, if deemed necessary	11/19/18 - Metro refused to provide responsive records, arguing that these are “personnel records” and release of records implicate a personal privacy interest, citing FOIA and <i>CCSD v. Las Vegas Review-Journal</i> 12/18/2018 – Metro cites NAC 284.718 as an additional basis for withholding records. Also argues request is unduly burdensome.
5	All weekly agendas, reports, attachments and presentations for all LVMPD “Action” and “Pre-Action” meetings from January 1, 2018 through the date this request is fulfilled	Metro “anticipates providing responsive records” by 2/22/19
6	A spreadsheet (in digital format if available) of all raw data collected from the Vice Section’s prostitute data sheet forms, which are blue for juveniles and white for adults, dating back to when the data was first collected through the date this request is fulfilled	12/18/18 – Metro states it does not have responsive records
7	All memos, reports, e-mails and other correspondence, including text messages, about hotels/casinos refusing to provide LVMPD’s Vice Section with rooms or any kind of support during covert operations from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro states it does not have responsive records

Request No.	Records Requested	Status
8a	<p>All memos, reports and e-mails about prostitutes, johns, john reversals, pimps, sex trafficking, pimping and pandering occurring in Convention Center Area Command, Southeast Area Command, South Central Area Command, Enterprise Area Command and Downtown Area Command from January 1, 2013 through the date this request is fulfilled, including, but not limited to:</p> <p>(a) Memos, reports, e-mails and other correspondence, including text messages, to and from Robert 'Bob' Duvall of Convention Center Area Command concerning prostitution and Vice Section operations and performance</p>	1/18/19 – Metro produced redacted memoranda
8b	<p>All memos, reports and e-mails about prostitutes, johns, john reversals, pimps, sex trafficking, pimping and pandering occurring in Convention Center Area Command, Southeast Area Command, South Central Area Command, Enterprise Area Command and Downtown Area Command from January 1, 2013 through the date this request is fulfilled, including, but not limited to: ...</p> <p>(b) Memos, reports, e-mails and other correspondence, including text messages, to and from the Tourist Crime Section concerning undercover operations to arrest prostitutes and johns or duplicating the efforts of the Vice Section in general as well as any correspondence between the Tourist Crime Section and the Vice Section</p>	Metro states that the Tourist Crime Bureau was last active in 2014; has not provided records

Request No.	Records Requested	Status
8c	<p>All memos, reports and e-mails about prostitutes, johns, john reversals, pimps, sex trafficking, pimping and pandering occurring in Convention Center Area Command, Southeast Area Command, South Central Area Command, Enterprise Area Command and Downtown Area Command from January 1, 2013 through the date this request is fulfilled, including, but not limited to: ...</p> <p>(c) Memos, reports, e-mails and other correspondence, including text messages, from the listed area commands complaining about prostitution problems in their areas and/or blaming the Vice Section for not addressing it</p>	12/18/18 – Metro states request is “unduly burdensome”
8d	<p>All memos, reports and e-mails about prostitutes, johns, john reversals, pimps, sex trafficking, pimping and pandering occurring in Convention Center Area Command, Southeast Area Command, South Central Area Command, Enterprise Area Command and Downtown Area Command from January 1, 2013 through the date this request is fulfilled, including, but not limited to: ...</p> <p>(d) Memos, reports, e-mails and other correspondence, including text messages, about Problem Solving Units or PSUs in the above named area commands conducting undercover Vice operations or duplicating the Vice Section’s efforts in general</p>	12/18/18 – Metro states request is “unduly burdensome”

Request No.	Records Requested	Status
9	All memos, reports and e-mails about undercover Vice operations that resulted in one undercover LVMPD officer soliciting another undercover LVMPD officer, including any operations involving john reversals, from January 1, 2004 through the date this request is fulfilled	11/19/18 – Metro states it does not have responsive records
10	All memos, reports, e-mails and other correspondence, including text messages, from the Vice Section concerning complaints about non-Vice officers not following Vice’s direction when engaging in Vice-related activities from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro states request is “unduly burdensome”
11	All memos, reports, e-mails and other correspondence, including text messages, about the consequences of non-Vice officers not following Vice’s direction when engaging in Vice-related activities from January 1, 2013 through the date this request is fulfilled	<p>11/19/18 – Metro refused to provide responsive records, arguing that these are “personnel records” and release of records implicate a personal privacy interest, citing FOIA and <i>CCSD v. Las Vegas Review-Journal</i></p> <p>12/18/2018 – Metro cites NAC 284.718 as an additional basis for withholding records. Also argues request is unduly burdensome.</p>
12	All ‘Quarterly Reports’ submitted by the Vice Section from January 1, 2013 through the date this request is fulfilled	1/18/19 – Metro indicates that it has compiled responsive records and is reviewing the records to determine if it will redact any information. Metro indicates it anticipates providing responsive records by 2/22/19

Request No.	Records Requested	Status
13	All agendas, reports, attachments and presentations for LVMPD's Undercover Operations Committee from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro states that it does not have any responsive records
14	All available records, including but not limited to e-mails and memos, documenting the reasons the Undercover Operations Committee was formed	12/18/18 – Metro states that it does not have any responsive records
15	All memos, reports, e-mails and other correspondence, including text messages, about hotel/casinos and/or their staffers tipping off anyone about undercover Vice Section operations within their facilities and/or hotel/casino staffers pulling names from their trespass database(s) from January 1, 2006 through the date this request is fulfilled	11/19/18 – Metro states it does not have any responsive records
16	All purchase orders for blood testing kits used to test prostitutes and/or johns (as allowed under NRS 201.356), from January 1, 2013 through the date this request is fulfilled, including, but not limited to, the amount of kits purchased, the price per kit and which cost center the purchase was charged to	1/18/19 – Metro states it is still searching for responsive records and anticipates providing records by 2/22/19
17	The number of blood testing kits used to test prostitutes and/or johns (as allowed under NRS 201.356), from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro provides responsive information
18	Any records documenting the percentage of people arrested by LVMPD for soliciting/engaging in prostitution (as allowed under NRS 201.356) who have their blood tested for human immunodeficiency virus	11/19/18 – Metro states it does not have any responsive records

Request No.	Records Requested	Status
19	Any and all records that show actual staffing levels – not budgeted staffing levels, but actual staffing levels – of the Vice Section from January 1, 2011 through the date this request is fulfilled, including Vice Section positions not paid for by LVMPD	12/18/18 – Metro provides responsive records
20	Any and all records that show a breakdown of actual expenses for each LVMPD section for fiscal years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19	12/18/18 – Metro provides responsive records
21	Any and all records that show the total number of paid positions, regardless of the funding source, for each LVMPD section for fiscal years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19	12/18/18 – Metro provides responsive records
22	Any and all records, including memos, e-mails, transfer lists/notices and other correspondence, announcing the assignment/appointment of a new lieutenant to lead the Vice Section and a new captain to lead the bureau overseeing the Vice section from January 1, 2001 through the date this request is fulfilled	12/18/18 – Metro provides responsive records
23	All memos, reports, e-mails and other correspondence, including text messages, about the Vice Section not being alerted to information or incidents it should have been notified about (per Section 5/202.18 “Vice Section Call Out Responses” of the LVMPD policy manual) from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro alleges the request “is too burdensome” to produce.
24	All purchase orders for new equipment of any kind for the Vice Section from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro provides responsive records

Request No.	Records Requested	Status
25	All purchase orders for new equipment of any kind for the Narcotics Section from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro provides responsive records
26	All memos, reports and white papers about prostitution, pandering and sex trafficking enforcement at hotel/casinos and/or enforcement by hotel/casino security produced from January 1, 2013 through the date this request is fulfilled	12/18/18 – Metro asserts request is overbroad
27	Any records documenting the formation or establishment of LVMPD’s Vice Section, including the reasons it was created and when	11/19/18 – Metro states it does not have responsive records
28	Any records documenting the number of blankets and jail uniforms possessed by Clark County Detention Center as of January 1, 2018 or during the calendar year of 2018	11/19/18 – Metro states it does not have responsive records
29	All “InfoCom” complaints regarding prostitution, pimping, pandering and sex trafficking from January 1, 2015 through the date this request is fulfilled, including the notation of whether the complaint resulted in an open investigation (please provide this information in electronic, database/spreadsheet format if available)	12/18/18 – Metro states that it is in the process of obtaining responsive records and reserves right to assert privileges and/or confidentiality; anticipates production by 2/22/19

Request No.	Records Requested	Status
30	All “Secret Witness” complaints about prostitution, pimping, pandering and sex trafficking from January 1, 2015 through the date this request is fulfilled, including the notation of whether the complaint resulted in an open investigation (please provide this information in electronic, database/spreadsheet format if available). For this item, I voluntarily agree to the redaction of the tipster names, if deemed necessary	12/18/18 – Metro asserts that the request “seeks information that is deemed confidential pursuant to NRS 49.335.”
31	All closed investigative files about Arman Izadi (Offender ID: 2825076), including but not limited to all Arrest Reports, Case Reports/Crime Reports, Case Notes, Officer Report(s), Search Warrant Applications, Requests for Prosecution and witness interview transcripts, from the 2013 case made against him by the Vice Section (District Court Case Number: C-13-289719-1) as well as the previous investigation of Izadi by the Criminal Intelligence Section that did not result in the filing of charges, as well as any other LVMPD criminal investigations into Izadi	1/18/29 – Metro indicates it has compiled the closed file and is reviewing for redaction; anticipates disclosure by 2/22/19
32	Any and all records related to Event Number 121116-1552 and/or involving Adam McKinney and a victim of pandering with force who previously worked at Sheri’s Ranch in Pahrump	12/18/18 – Metro states that the only responsive record in its possession is an audio interview with the victim that is confidential; cites NRS 200.3771 as basis for confidentiality

103. On November 9, 2018, counsel for Metro directed the Review-Journal to submit its request directly to Metro. (Exh.69.)

104. On November 9, 2018, the Review-Journal sent the request to Metro’s Office of Public Information. (Exh. 70.)

1 105. On November 19, 2018, counsel for Metro—who had previously
2 indicated that the Review-Journal’s November 5 Request should be submitted directly to
3 Metro—responded to the Review-Journal’s November 9, 2018 letter to Metro’s Office of
4 Public Information. (Exh. 71 (“November 19 Response”).)

5 ***Requests 4 and 11***

6 106. In its November 5 Request, the Review-Journal made two requests
7 for records pertaining to the performance of officers in Metro’s Vice Section.

8 107. First, Request 4 asked Metro to provide the following public
9 records:

10 All contact reports (write-ups by supervisors) and statements of
11 performance that mention john arrests and/or officer(s) not following
12 directions from the Vice Section from January 1, 2013 through the date this
request is fulfilled. ***For this item, I voluntarily agree to the redaction of
officer names, if deemed necessary.***

13 (Exh. 68, p. 2) (emphasis added).

14 108. Second, Request 11 asked Metro to provide the following public
15 records:

16 All memos, reports, e-mails and other correspondence, including text
17 messages, about the consequences of non-Vice officers not following
Vice’s direction when engaging in Vice-related activities from January 1,
18 2013 through the date this request is fulfilled.

19 (Exh. 68, p. 3.)

20 109. In its November 19 Response, Metro declined to produce records
21 responsive to Requests 4 and 11. (Exh. 71, p. 2.) Metro cited the same grounds for refusing
22 to produce either category of records, asserting that the requested records are “personnel
23 records,” and that the disclosure of the records “would subject individuals to possible
24 embarrassment, harassment, or the risk of mistreatment.” (*Id.*)

25 110. On November 30, 2018, the Review-Journal replied to Metro’s
26 November 19 Response. (Exh. 72 (“November 30 Reply”).)

27 111. With regard to Metro’s refusal to provide records responsive to
28 Requests 4 and 11, the Review-Journal noted that Metro’s November 19 Response ignored

Nev. Rev. Stat. § 239.010(3), which mandates that a governmental entity should redact confidential information from a public record rather than withholding it in its entirety. (Exh. 71, p. 2.) The Review-Journal also noted that the CCSD Court did not create a new basis for withholding records, but merely adopted a test that it found “provides a better way to determine if a government entity should **redact information** in a public records request.” (*Id.*, citing CCSD, 134 Nev. Adv. Op. 884, 429 P.3d at 321) (emphasis in original).

112. Metro responded on December 18, 2018. (Exh. 73 (“December 18 Response”).)

113. To date, the parties have not resolved their disputes over these records.

Requests 8c and 8d

114. In its November 5 Request, the Review-Journal also requested several categories of records, including the following two categories:

All memos, reports and e-mails about prostitutes, johns, john reversals, pimps, sex trafficking, pimping and pandering occurring in Convention Center Area Command, Southeast Area Command, South Central Area Command, Enterprise Area Command and Downtown Area Command from January 1, 2013 through the date this request is fulfilled, including, but not limited to: ... [c] Memos, reports, e-mails and other correspondence, including text messages, from the listed area commands complaining about prostitution problems in their areas and/or blaming the Vice Section for not addressing it.⁵

All memos, reports and e-mails about prostitutes, johns, john reversals, pimps, sex trafficking, pimping and pandering occurring in Convention Center Area Command, Southeast Area Command, South Central Area Command, Enterprise Area Command and Downtown Area Command from January 1, 2013 through the date this request is fulfilled, including, but not limited to: ... [d] Memos, reports, e-mails and other correspondence, including text messages, about Problem Solving Units or PSUs in the above named area commands conducting undercover Vice operations or duplicating the Vice Section’s efforts in general.⁶

⁵ “Request 8c”

⁶ “Request 8d”

(Exh. 68, p. 2.)

115. In its November 19 Response, Metro asked the Review-Journal to clarify Request 8c, stating that “[i]n order to be able to search for responsive records, [Metro] needs information regarding which unit or department [the Review-Journal] seeks the requested records from.” (Exh. 71, p. 3.)

116. In its November 30 Reply, the Review-Journal reiterated that Request 8c “seeks records concerning the Convention Center Area Command, South Central Area Command, Enterprise Area Command and Downtown Area Command,” and offered to provide additional clarification if necessary. (Exh. 72, p. 4.)

117. With regard to Request 8d, Metro indicated in its November 19 Response that it was searching its files for “records from the Problem Solving Unit concerning overcover operations or duplicating the efforts of the Vice Section” and said that it would provide responsive records if they existed. (*Id.*)

118. Metro’s November 19 Response did not inform the Review-Journal when it would make records responsive to Request 8c available.

119. Metro’s November 19 Response also did not make any specific confidentiality assertions with regard to Request 8c; instead, Metro only stated that it “reserve[d] its right to assert any privileges and confidential statutes that pertain to the information contained in the records.” (*Id.*)

120. In its December 18 Response, Metro asserted that Requests 8c and 8d were “unduly burdensome” because locating the requested information would require Metro “to first identify every officer within the specified area commands and Problem Solving Unit for the dates requested,” and then “comb through all memos, reports, correspondence, and emails authored by each officer to determine whether there are responsive records.” (Exh. 73, p. 3.)

121. Thus, Metro has refused to provide—or even search for—records responsive to Requests 8c and 8d.

///

1 **Request 10**

2 122. In its November 5 Request, the Review-Journal asked Metro to
3 provide “All memos, reports, e-mails and other correspondence, including text messages,
4 from the Vice Section concerning complaints about non-Vice officers not following Vice’s
5 direction when engaging in Vice-related activities from January 1, 2013 through the date this
6 request is fulfilled.” (Exh. 68, p. 3.)

7 123. In its November 19 Response, Metro stated it was searching for
8 records responsive to Request 10. (Exh. 71, p. 3.)

9 124. Metro’s November 19 Response did not inform the Review-Journal
10 when it would have responsive records, instead stating only that it “anticipates providing you
11 with information regarding these records by December 21, 2018.” (*Id.*)

12 125. Metro’s November 19 Response also did not make any specific
13 confidentiality assertions regarding Request 23; instead, Metro only stated that it “reserve[d]
14 its right to assert any privileges and confidential statutes that pertain to the information
15 contained in the records.” (*Id.*)

16 126. In its December 18 Response, Metro asserted for the first time that
17 Request 10 is “too burdensome” to produce because it would require Metro to review
18 “upwards of 12,000 documents” generated by “over 80 officers.” (Exh. 73, p. 3.)

19 **Request 23**

20 127. In the November 5 Request, the Review-Journal asked Metro to
21 provide “All memos, reports, e-mails and other correspondence, including text messages,
22 about the Vice Section not being alerted to information or incidents it should have been
23 notified about (per Section 5/202.18 “Vice Section Call Out Responses” of the LVMPD
24 policy manual) from January 1, 2013 through the date this request is fulfilled.” (Exh. 68, p.
25 3.)

26 128. In its November 19 Response, Metro stated that it was “currently
27 searching its files” to determine whether it had records responsive to Request 23. (Exh. 71,
28 p. 5.)

1 129. Metro’s November 19 Response did not inform the Review-Journal
2 when it would have responsive records, instead stating only that it “anticipates providing you
3 with information regarding these records by December 21, 2018.” (*Id.*)

4 130. Metro’s November 19 Response also did not make any specific
5 confidentiality assertions regarding Request 23; instead, Metro only stated that it “reserve[d]
6 its right to assert any privileges and confidential statutes that pertain to the information
7 contained in the records.” (*Id.*)

8 131. In its December 18 Response, Metro asserted that responding to
9 Request 23 would be “too burdensome” because it would require Metro to “individually
10 review all memos, reports, e-mails, and correspondence from each officer of the Department
11 to determine whether any records exist.” (Exh. 73, p. 4.)

12 132. Thus, Metro has refused to provide—or even search for—records
13 responsive to Request 23.

14 ***Request 26***

15 133. Request 26 of the Review-Journal’s November 5 Request also asked
16 Metro to produce “[a]ll memos, reports and white papers about prostitution, pandering and
17 sex trafficking enforcement at hotel/casinos and/or enforcement by hotel/casino security
18 produced from January 1, 2013 through the date this request is fulfilled.” (Exh. 68, p. 3.)

19 134. In its November 19 Response, Metro asked the Review-Journal to
20 clarify Request 26. (Exh. 71, p. 5.)

21 135. In its November 30 Reply, the Review-Journal provided the
22 following response to Metro’s request for clarification:

23 The original request appears clear. It seeks records (“memos, reports and
24 white papers”) about “prostitution, pandering and sex trafficking
25 enforcement at hotel/casinos and/or enforcement by hotel/casino security
26 produced from January 1, 2013 through the date this request is fulfilled.”
27 The request seeks: (1) records concerning efforts by Vice to enforce
28 prostitution, pandering and sex trafficking laws at hotels and casinos; and
 (2) records concerning efforts by or the need for efforts by hotels/casinos to
 address prostitution, pandering and sex trafficking on their premises. Please
 let me know if this request remains unclear (and, if so, please explain what
 you are confused by).

1 (Exh. 72, p. 4.)

2 136. In its December 18 Response, Metro stated that Request 26 was
3 “overbroad and vague,” and asserted that

4 The Vice Section’s obligation includes the duty to enforce prostitution,
5 pandering and sex trafficking laws. Is LVRJ seeking all records in Vice’s
6 possession relating to hotel and casinos? Furthermore, which particular
7 hotel and casinos are you searching records for? To the extent this request
8 seeks criminal history information, the request is improper. NRS 179A.100
9 requires LVRJ to request a record of a named person. Thus, please clarify
10 this request.

11 (Exh. 73, p. 4.)

12 ***Request 30***

13 137. In its November 5 Request, the Review-Journal asked Metro to
14 produce public records pertaining to “Secret Witness” complaints, and voluntarily agreed to
15 the redaction of tipster names:

16 All “Secret Witness” complaints about prostitution, pimping, pandering and
17 sex trafficking from January 1, 2015 through the date this request is
18 fulfilled, including the notation of whether the complaint resulted in an open
19 investigation (please provide this information in electronic,
20 database/spreadsheet format if available). For this item, I voluntarily agree
21 to the redaction of the tipster names, if deemed necessary.

22 (Exh. 68, p. 4.)

23 138. In its November 19 Response, Metro stated it was “searching its
24 file” for responsive records. (Exh. 71, p. 6.)

25 139. Metro’s November 19 Response did not inform the Review-Journal
26 when it would produce records responsive to Request 30, instead stating only that it
27 “anticipates providing you with information regarding these records by December 21, 2018.”
28 (*Id.*)

139. Metro’s November 19 Response also did not make any specific
confidentiality assertions regarding Request 30; instead, Metro only stated that it “reserve[d]
its right to assert any privileges and confidential statutes that pertain to the information
contained in the records, including information related to an open investigation and

1 information about victims or the secret witness.” (*Id.*)

2 141. In its December 18 Response, Metro implicitly refused to disclose
3 the requested Secret Witness records, stating only that “[t]his request seeks information that
4 is deemed confidential pursuant to NRS 49.335.” (Exh. 73, p. 5.)

5 142. Thus, despite the Review-Journal’s voluntary agreement to accept
6 records with tipster names redacted (which would comply with Nev. Rev. Stat. §§ 49.335
7 and 239.010(3)⁷), Metro has acted in bad faith in refusing to disclose public records
8 responsive to Request 30.

9 ***Request 32***

10 143. Request 32 of the Review-Journal’s November 5 Request asked
11 Metro to produce “[a]ny and all records related to Event Number 121116-1552 and/or
12 involving Adam McKinney and a victim of pandering with force who previously worked at
13 Sheri’s Ranch in Pahrump.” (Exh. 68, p. 5.)

14 144. In its November 19 Response, Metro stated it was searching for
15 records responsive to Request 32,” and indicated it anticipated providing those records by
16 December 21, 2018. (Exh. 71, p. 6.)

17 145. Metro’s November 19 Response also did not make any specific
18 confidentiality assertions regarding Request 32; instead, Metro only stated that it “reserve[d]
19 its right to assert any privileges and confidential statutes that pertain to the information within
20 the records.” (*Id.*)

21 146. In its December 18 Response, Metro stated that the “only record” it
22 had in response to Request 32 was an audio interview with the victim and asserted that the
23 recording is confidential pursuant to Nev. Rev. Stat. § 200.3771. (Exh. 73, p. 5.)

25 ⁷ Nev. Rev. Stat. § 239.010(3) provides that “[a] governmental entity that has legal custody
26 or control of a public book or record shall not deny a request made pursuant to subsection 1
27 to inspect or copy or receive a copy of a public book or record on the basis that the requested
28 public book or record contains information that is confidential if the governmental entity can
redact, delete, conceal or separate the confidential information from the information included
in the public book or record that is not otherwise confidential.”

1 ***Metro’s Vague “Preservation” of Confidentiality Assertions***

2 147. In addition to those instances listed above (*see supra* ¶¶ 119, 125,
3 130, 140, and 145) in response to several of the requests contained in the November 5
4 Request Metro did not specifically identify any statute or case law which it believes makes
5 the requested records confidential; instead, Metro only “reserved” its right to assert privileges
6 or confidentiality at some later, undefined date.

7 148. Specifically, in its November 19 Response, Metro “reserved” its
8 right to assert privileges or confidentiality with respect to Request Nos. 1, 2, 5, 6, 8a, 8b, 8d,
9 10, 12, 16, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, and 32. (*See generally* Exh. 71, pp. 1-6.)

10 ***Metro Produces Some Records Responsive to the November 5 Request***

11 149. In the months since the Review-Journal’s November 5 Request,
12 Metro has provided records that are responsive to some of the Review-Journal’s requests.

13 150. Specifically, Metro has provided records responsive to Requests
14 Nos. 1, 3, 8a, 19, 20, 21, 22, and 24. (*See supra* ¶ 102.)

15 ***Metro Declines to Disclose Records Demonstrating It Searched for***
16 ***Responsive Records***

17 151. As set forth in the chart above, in its November 19 Response, Metro
18 indicated that it does not have documents responsive to Request Nos. 7, 9, 15, 18, and 27.
(Exh. 71, pp. 3-5.)

19 152. In its November 30 Reply, the Review-Journal asked Metro to
20 provide “any records reflecting that, in fact, Metro has searched for responsive records.”
21 (Exh. 72, pp. 3-5.)

22 153. In its December 18 Response, Metro asserted that its search for
23 records responsive to Requests 7, 9, 15, 18, 27 “did not result in the creation of records.”
24 (Exh. 73, pp. 3-4.)

25 **F. December 21 Request**

26 154. Pursuant to Metro’s direction, on December 21, 2018, the Review-
27 Journal sent a request to Metro’s PIO requesting the following public records:
28

- Any and all agendas, memos/reports, attachments and meeting minutes from any meetings between LVMPD sheriffs, undersheriffs, chiefs, captains, lieutenants, sergeants and/or any LVMPD peace officer in a supervisory role and any hotel/casino personnel whose titles include the words “chief,” “president,” “director,” and/or “security” from 1/1/2010 through the date this request is fulfilled. (It is our understanding that such meetings were held at least every other month.)
- The total number of prostitutes and the total number of johns arrested for soliciting/engaging in prostitution and where they were arrested (the Strip, the Street/Track, Massage parlor, strip club) during the calendar years of 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013.
- The total number of prostitutes and the total number of johns arrested for soliciting/engaging in prostitution during the calendar years of 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013.

(See Exh. 74 (the “December 21 Request”).)

155. The PIO responded on December 26, 2018. (Exh. 75.)

156. Rather than providing responsive records or a date by which it would provide the records, the PIO stated “Please be advised that it will take at least 30 days to compile any public records which may be responsive to your request. We will be in touch with your office to advise you of the costs for reproduction of any responsive public records.”
(*Id.*)

157. As of the date of this filing, however, Metro’s PIO has not provided the Review-Journal with any substantive response to the December 21 Request, let alone any of the requested records.

VI. LEGAL AUTHORITY

A. Legal Framework

158. The NPRA reflects that records of governmental entities belong to the public in Nevada. Nev. Rev. Stat. § 239.010(1) mandates that, unless a record is confidential, “all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied...” The NPRA reflects specific legislative findings and declarations that “[its] purpose is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law” and that its provisions “must be

1 construed liberally to carry out this important purpose.” Nev. Rev. Stat. § 239.010(1) and
2 (2).

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

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

11 160. More generally, the NPRA dictates that a governmental entity must
12 provide a meaningful response within five business dates of a request. Nev. Rev. Stat. §
13 239.0107(1).

14 161. The NPRA also limits the fees a governmental entity can charge.

15 **B. Metro Acted in Bad Faith in Responding to the November 5 Request.**

16 162. As discussed above, because the records requested in the November
17 5 Request overlapped with ongoing litigation, the Review-Journal submitted that Request to
18 counsel for Metro. (Exh. 68.)

19 163. Rather than responding to the request, on November 9, 2018,
20 counsel for Metro directed the Review-Journal to submit its request directly to Metro. (Exh.
21 69); the Review-Journal then submitted the request to Metro that same day. (Exh. 70.)

22 164. However, despite directing the Review-Journal to submit its
23 November 5 Request to Metro, counsel for Metro responded to the request on November 19,
24 2018. (Exh. 71.)

25 165. This sort of bait-and-switch approach to responding to public
26 records requests evidences bad faith; this is particularly so in light of the NPRA’s specific
27 mandate that its provisions must be interpreted liberally to further the “important purpose”
28 of fostering democratic principles by providing the public with access to inspect and copy

1 public records, *see* Nev. Rev. Stat. § 239.001(1) and (2), as well as its requirement that
2 governmental entities must respond quickly to public records requests. *See generally* Nev.
3 Rev. Stat. § 239.0107 (outlining a governmental entity’s obligations in responding to public
4 records requests).

5 166. Thus, Metro acted in bad faith in responding (or delaying its
6 response) to the Review-Journal’s November 5 Request.

7 **C. Metro Has Acted in Bad Faith in Failing to Provide Records**
8 **Responsive to the December 21 Request.**

9 167. As discussed above, on December 21, 2018, the Review-Journal
10 submitted a request to Metro for three categories of records pertaining to sex trafficking. (*See*
11 Exh. 74; *see also supra*, ¶ 154.)

12 168. In its December 26, 2018 response, Metro indicated it would “take
13 at least 30 days” to provide responsive records. (Exh. 75.)

14 169. As of the date of this filing, however, Metro has not provided any
15 records responsive to the December 21 Request.

16 170. Metro’s failure to provide responsive records—despite its statutory
17 obligations under the NPRA to do so—evidences bad faith.

18 **D. Metro Has Failed to Timely Assert Claims of Confidentiality and Has**
19 **Waived Such Claims.**

20 171. Here, Metro failed to provide the Review-Journal with sufficient
21 and timely citations to any specific statute or legal authority which renders any of the
22 requested records confidential.

23 172. Metro’s failure to timely provide sufficient and timely statutory or
24 legal bases for withholding the documents should be construed as a waiver of the ability to
25 assert any privilege justifying withholding public records.

26 173. Metro sent Mr. Joseph form letters regarding the February
27 Requests, the March Request, the May 19, 2017 Request, and the August 18, 2017 Request.

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174. These form letters do not comply with the requirements for a response to an NPRA request set forth in Nev. Rev. Stat. § 239.0107.

175. Metro effectively ignored the May 31, 2017 Request, the September 7, 2017 Request, the September 15 Requests, and the December 12, 2017 Request. This is so despite the efforts by Mr. Joseph detailed above to get information.

176. With regard to the November 5 Request, Metro's November 19 Response was untimely under Nev. Rev. Stat. § 239.0107(1)(d). Although counsel for Metro initially indicated that the Review-Journal's November 5 Request should have been submitted directly to Metro's PIO, counsel for Metro ultimately responded to the November 5 Request on November 19, 2018—9 business days later.

177. Additionally, Metro's vague "preservation" of the right to assert claims of confidentiality with respect to Request Nos. 5, 8b, 8d, 10, 12, 16, 23, 24, 25, 29, 30, 31, and 32 did not comport with the plain requirements of the NPRA. Thus, Metro has not timely provided the Review-Journal with sufficient and timely citations to any specific statute or legal authority which renders any of the requested records confidential.

E. The Records Sought by the Review-Journal Are Subject to Disclosure.

178. In accordance with the presumption of openness and "emphasis on disclosure," both the NPRA and the Nevada Supreme Court place a high burden on a governmental entity to justify disclosure.

179. First, the law requires that if a governmental entity seeks to withhold or redact a public record in its control, it must prove by a preponderance of the evidence that the record or any portion thereof it seeks to redact is confidential. *See* Nev. Rev. Stat. § 239.0113; *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 629 (2011); *accord Nevada Policy Research Inst., Inc. v. Clark Cty. Sch. Dist.*, No. 64040, 2015 WL 3489473, at *2 (D. Nev. May 29, 2015). It is of note that, as a general matter, "[i]t is well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly." *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Ashokan v. State, Dept. of Ins.*, 109

1 Nev. 662, 668, 856 P.2d 244, 247 (1993)). This is especially so in the public records context
2 because any restriction on disclosure “must be construed narrowly.” Nev. Rev. Stat. §
3 239.001(3).

4 180. Second, in addition to first establishing the existence of the
5 privilege it asserts and applying it narrowly, unless the privilege is absolute, the
6 governmental entity bears the burden of establishing “interest in nondisclosure *clearly*
7 outweighs the public’s right to access.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873,
8 880, 266 P.3d 623, 628 (2011) (citation and internal quotation marks omitted; emphasis
9 added).

10 181. Metro has not—and cannot—meet this heavy burden.

11 **F. Metro Must Produce the Sex Trafficking Records.**

12 182. The Review-Journal has sought investigative files pertaining to sex
13 trafficking cases that were closed in calendar years 2014, 2015, and 2016. (February
14 Request).

15 183. The Review-Journal has also sought investigative case files
16 pertaining to Robert Sharpe, III, Kariah Heiden, Branden Johnson, Poppy Wellman, Brittani
17 Stugart, and Megan Lundstrom. (Exhs. 40, 49, 51, 53, and 57.)

18 184. Metro has conceded that these investigative files are public records. (*See*
19 Exh. 5, p. 2 (April 14, 2017 letter from Metro General Counsel).) In its February Request,
20 the Review-Journal explicitly stated that it would accept redactions of juveniles’ names.
21 (Exh. 1.)

22 185. The Review-Journal also understands that victims who have not
23 testified in court regarding a sex trafficking offense are provided confidentiality protections.
24 *See* Nev. Rev. Stat. § 200.3771.

25 186. However, if a victim has testified in court regarding a sex
26 trafficking offense, it would be nonsensical to require that their identifying information must
27 remain confidential. *See, e.g.*, Nev. Rev. Stat. § 200.3771(4)(a) (mandating that nothing in
28 § 200.3771 prohibits “[a]ny publication or broadcast by the media concerning a sexual

offense, an offense involving a pupil or sex trafficking.”).

187. Additionally, upon information and belief, when an alleged victim stops cooperating with Metro as a witness, the Vice Section no longer considers him or her a victim, rendering the confidentiality provision of Nev. Rev. Stat. § 200.3771 inapplicable to information pertaining to said victim.

188. In its November 5 Request, the Review-Journal also requested “[a]ny and all records related to Event Number 121116-1552 and/or involving Adam McKinney and a victim of pandering with force who previously worked at Sheri's Ranch in Pahrump.” (Exh. 68, p. 5.) Metro has claiming that the only responsive record in its possession is an audio interview with the victim that is confidential, relying on NRS 200.3771 as the basis for confidentiality. There should be additional records such as investigative case notes, for example, that would also be responsive. Further. If the alleged victim in this case (for which Metro has an audio file) stopped cooperating with police. On information and belief, when an alleged victim stops cooperating with Metro, the Vice Section no longer considers her a victim. This would negate Metro's claim of confidentiality under NRS 200.3771.

189. Given that Metro has conceded investigative files are public records, it should produce the investigative files for sex trafficking cases, with the names and identifying information of juveniles and sex trafficking victims who have not testified redacted. *See* Nev Rev. Stat. § 239.010(3) (“A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.”)

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G. Metro Must Produce the Arrest Reports and Police Reports.

190. The Review-Journal has sought arrest reports pertaining to both sex trafficking (February Request) and grand larceny (March Request).

191. The Review-Journal has also requested arrest reports pertaining to loitering, being a minor in a gaming establishment, acting as a masseuse without a permit, pandering, advertising prostitution, transporting a prostitute, attempted loitering, attempted being a minor in a gaming establishment, attempted acting as a masseuse without a permit, attempted pandering, attempted advertising prostitution, attempted transporting a prostitute, attempted soliciting, attempted trespass, sex trafficking, attempted sex trafficking, giving false information to a police officer, attempting to give false information to a police officer, obstructing an officer, attempting to obstruct an officer, aid and abetting a prostitute and attempted aid and abetting a prostitute. (*See* Exh. 40 (May 19, 2017 Request).)

192. The Review-Journal also requested police reports filed by citizens in which the home address is listed as 1 West Owens, North Las Vegas, Nevada 89030 from January 1, 2014 through the present. (Exh. 42 (May 31, 2017 Request).)

193. The Review-Journal has also requested arrest reports for Robert Sharpe, III, Kariah Heiden, Branden Johnson, Poppy Wellman, Brittani Stugart, and Megan Lundstrom. (Exhs. 40, 49, 51, 53, and 57.)

194. Arrest reports are public records.

195. Police reports are public records.

196. Metro has not established otherwise.

197. Nevada law explicitly mandates that agencies of criminal justice must disseminate “records of criminal history” to reporters.

198. Chapter 179A of the Nevada Revised Statutes governs dissemination of “records of criminal history.”

199. Arrest reports fall within the definition of a “record of criminal history:”

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1 **[I]nformation contained in records collected and maintained by**
2 **agencies of criminal justice, the subject of which is a natural person,**
3 **consisting of descriptions which identify the subject and notations of**
4 **summons in a criminal action, warrants, arrests, . . . detentions, decisions**
5 **of a district attorney or the Attorney General not to prosecute the subject,**
6 **indictments, informations or other formal criminal charges and dispositions**
7 **of charges, including, without limitation, dismissals, acquittals, convictions,**
8 **sentences, information . . . concerning an offender in prison, any**
9 **postconviction relief, correctional supervision occurring in Nevada,**
10 **information concerning the status of an offender on parole or probation, and**
11 **information concerning a convicted person who has registered as such**
12 **pursuant to chapter 179C of NRS. The term includes only information**
13 **contained in a record, maintained in written or electronic form, of a formal**
14 **transaction between a person and an agency of criminal justice in this State,**
15 **including, without limitation, the fingerprints of a person who is arrested**
16 **and taken into custody and of a person who is placed on parole or probation**
17 **and supervised by the Division of Parole and Probation of the Department.**

18 Nev. Rev. Stat. § 239.070(1) (emphasis added.)

19 200. Metro likewise falls within the definition of “agency of criminal
20 justice” set forth in Chapter 179A, which includes “[a]ny governmental agency or subunit of
21 any governmental agency which performs a function in the administration of criminal justice
22 pursuant to a statute or executive order, and which allocates a substantial part of its budget
23 to a function in the administration of criminal justice.” Nev. Rev. Stat. § 179A.030(2).

24 201. Nev. Rev. Stat. § 179A.100(7) in turn mandates that “records of
25 criminal history must be disseminated by an agency of criminal justice, upon request, to the
26 following persons or governmental entities: . . . (l) Any reporter for the electronic or printed
27 media in a professional capacity for communication to the public.”

28 202. This provision does not allow for an agency of criminal justice to
levy fees or costs on those who request records of criminal history.

203. Despite the statute’s mandatory language, Metro has resisted the
disclosure of public records, including those pertaining to open matters.

204. Even if Nev. Rev. Stat. § 179A.100(7) were not clear, Nev. Rev.
Stat. § 179A.100(1)(b), also explicitly permits dissemination of records of criminal history
for open matters—to any person. It provides that records of criminal history “may be
disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

1 (a) Any which reflect records of conviction only; and (b) *Any which pertain to an incident*
2 *for which a person is currently within the system of criminal justice*, including parole or
3 probation.” (Emphasis added). This makes clear that arrest reports *may be disseminated*
4 *without restriction, to any person*, if the person who is the subject of the record is currently
5 within the system of criminal justice.

6 205. Accordingly, all arrest reports are public records—not just fully
7 adjudicated matters as Metro indicated in its April 14 and April 27 letters. (*See* Exhs. 6 and
8 7.)

9 206. Thus, Metro must provide arrest reports to the Review-Journal
10 without delay, and without costs.

11 207. The Nevada Attorney General opined that arrest reports are public
12 records in a 1983 Opinion. *See* 1983 Nev. Op. Atty. Gen. 9, Nev. Op. Atty. Gen. 3, 1983 WL
13 171440. Even under the less robust version of the NPRA in effect in 1983, the Attorney
14 General concluded that arrest reports are public records subject to the provisions of the
15 NPRA. Thus, Metro has not met—and cannot meet—its burden of demonstrating by a
16 preponderance of the evidence that officer unit assignments are confidential, or that any
17 claim of confidentiality clearly outweighs the presumption in favor of access.

18 208. Accordingly, Metro must provide access to the requested arrest
19 reports without delay—and without cost.

20 **H. Metro Must Produce the Officer Unit Assignments.**

21 209. The Review-Journal sought information about officer unit
22 assignments (February 23, 2017 Request).

23 210. Metro has asserted that it does not provide office unit assignments
24 but has not provided any legal or statutory authority to support its position. Thus, Metro has
25 not met its burden of demonstrating by a preponderance of the evidence that officer unit
26 assignments are confidential, or that any claim of confidentiality clearly outweighs the
27 presumption in favor of access.

28 ///

211. Accordingly, Metro should produce officer unit assignments as requested.

I. Metro Must Produce Records Reflecting Metro Leadership Communications With Hotel/Casino Leadership.

212. Request 2 of the Review-Journal's November 5 Request asked Metro to produce "[a]ll memos, e-mails and other correspondence, including text messages, between LVMPD leadership and hotel/casino leadership, including security staffers, regarding prostitution, pandering, pimping, sex trafficking and john arrests from January 1, 2013 through the date this request is fulfilled." (Exh. 68, p. 1.)

213. As of the date of this filing, Metro has not produced records responsive to Request 2, nor has it provided the Review-Journal with any statutory or legal authority which renders these records confidential.

214. In its December 21 Request, the Review-Journal similarly requested Metro produce "[a]ll memos, e-mails, and other correspondence, including text messages, between LVMPD leadership and hotel/casino leadership, including security staffers, regarding prostitution, pandering, pimping, sex trafficking and john arrests from January 1, 2013 through the date this request is fulfilled." (Exh. 74, p. 1.)

215. In its December 26 Response, Metro indicated that "it will take at least 30 days to compile records which may be responsive" to the Review-Journal's request, and further indicated it would contact the Review-Journal regarding the costs of reproduction. (Exh. 75.)

216. As of the date of this filing, however, Metro has not produced records responsive to this request, nor has it provided the Review-Journal with any statutory or legal authority which renders these records confidential.

217. Accordingly, Metro must disclose these records.

J. Metro Must Produce Records Regarding Complaints About and/or Discipline of Officers.

218. The Review-Journal sought records related to complaints about or the discipline of officers who failed to follow Vice directions when engaged in Vice-related

1 activities. (Exh. 71, pp. 2-3 (Requests 4 and 11).)

2 219. Metro has asserted that these records are “personnel records” and
3 that release of the documents implicate a personal privacy interest, citing FOIA and *Clark*
4 *County School District v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313
5 (2018) (“CCSD”). (Exh. 71, p. 2.)

6 220. Metro has also cited NAC 284.718—a provision of the Nevada
7 Administrative Code that pertains solely to State employees—as an additional basis for
8 refusing to disclose the records. (Exh. 73, p. 2.)

9 221. Metro has also asserted that the Review-Journal’s requests for these
10 records are too broad. (Exh. 73, pp. 2-3.)

11 222. Metro has failed to meet its burden that these records are not subject
12 to disclosure for several reasons.

13 223. First, Metro has ignored that the NPRA mandates that governmental
14 entities must redact confidential information from public records rather than withholding
15 those records in their entirety. *See* Nev. Rev. Stat. § 239.010(3).

16 224. Second, Metro’s reliance on *CCSD* is misplaced because that
17 opinion does not permit a governmental entity to invoke privacy to overcome disclosure;
18 instead, Metro still bears the burden of demonstrating by a preponderance of the evidence
19 that the records are confidential. *CCSD*, 429 P.3d at 321.

20 225. Third, Metro has improperly relied on inapplicable sections of the
21 Nevada Administrative Code and FOIA to withhold the requested records.

22 226. Accordingly, Metro should disclose the records regarding discipline
23 and/or complaints about Metro officers.

24 **K. Metro Must Produce Redacted Secret Witness Complaints.**

25 227. In its November 5 Request, the Review-Journal requested Metro
26 produce “[a]ll ‘Secret Witness’ complaints about prostitution, pimping, pandering and sex
27 trafficking from January 1, 2015 through the date this request is fulfilled, including the
28 notation of whether the complaint resulted in an open investigation,” and specifically stated

1 that it “voluntarily agree[d] to the redaction of tipster names.” (Exh. 68, p. 4 (Request 30).)

2 228. Although Metro initially indicated in its November 19 Response that
3 it was searching for responsive records (Exh. 71, p. 6), in its December 18 Response Metro
4 stated that the request “seeks information that is deemed confidential pursuant to NRS
5 49.335.” (Exh. 73, p. 5.)

6 229. Nev. Rev. Stat. § 49.335 provides that “[t]he State or a political
7 subdivision thereof has a privilege to refuse to disclose the *identity of a person* who has
8 furnished to a law enforcement officer information purporting to reveal the commission of a
9 crime.” (emphasis added). Thus, only the identity of an informant is rendered confidential
10 under Nev. Rev. Stat. § 49.335.

11 230. The Review-Journal voluntarily agreed to the redaction of tipster
12 names. (Exh. 68, p. 4.) Thus, Metro cannot rely on Nev. Rev. Stat. § 49.335 to withhold the
13 requested tipster records in their entirety.

14 231. Moreover, Nev. Rev. Stat. § 239.010(3) specifically mandates that
15 a governmental entity cannot withhold public records “if the governmental entity can redact,
16 delete, conceal or separate the confidential information from the information included in the
17 public book or record that is not otherwise confidential.”

18 232. Metro’s refusal to disclose redacted versions of the requested
19 records therefore evidences bad faith.

20 233. Accordingly, Metro must disclose the requested redacted secret
21 witness complaints.

22 **L. Metro Is Not Entitled to the Costs and Fees It Is Demanding;
23 Exorbitant and Illegal Fees Operate as a Denial.**

24 234. The NPRA does not allow for fees to be charged for a governmental
25 entity’s privilege review, or for inspection of public records.

26 235. As set forth above, no fees are permitted for copies of arrest reports
27 pursuant to Chapter 179A.

28 236. The only fees permitted for copies of other public records are set
forth in Nev. Rev. Stat. § 239.052 and Nev. Rev. Stat. § 239.055(1).

1 237. Nev. Rev. Stat. § 239.052(1) provides that “a governmental entity
2 may charge a fee for providing a *copy* of a public record.” (Emphasis added.)

3 238. Nev. Rev. Stat. § 239.055(1), the provision Metro appears to rely
4 on for its demand for fees, also permits governmental entities to charge fees for the
5 “extraordinary use” of personnel or resources.

6 239. None of the requests set forth herein require extraordinary use of
7 personnel or resources.

8 240. Metro cannot ignore public records requests, let them accumulate,
9 and then claim that extraordinary use is required to respond to them.

10 241. Even assuming these requests constitute extraordinary use, which
11 they do not, the NPRA provides that “... if a request for a copy of a public record would
12 require a governmental entity to make extraordinary use of its personnel or technological
13 resources, the governmental entity may, in addition to any other fee authorized pursuant to
14 this chapter, *charge a fee not to exceed 50 cents per page* for such extraordinary use....”
15 (emphasis added). Thus, even if the requests at issue herein required “extraordinary use,”
16 Metro cannot seek more than 50 cents per page for hard copies.

17 242. Metro appears to be demanding payment simply for locating
18 documents responsive to a request and redacting them. Not only is this interpretation belied
19 by the plain terms of the NPRA, requiring a requester to pay a public entity to withhold
20 documents (or parts thereof) would be an absurd result. *See S. Nevada Homebuilders Assn*
21 *v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (noting that courts must
22 “interpret provisions within a common statutory scheme harmoniously with one another in
23 accordance with the general purpose of those statutes and to avoid unreasonable or absurd
24 results, thereby giving effect to the Legislature’s intent”) (quotation omitted); *see also Cal.*
25 *Commercial Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003)
26 (“When a statute is not ambiguous, this court has consistently held that we are not
27 empowered to construe the statute beyond its plain meaning, unless the law as stated would
28 yield an absurd result.”)

243. In any event, Metro cannot charge for redaction. Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring requesters to pay public entities for undertaking a review for responsive documents and confidentiality would be inconsistent with the plain terms of the statute and with the statutory mandate to interpret the NPRA broadly.

244. Metro is legally obligated to undertake a search and review of responsive records free of charge when it receives an NPRA request. *See, e.g.*, Nev. Rev. Stat. § 239.0107(1)(d). Further, allowing a public entity to charge a requester for legal fees associated with reviewing for confidentiality is impermissible because “[t]he public official or agency bears the burden of establishing the existence of privilege based upon confidentiality.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

245. Allowing a governmental entity to charge fees for searching for, reviewing, withholding, and redacting records is not consistent with the mandates regarding statutory construction contained in the NPRA, which require this Court to interpret the terms of the NPRA liberally in favor of access (Nev. Rev. Stat, § 239.001(2)) and any restrictions on access to public records narrowly (Nev. Rev. Stat, § 239.001(3)).

246. Here, Metro has demanded payment for staff time just to begin making any records available.

247. Metro’s interpretation of Nev. Rev. Stat. § 239.055 would create a strong disincentive for individuals to make public records requests. If a requester was required to pay a governmental entity an hourly rate for privilege review, the steep price tag would discourage or effectively cease future public records requests. This is contrary to the stated purpose of the NPRA: “foster[ing] 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).

248. When a governmental entity demands impermissible and excessive fees before it will produce public records, as Metro has done here, it operates as a denial of

1 a request—and constitutes bad faith.

2 249. Even if Respondent could, as it has asserted, charge for its privilege
3 review as “extraordinary use,” such fees would be capped at 50 cents per page for copies.
4 Nev. Rev. Stat. § 239.055(1).

5 250. Metro has not provided sufficient support for its claimed copying
6 and other costs.

7 251. For electronic copies, there is no copying cost, other than the cost
8 of the medium and the costs to transfer the records to the medium.

9 252. Thus, the fees Metro is demanding the Review-Journal pay before
10 it even begins compiling the requested records conflicts with the NPRA.

11 253. Although not binding on this Court, a recent order from another
12 court provides some guidance regarding the fees Metro can and cannot charge in producing
13 records pursuant to the NPRA. On March 9, 2017 the Honorable Richard Scotti issued an
14 order in *American Broadcasting Companies, Inc., et al. v. Las Vegas Metropolitan Police*
15 *Department, et al.*, Dist. Ct. Case No. A-17-764030-W, outlining the fees Metro is permitted
16 to charge in responding to requests from the Review-Journal and other media entities for
17 public records pertaining to the 1 October shooting (“1 October Costs Order”). A copy of
18 that order is attached as Exhibit 59.

19 254. In that case, as here, Metro asserted that it could charge its actual
20 cost for compiling and reviewing responsive records and its copying costs. (*Id.* at p. 3:26-
21 27.)

22 255. In the 1 October Costs Order, Judge Scotti found that with regard
23 to records such as evidence logs and interview reports, the plain language of the NPRA only
24 permits Metro to charge the actual costs for copying the responsive records and the 50-cent-
25 per-page “extraordinary use” fee set forth in Nev. Rev. Stat. § 239.055 and could not charge
26 the media entities for time Metro staff expended in gathering and reviewing the requested
27 records. (*Id.*, pp. 5:12-6:9; *see also id.* at p. 8:9-11.)

28 256. Judge Scotti also found that Metro cannot charge costs for

1 electronic copies, other than the actual costs to transfer records to an electronic medium.
2 (*Id.*, p. 8:11:13.)

3 **M. Metro Must Provide Timely Access to Records.**

4 257. Counsel for Metro has indicated to counsel for the Review-Journal
5 that the NPRA does not set a deadline for producing public records. (Exh. 23 (August 24,
6 2017 email).)

7 258. This position, however, conflicts with the plain language of Nev.
8 Rev. Stat. § 239.0107.

9 259. As discussed above, the NPRA mandates that “[n]ot later than the
10 end of the fifth business day after the date on which the person who has legal custody or
11 control of a public book or record of a governmental entity receives a written or oral request
12 from a person to inspect, copy or receive a copy of the public book or record,” the
13 governmental entity must allow the person to inspect the requested record, or provide such
14 a copy to the requestor. Nev. Rev. Stat. § 2309.0107(1)(a).

15 260. If the governmental entity cannot provide the public record or make
16 it available for inspection within that five-day period, it must provide the requester written
17 notice of that fact, and “[a] date and time after which the public book or record will be
18 available for the person to inspect or copy or after which a copy of the public book or record
19 will be available to the person.” Nev. Rev. Stat. § 239.0107(1)(c)(1-2).

20 261. Metro has failed to comply with this requirement. Although it
21 acknowledged receipt of both the February and March Requests within the five-day period
22 mandated by the NPRA, it did not provide a specific date when the requested records would
23 be available as required by Nev. Rev. Stat. § 239.0107(1)(c) and has yet to make any records
24 available, other than one sample of an investigative file.

25 262. Regarding the February Request, Metro only told Mr. Joseph that
26 it would take “at least 30 days to compile any public records.” (Exh. 2, p. 2.)

27 263. Regarding the March Request, Metro provided an estimate of the
28 time it would take to compile the requested records but did not provide a date when the

1 records would be available. (Exh. 9, p. 1.)

2 264. Metro also used this same verbiage in responding to Mr. Joseph's
3 May 19, 2017 request (Exh. 41, p. 2), his July 27, 2017 request (Exh. 47, pp. 2-3), and his
4 August 18, 2017 request (Exh. 50).

5 265. Metro entirely ignored Mr. Joseph's September requests.

6 266. Delays are at odds with the mandates and plain language of §
7 239.0107, which is designed to facilitate speedy access to public records.

8 **VII. CLAIM FOR RELIEF**

9 267. Petitioner re-alleges and incorporates by reference each and every
10 allegation contained in paragraphs 1-266 with the same force and effect as if fully set forth
11 herein.

12 268. The Review-Journal must be provided with the records it has
13 requested pursuant to the NPRA.

14 269. The records sought are subject to disclosure, and Respondent has
15 not met its burden of establishing otherwise.

16 270. A writ of mandamus is necessary to compel Respondent's
17 compliance with the NPRA.

18 271. The NPRA does not permit the fees Metro is demanding.

19 272. Metro either does not understand its obligations to comply with the
20 law or it is engaging in bad faith intentionally disregarding the plain terms of the NPRA to
21 discourage reporters and individuals from accessing public records.

22 **VIII. PRAYER FOR RELIEF**

23 WHEREFORE, the Petitioner respectfully requests that this Court

24 1. Handle this matter on an expedited basis as mandated by Nev. Rev.
25 Stat. § 239.011 and conduct an expedited hearing;

26 2. Order Metro to immediately make available complete copies of all
27 records requested for inspection without charging fees;
28

1 3. Order that Metro is not entitled to extraordinary use or other fees
2 or costs for reviewing, compiling, or redacting records;

3 4. Order that Metro provide electronic copies at no fee or costs, other
4 than the actual cost of the medium and actual costs associated with transferring the records
5 to the medium;

6 5. Order that, should the Review-Journal request hard copies, limit the
7 costs Metro can charge to its actual copying costs;

8 6. Require Metro to prove that it actually incurs any costs for hard
9 copies and electronic copies;

10 7. Award the Review-Journal's reasonable costs and attorney's fees;
11 and

12 8. Any further relief the Court deems appropriate.

13
14 DATED this the 1st day of April, 2019.

15
16 Respectfully submitted,

17 /s/ Margaret A. McLetchie

18 Margaret A. McLetchie, Nevada Bar No. 10931

19 MCLEATCHIE LAW

20 701 East Bridger Ave., Suite 520

21 Las Vegas, Nevada 89101

22 Telephone: (702) 728-5300; Fax: (702) 425-8220

23 maggie@nvlitigation.com

24 *Counsel for Petitioner*
25
26
27
28

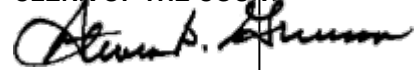
CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing SUPPLEMENT TO PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS - EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 in *Las Vegas Review-Journal v. Las Vegas Metropolitan Police Department*, Clark County District Court Case No. A-18-775378-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

Nick D. Crosby, and Jackie V. Nichols
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Attorneys for Las Vegas Metropolitan Police Department

/s/ Pharan Burchfield
An Employee of McLetchie Law

Exhibit 2



1 **NEOJ**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

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8 Email: maggie@nvlitigation.com

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

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-18-775378-W

13 Petitioner,

Dept. No.: XV

14 vs.

NOTICE OF ENTRY OF ORDER

15 LAS VEGAS METROPOLITAN POLICE
16 DEPARTMENT,

17 Respondent.

18 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
19 PLEASE TAKE NOTICE that on the 12th day of April, 2019, an Order was entered
20 in the above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

21 DATED this 12th day of April, 2019.

22 /s/ Margaret A. McLetchie

23 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

24 ALINA M. SHELL, Nevada Bar No. 11711

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Counsel for Petitioner, Las Vegas Review-Journal

CERTIFICATE OF SERVICE

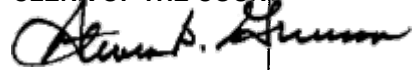
I hereby certify that on this 12th day of April, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Las Vegas Metropolitan Police Department*, Clark County District Court Case No. A-18-775378-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

Nick D. Crosby, and Jackie V. Nichols
MARQUIS AURBACH COFFING
10001 Park Run Drive
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Email: ncrosby@maclaw.com; jnichols@maclaw.com
Attorneys for Las Vegas Metropolitan Police Department

/s/ Pharan Burchfield
An Employee of McLetchie Law

INDEX OF EXHIBITS TO NOTICE OF ENTRY OF ORDER	
Exhibit	Description
1	April 12, 2019 Order

EXHIBIT 1



ORDR

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Counsel for Petitioner

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

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-18-775378-W

Petitioner,

Dept. No.: XV

vs.

ORDER

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

This matter, having come before the Court on March 27, 2019 for a hearing on supplemental briefing submitted by Petitioner the Las Vegas Review-Journal's ("Review-Journal") and Respondent the Las Vegas Metropolitan Police Department ("Metro"), and the Court, having reviewed all of the papers and pleadings on file in this matter, and having entertained the arguments of counsel, considered the points and authorities thereof, and for good cause appearing, the Court hereby finds as follows:

I. FINDINGS OF FACT

1. This matter stems from the LVRJ's Petition for Writ of Mandamus seeking public records from LVMPD pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPRA").

2. Among other things, the Review-Journal requested that Metro produce public records reflecting officer unit assignments for calendar years 2014, 2015, and 2016.¹

¹ The Review-Journal subsequently clarified that it only sought unit assignments for patrol officers and did not want unit assignments for undercover officers, and further amended its request to include patrol officer unit assignments for calendar year 2017.

1 The Review-Journal also requested, *inter alia*, arrest reports for solicitation or trespass that
2 were produced in calendar years 2014, 2015, and 2016, and investigative case files
3 pertaining to sex trafficking cases closed in 2014-2016.

4 3. On May 31, 2018, the Review-Journal filed a Public Records Act
5 Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus seeking the
6 production of public records pertaining to Metro's investigations of sex trafficking crimes
7 and related matters (the "Petition").

8 4. This Court held hearings regarding the Petition on August 8, 2018 and
9 August 22, 2018. Pursuant to those hearings, this Court entered two written orders on
10 September 7, 2018.

11 5. In the Order regarding the August 8, 2018 hearing, the Court deferred
12 ruling on whether the information regarding officer unit assignments was confidential and
13 ordered the parties to engage in further good faith meet and confer efforts to address that
14 issue.

15 6. On August 22, 2018, following direction from the Court, Metro agreed to
16 produce arrest reports, case reports, and requests for prosecution for 2014 through 2018,
17 and the parties filed a Stipulation and Order outlining the protocol Metro would implement
18 in producing those arrest reports. That Stipulation and Order was entered with the Court on
19 August 22, 2018.

20 7. Notably, the Stipulation and Order did not limit Metro's obligation to
21 produce solicitation arrest reports to only closed cases.

22 8. Additionally, with regards to investigative case files for closed sex
23 trafficking cases, the Stipulation and Order noted that the Review-Journal amended its
24 request to include 2017 and 2018 case files.

25 9. With regard to solicitation arrest reports, the Stipulation and Order
26 provides that Metro will produce solicitation arrest reports produced in 2014 through 2017.
27 (Stipulation and Order, pp. 2-3, § 2.)

28 ///

1 10. The Stipulation and Order does not limit Metro's production obligation to
2 closed cases, nor does it permit Metro to redaction information from those reports.

3 11. On August 27, 2018, Metro notified the Review-Journal that it would be
4 redacting victim and witness names; information it was not permitted to redact pursuant to
5 the terms of the Stipulation and Order.

6 12. In subsequent correspondence with the Review-Journal, Metro stated it
7 would be redacting addresses, telephone numbers, Social Security numbers, dates of birth,
8 victim names, undercover officer information, and juvenile information. As justification for
9 its decision to violate the terms of the Stipulation and Order, Metro cited Nev. Rev. Stat. §
10 200.377 *et seq.*

11 13. On March 13, 2019, the Court conducted a hearing on the Review-
12 Journal's motion to amend its Petition. During that hearing, the Court and the parties
13 discussed the parties' disputes regarding the historical officer unit assignments and the
14 scope of redactions to the records Metro agreed to produce pursuant to the Stipulation and
15 Order. During that hearing, the Court ordered the parties to submit supplemental briefing
16 regarding the disputes by no later than 5:00 p.m. on March 18, 2019.

17 14. Both parties submitted supplemental briefing on March 18, 2019.

18 15. Metro has had multiple opportunities to present evidence supporting its
19 confidentiality claims, as required by Nev. Rev. Stat. 239.0114.

20 16. The Court finds that Metro has met its evidentiary burden of supporting
21 the redactions made to the SCOPE manual it provided to the Review-Journal.

22 **II. CONCLUSIONS OF LAW**

23 17. The Court, having reviewed the supplemental briefs submitted by the
24 parties on March 18, 2019, as well as all other pleadings and papers on file in this matter,
25 including the Review-Journal's Petition, the Review-Journal's Opening Brief, Metro's
26 Response, the Review-Journal's Reply, and all other filings in this matter, hereby makes
27 the following findings of law:

28 ///

SCOPE Manual

18. A governmental entity seeking to withhold or redact records must establish by a preponderance of the evidence that the records are confidential or privileged and that the interest in nondisclosure outweighs the strong presumption in favor of public access. *See Nev. Rev. Stat. § 239.0113(2); Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011). As noted above, Metro met its evidentiary burden to support its redactions and the Review-Journal has not sought to cross-examine the persons making declarations in support of the redactions. Thus, Metro need not produce an unredacted version of the manual.

Historical Information Regarding Patrol Officer Unit Assignments

19. The NPRA sets forth the default rule that public records are to be made available to the public for inspection or copying. *Nev. Rev. Stat. § 239.010(1); Gibbons*, 127 Nev. at 882, 266 P.3d at 628. 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)*.

20. The NPRA must be construed liberally; government records are presumed public records subject to the act, 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)*.

21. A governmental entity seeking to withhold or redact records must establish by a preponderance of the evidence that the records are confidential or privileged *and* that the interest in nondisclosure outweighs the strong presumption in favor of public access. *See Nev. Rev. Stat. § 239.0113(2); Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citation omitted).

22. The Nevada Supreme Court has emphasized that in meeting this burden, governmental entities cannot rely on a “non-particularized showing, . . . or by expressing hypothetical concerns.” *Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also Reno Newspapers v. Sheriff*, 126 Nev. 211, 218, 234 P.3d 922, 927 (2010) (“A mere assertion of possible endangerment does not ‘clearly outweigh’ the public interest in access to these

1 records.”) (quotation omitted).

2 23. The Review-Journal initially requested that Metro disclose unit
3 assignment for patrol officers for calendar years 2014, 2015, and 2016. Subsequently, the
4 Review-Journal amended its request to include patrol officer unit assignments for calendar
5 year 2017.

6 24. At this time, the Court defers ruling on whether Metro must disclose
7 officer unit assignments for calendar year 2017.

8 25. With regard to patrol officer unit assignments for calendar years 2014,
9 2015, and 2016, the Court finds that Metro failed to meet its evidentiary burden under Nev.
10 Rev. Stat. § 239.0113(2). The declarations from Sheriff Joseph Lombardo and Las Vegas
11 Police Protective Association President Steve Grammas to support the assertion that officer
12 unit assignments should be kept confidential are too speculative in nature to satisfy Metro’s
13 burden under Nev. Rev. Stat. § 239.0113(2).

14 26. In its March 19, 2019 Supplement, Metro also cited the Nevada Supreme
15 Court’s opinion in *Clark County School District v. Las Vegas Review-Journal*, 134 Nev.
16 Adv. Op. 34, 429 P.3d 313 (2018), to justify withholding historical information about
17 patrol officer unit assignments.

18 27. In CCSD, the Supreme Court adopted a two-part balancing test set forth in
19 *Cameranesi v. U.S. Dep’t of Defense*, 856 F.3d 626 (9th Cir. 2017) to be applied by courts
20 in cases “in which the nontrivial personal privacy interest of a person named in an
21 investigative report may warrant redaction.”

22 28. Under that test, which the CCSD Court explicitly held cohered with the
23 NPRA, a governmental entity must first assert a “personal privacy interest stake to ensure
24 that disclosure implicates a personal privacy interest that is nontrivial or ... more than [] de
25 minimis.” CCSD, 429 P.3d at 320 (quotation omitted). Then, if the governmental entity “
26 succeeds in showing that the privacy interest at stake is nontrivial, the requester ‘must show
27 that the public interest sought to be advanced is a significant one and that the information
28 [sought] is likely to advance that interest.’” *Id.* (quotation omitted).

1 29. Metro has not met this burden. First, Metro has not provided evidence to
2 show that (even sufficiently explained how) the requested records implicate any personal
3 privacy interest. Metro's officers are public employees and patrol officers, by definition,
4 interact with the public and the community. Metro has also not sufficiently established that
5 providing the requested historical unit assignment information would reveal the identities
6 of any undercover officers. All of Metro's concerns and evidence are too speculative in
7 nature. Thus, information regarding past unit assignments does not implicate a nontrivial
8 personal privacy interest.

9 30. Metro must therefore disclose patrol officer unit assignments for calendar
10 years 2014, 2015, and 2016.

11 ***Arrest Reports***

12 31. Metro's decision to withhold arrest reports for open cases is inconsistent
13 with the terms of the Stipulation and Order. As noted, nothing in the Stipulation and Order
14 contemplates that Metro may limit its production of solicitation arrest reports to closed
15 cases only.

16 32. Accordingly, Metro must comply with the Stipulation and Order and
17 produce arrest reports for solicitation for 2014-2017 for closed and pending cases.

18 33. The court defers ruling on the propriety of any redactions, which Metro
19 must track on a log (Vaughn Index) and is required to justify by a preponderance of the
20 evidence. Nev. Rev. Stat. §239.0113.

21 ***Redaction of Victim, Witness, and Undercover Officer Names***

22 34. Pursuant to the Stipulation and Order, the parties stipulated that Metro
23 would begin a "test-run" for the December 2016 case files, and would provide the Review-
24 Journal with a list of case file names. The Stipulation and Order further provides that, after
25 Metro provides that list, the Review-Journal would then give Metro information regarding
26 whether the case was prosecuted and the names of any victim witnesses who testified, and
27 that Metro will use that information to avoid unnecessary redactions. Finally, the
28 Stipulation and Order provides that the only information to be redacted from those records

1 would be Social Security numbers.

2 35. Metro's redactions (and planned redactions) exceed the terms of the
3 Stipulation and Order and the scope of permissible redactions under the NPRA.

4 36. Moreover, the Stipulation and Order sufficiently protects privacy and
5 other interests because it limits production to information in the public domain. The
6 Nevada Supreme Court and other courts across the country have held that once information
7 enters the public domain, it cannot be kept secret—and that, any privacy interests in that
8 information fades. *See, e.g., Las Vegas Review-Journal v. Eighth Judicial Dist. Court in &*
9 *for County of Clark* (“Hartfield”), 134 Nev. Adv. Op. 7, 412 P.3d 23, 27–28 (2018) (prior
10 publication of information diminishes a privacy claim in connection with the information).

11 37. Nev. Rev. Stat. § 200.3771 does not dictate a contrary conclusion and does
12 not render victim information permanently confidential. In adopting protections for victims
13 of sex offenses, the Nevada Legislature specifically found that the State has a compelling
14 interest in assuring that a victim of a sex offense “[t]estifies at the criminal trial of the
15 person charged with committing the sexual offense, offense involving a pupil or child or
16 sex trafficking.” Nev. Rev. Stat. § 200.377(1)(c). Once a victim testifies in court, that
17 significant government interest has been fulfilled and the need to keep that person's name
18 confidential has dissipated.

19 38. Nevada's Public Records Act does not parallel the federal Freedom of
20 Information Act's (FOIA). However, the reasoning behind a line of cases concerning FOIA
21 is persuasive value and supports the proposition that Nev. Rev. Stat. § 200.3771 does not
22 require secrecy with regard to victims' names who testified in open court.

23 39. In general, when a federal agency withholds information under law
24 enforcement exemption (Exemption 7) (5 U.S.C. § 552(b)(7)), disclosure may nevertheless
25 be required under the public domain doctrine based on prior release information. Despite
26 the fact that Exemption 7 explicitly protects certain records, “a number of courts have
27 recognized a ‘public domain doctrine’ pursuant to which information withheld under
28 Exemption 7 must [nonetheless] be disclosed.” 3 A.L.R. Fed. 3d Art. 5 (Originally

published in 2015); *see also Hronek v. Drug Enf't Agency*, 16 F. Supp. 2d 1260, 1279 (D. Or. 1998), *aff'd*, 7 Fed. Appx. 591 (9th Cir. 2001) (explaining that “the government cannot rely on an otherwise valid exemption to claim to justify withholding information that has been ‘officially acknowledged’ or is in the ‘public domain’”) (citing *Davis v. U.S. Dept. of Justice*, 968 F.2d 1276, 1279 (D.C.Cir.1992) (quoting *Afshar v. Department of State*, 702 F.2d 1125, 1130–34 (D.C.Cir.1983))).

40. In the case of victims, witnesses, and undercover officers who testify in open court, once those individuals testify, their names have entered the public domain. Thus, their names cannot be kept confidential.

41. Accordingly, Metro cannot redact the names of victims, witnesses, or undercover officers who have testified in open court.

42. Metro must comply with the Stipulation and Order.

This Matter is Not Suitable for a Jury Trial

43. Pursuant to Nev. Rev. Stat. § 34.220, if an answer to a petition for a writ of mandamus is made which raises a question of fact essential to the determination of the motion and affecting the substantial rights of the parties, a court may, in its discretion, order the question to be tried before a jury.

44. Having reviewed all the papers and pleading on file in this matter, and having entertained argument from the parties on August 8, 2018, August 22, 2018, and March 27, 2019, the Court finds that this case does not merit a jury trial on any issues.

45. The purpose of a jury trial in a mandamus proceeding such as the case at bar is to decide disputed factual issues which are “critical in demonstrating the propriety of a writ of mandamus.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

46. Having reviewed this case in its entirety, the Court finds that there are no disputed issues of fact which merit a jury trial.

47. Moreover, a jury trial would cause the parties ~~and taxpayers~~ to incur unnecessary costs. BM

48. Accordingly, this matter is not appropriate for trial. To the extent that the Court determines that an evidentiary hearing is necessary, the Court will conduct such a hearing. Additionally, should the Court determine that a trial on any issue of fact is necessary, such a trial will proceed as a bench trial.

III. ORDER

IT IS HEREBY ORDERED AND ADJUDGED that Metro does not have to produce an unredacted version of the SCOPE Manual.

IT IS FUTHER ORDERED that Metro must produce information regarding officer unit assignments for all patrol officers for calendar years 2014, 2015, and 2016.

IT IS FURTHER ORDERED that Metro must produce arrest reports for solicitation for calendar years 2014, 2015, 2016, 2017, and 2018, regardless of the status of any criminal case.

IT IS FURTHER ORDERED that Metro may not redact the names of victims, witnesses, or undercover officers who testified in open court from any of the records it is producing in this matter.

IT IS FURTHER ORDERED that this matter is not appropriate for jury trial, as there are no disputed issues of fact which merit a jury trial.

THE COURT DEFERS RULING ON THE OTHER UNRESOLVED ISSUES IN THIS MATTER.

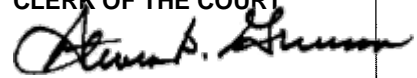
April 12, 2019
Date

Joe Hardy
DISTRICT COURT JUDGE BM

Respectfully Submitted By:

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Exhibit 3



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DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Case No.: A-18-775378-W
Dept. No.: XV

HEARING REQUESTED

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION FOR 54(b)
CERTIFICATION AND FOR STAY PENDING APPEAL**

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 its Motion for 54(b) Certification
and for Stay Pending Appeal.

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1 This Motion 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 15 day of April, 2019.

MARQUIS AURBACH COFFING

By: 

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MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

5 Based upon the Las Vegas Review-Journal's ("LVRJ") Petition under the Nevada Public
6 Records Act ("NPRA"), the Court ordered LVMPD to produce patrol officer unit assignments
7 for the years 2014, 2015, and 2016. While many of LVRJ's other requests remain active—either
8 not ordered to be disclosed by the Court or in the midst of production by LVMPD—LVRJ's
9 specific request for unit assignments has been resolved. Accordingly, LVMPD asks that this
10 Court grant final judgment certification pursuant to NRCP 54(b) of the March 27th Order as it
11 relates to the production of unit assignments. Additionally, LVMPD asks that this Court stay its
12 Order to produce unit assignments pending appeal pursuant to NRAP 8(c). Certifying the Order
13 as final allows the Parties to reach a final order as to the particular request of unit assignments
14 and, further, staying execution of the Order preserves the status quo pending resolution of the
15 matter on appeal.

II. STATEMENT OF FACTS

16 As the Court is aware, this matter stems from the Petition for Writ of Mandamus of LVRJ
17 seeking public records from LVMPD under NRS 239.001 *et seq.*, relating to various records,
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1 including LVMPD's unit assignments for officers from 2014–2016. *See Exhibit 1* to Petition.
2 On April 27, 2017, LVMPD provided the names and badge numbers of officers on the force
3 from 2014-2016. *Id.* at **Exhibit 7**. Prior to this disclosure, however, General Counsel informed
4 LVRJ that it was not providing unit assignments due to safety concerns. *Id.* at **Exhibit 6**. After
5 Ms. McLetchie became involved, Mr. Crosby also explained that unit assignments would not be
6 produced because of officer safety and it would reveal identities of officers working in covert
7 positions. *Id.* at **Exhibit 20**.

8 LVRJ then filed its Petition seeking access to the unit assignments. *See* Petition on file
9 herein, *generally*. After initial briefing and oral argument, the Court ordered LVMPD to submit
10 supplemental briefing on the production of unit assignments. *See* Order from August 22, 2018
11 Hearing on file herein. LVMPD submitted a Supplemental Brief on August 29, 2018 in support
12 of its position that the disclosure of patrol officer unit assignments can reveal the identities of
13 past or future undercover and covert officers. *See* LVMPD's Supplemental Brief filed on August
14 29, 2018 on file herein. At the March 4, 2019 status check, LVMPD requested additional
15 briefing on the unit assignment issue in light of the Supreme Court's recent decision in *Clark*
16 *County School District v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 34, 429 P.3d 313
17 (2018), which adopted a balancing test regarding an individual's nontrivial privacy interest in
18 relation to public records. On March 18, 2019, the Parties submitted simultaneous briefs that
19 addressed the unit assignment issue. Following a final hearing on March 27, 2019, the Court
20 issued an Order which, among other things, concluded that the NPRA requires LVMPD to
21 produce unit assignments for patrol officers for calendar years 2014, 2015, and 2016. *See* Order
22 entered on April 12, 2019.

23 **III. LEGAL ARGUMENT**

24 First, the Court's Order requiring production of patrol officer unit assignments should be
25 certified as final. While the instant case involves requests for dissemination of a variety of
26 records, the request for unit assignment of patrol officers is separate from LVRJ's remaining
27 requests. Furthermore, any order from the Supreme Court on the unit assignment issue would
28

1 not affect LVRJ's remaining record requests. Accordingly, certification of the March 27, 2019
2 Order as it pertains to the production of unit assignments is proper.

3 Second, a stay of an order is appropriate to preserve the status quo during the pendency
4 of appellate proceedings, to ensure that neither party is prejudiced. Here, the Court should grant
5 LVMPD's Motion for Stay because the object of its appeal would be defeated without a stay,
6 because LVRJ will not suffer any serious injury if the stay is granted, and because the privacy
7 rights of nonparties would be jeopardized if the stay is not granted.

8 **A. THIS COURT SHOULD CERTIFY THE ORDER AS FINAL UNDER**
9 **NRCP 54(B).**

10 A party may move for an order certifying a judgment as final when other claims remain
11 pending in the matter. This is confirmed by NRCP 54(b), which states, in pertinent part:

12 **(b) Judgment on Multiple Claims or Involving Multiple Parties.** When an
13 action presents more than one claim for relief--whether as a claim, counterclaim,
14 crossclaim, or third-party claim--or when multiple parties are involved, the court
15 may direct entry of a final judgment as to one or more, but fewer than all, claims
16 or parties only if the court expressly determines that there is no just reason for
17 delay. Otherwise, any order or other decision, however designated, that
18 adjudicates fewer than all the claims or the rights and liabilities of fewer than all
19 the parties does not end the action as to any of the claims or parties and may be
20 revised at any time before the entry of a judgment adjudicating all the claims and
21 all the parties' rights and liabilities.

22 When a district court is asked to certify a judgment based on the resolution of fewer than
23 all claims, the court is only charged with determining whether the claim sought to be certified is
24 separate from the remaining claims. *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d
25 441, 442 (1986). If the claim is separate, the court may expressly determine that there is no just
26 reason for delay. *Id.*; *see also* NRCP 54(b); *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 609-10,
27 797 P.2d 978, 981 (1990), *overruled on other grounds by Matter of Estate of Sarge*, 134 Nev.
28 Adv. Op. 105, 432 P.3d 718 (2018) (the district court is required only to make an express
determination that there is no just reason for delay and an express direction for the entry of
judgment). On the other hand, if the claims asserted in an action, albeit separate, are so closely
related that the appellate court must necessarily decide important issues pending below in order

1 to decide the issues appealed, there can be no finding that there is no just reason for delay, and
2 certification of an order is not proper. *Id.*

3 Consequently, the Order directing production of patrol officer unit assignments should be
4 certified as final pursuant to NRCP 54(b), because it is a separate claim for production of
5 records. Separate causes of action may frequently state only a single claim for relief for
6 purposes of NRCP 54(b) when they arise out of a single transaction, or a series of related
7 transactions. *Id.* at 527–28, 728 P.2d at 442. Multiple claims for relief can arise, however, from
8 a single transaction, or a series of related transactions, in some circumstances. *Id.* The latter
9 applies to the instant case. The NPRA permits a requester to seek access to public records. NRS
10 239.010. Thus, each record request is a separate claim for purposes of a public record action.
11 NRS 239.011. Here, the Order resolves LVRJ’s claim for production of unit assignments. The
12 issue of unit assignments will not affect any of LVRJ’s remaining requests. NRCP 54(b)
13 certification will simply permit LVMPD and LVRJ to move forward with a pending appeal of
14 the Order concerning production of unit assignments. Thus, this Court should certify as final the
15 Order pursuant to NRCP 54(b).

16 **B. A STAY PRESERVES THE STATUS QUO.**

17 As noted above, the purpose of a stay is to preserve the status quo. *See Nelson v. Heer*,
18 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005); *see also United States v. State of Mich.*, 505
19 F.Supp. 467, 471 (W.D. Mich. 1980) (stating that the purpose of a stay is to preserve, not
20 change, the status quo). In this case, LVMPD being required to produce the contested
21 information would upset the status quo because LVMPD cannot un-ring the bell—once the
22 information is released, any confidentiality or privacy interest in those documents is destroyed.
23 As such, in the event the Nevada Supreme Court alters or vacates the decision, the damage will
24 have already been done. Thus, the Order should be stayed as to unit assignments through the
25 pendency of LVMPD’s appeal.

26 **C. THE NRAP 8(c) FACTORS WEIGH IN FAVOR OF A STAY.**

27 Courts are afforded discretion in determining whether a stay is appropriate because
28 decisions regarding a requested stay are fact-intensive. *See Aspen Fin. Servs., Inc. v. Eighth*

1 *Judicial Dist. Court*, 128 Nev. 635, 289 P.3d 201, 205–06 (2012) (reviewing a district court’s
2 denial of a stay for an abuse of discretion and recognizing that “[d]etermining whether to grant
3 such a stay is a fact-intensive, case-by-case determination”).

4 That being said, in assessing a request for a stay, courts should consider the NRAP 8(c)
5 factors, including: (1) Whether the object of the appeal will be defeated if the stay or injunction
6 is denied; (2) Whether appellant will suffer irreparable or serious injury if the stay or injunction
7 is denied; (3) Whether the respondent/real party in interest will suffer irreparable or serious
8 injury if the stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail
9 on the merits of the appeal. *See, e.g., Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986
10 (2000); *see also Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 134
11 Nev. Adv. Op. 24, 415 P.3d 16, 19 (2018) (Cherry, J., concurring in part and dissenting in part)
12 (suggesting that courts may consider other factors because the Rule states that courts “will
13 generally consider” the enumerated factors). A moving party need not satisfy all four NRAP
14 8(c) factors; instead, one or two particularly strong factors may counterbalance other factors that
15 are weak or inapplicable. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36,
16 38 (2004).

17 **1. The Object of LVMPD’s Appeal Will be Defeated if the Requested**
18 **Stay is Denied.**

19 Parties should not be penalized for exercising their appellate rights, especially where the
20 issues on appeal are legitimate and pursued in good faith. Here, the litigation between the parties
21 implicates significant legal determinations that are constantly evolving in light of the Nevada
22 Supreme Court’s examination of distinct factual scenarios in relation to the NPRA. The harm
23 caused by disclosure of these particular records would be irreparable and immediate upon the
24 documents being produced. As such, the object of the appeal will be to avoid producing these
25 documents altogether, and such an appeal would be moot if the documents were already
26 produced. Thus, the first factor weighs in favor of a stay.

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28 ///

1 2. **Interested Parties will Suffer Irreparable Injury if a Stay is Not**
2 **Granted.**

3 As noted above, the disputed production of unit assignments of patrol officers involves
4 discrete nontrivial privacy interests, the public disclosure of which would irreparably destroy
5 those privacy interests. First, as detailed in the Supplemental Briefing provided by LVMPD,
6 disclosure of unit assignments for all patrol officers constitutes an unwarranted risk of harm to
7 those officers, as members of the public have already harassed police officers after gaining
8 knowledge of their personal information. Further, allowing redaction of officers given a
9 particular assignment (such as undercover officers) does not actually protect those officers when
10 all other names are disclosed; through simple deduction, any member of the public would be able
11 to ascertain which officers in a given unit have been redacted. Thus, the officers have personal
12 nontrivial privacy interests that would be harmed if unit assignments were to be disclosed.

13 Privacy interests cannot be adequately compensated with monetary damages. Further,
14 the privacy interests detailed above would be immediately and irreparably harmed as soon as the
15 documents are produced. As such, irreparable harm will result without a stay pending appeal,
16 and the second NRAP 8(c) factor is satisfied here.

17 3. **Will Not Suffer Any Serious or Irreparable Injury if a Stay is**
18 **Granted.**

19 While the disclosure of the disputed categories of documents would immediately harm
20 the privacy interests implicated as noted above, on the contrary, any harm suffered by LVRJ or
21 the general public by a delay in the disclosure of documents would be only temporary. In the
22 event the Nevada Supreme Court decides that the ordered disclosure would not violate any
23 nontrivial privacy interests, then LVMPD will disclose the documents in full at that time. The
24 public interest in knowing what units particular patrol officers were assigned to is not time-
25 sensitive. There is no looming deadline that would make public disclosure of this information at
26 a later date somehow less impactful. Additionally, LVMPD will continue to provide responsive
27 records that are not impacted by this Court's recent Order to LVRJ on a rolling basis. Therefore,
28 any interest in receiving this information now is easily outweighed by the risk of serious or

1 irreparable harm if the information is disclosed before the Nevada Supreme Court can render an
2 opinion on whether disclosure is appropriate. LVMPD thus satisfies the third NRAP 8(c) factor
3 for granting a stay pending appeal.

4 **4. LVMPD is Likely to Prevail on the Merits of its Appeal.**

5 In weighing this final factor, the Supreme Court has articulated that “a movant does not
6 always have to show a probability of success on the merits, [but] the movant must ‘present a
7 substantial case on the merits when a serious legal question is involved and show that the balance
8 of equities weighs heavily in favor of granting the stay.’” *Hansen*, 116 Nev. at 659, 6 P.3d at
9 987. Here, LVMPD presents serious legal questions which satisfy this final factor.

10 Indeed, and with all due respect for this Court, LVMPD maintains that the Court’s
11 decision as to the unit assignments of patrol officers was erroneous and should be overturned.
12 As the Court is aware, the Nevada Supreme Court has recently agreed that privacy interests can
13 outweigh the public interest in an NPRA case. *See, e.g. Clark County School District v. Las*
14 *Vegas Review-Journal*, 134 Nev. Adv. Op. 34, 429 P.3d 313 (2018). The facts at issue in this
15 case are substantially similar to those in the *CCSD* case, so LVMPD’s emergency appeal will, at
16 a minimum, “present a substantial case on the merits when a serious legal question is involved.”
17 As such, this Court should enter the requested stay during the pendency of the appeal.

18 **IV. CONCLUSION**

19 Final certification of this Court’s order to produce patrol officer unit assignments is
20 proper under NRCP 54(b). As this Court has ordered LVMPD to produce the disputed
21 documents immediately, LVMPD will be left in the difficult position of complying with the
22 district court’s order and thus, mooted the appeal, or preserving the issue for appeal and
23 consequently disobeying this Court’s Order. This is a textbook example of when a stay pending
24 appeal must be granted. As explained above, each of the NRAP 8(c) factors weigh in LVMPD’s
25 favor.

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1 Based on the foregoing, LVMPD respectfully requests the Court grants its Motion for
2 54(b) Certification and for Stay Pending Appeal.

3 Dated this 15 day of April, 2019.

MARQUIS AURBACH COFFING

By: 

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION FOR 54(B) CERTIFICATION AND FOR STAY PENDING APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15 day of April, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
MCLETCHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Email: maggie@nvlitigation.com
Counsel for Petitioner,
Las Vegas Review-Journal

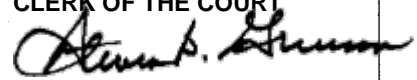
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

¹ 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 4

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LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Case No.: A-18-775378-W

Dept. No.: XV

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Regarding Respondent's Motion for 54(b) Certification and for Stay Pending Appeal was entered on the 29th day of May, 2019, a copy of which is attached hereto.

Dated this 30 day of May, 2019.

MARQUIS AURBACH COFFING

By: 

Nick D. Crosby, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th day of May, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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Counsel for Petitioner,
Las Vegas Review-Journal

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

¹ 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).

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CLERK OF THE COURT

Steven D. Grierson

DISTRICT COURT

CLARK COUNTY, NEVADA

10 LAS VEGAS REVIEW-JOURNAL,

11 Petitioner,

12 vs.

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT,

15 Respondent.

Case No.: A-18-775378-W
Dept. No.: XV

16 ORDER

17 This matter, having come before the Court on May 20, 2019 for a hearing on Respondent
18 the Las Vegas Metropolitan Police Department's ("LVMPD") Motion for 54(b) Certification and
19 for Stay Pending Appeal, and the Court, having reviewed all of the papers and pleadings on file
20 in this matter, and having considered the points and authorities thereof, and for good cause
21 shown:

22 1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that LVMPD's
23 Motion for NRCP 54(b) Certification is GRANTED;

24 2. IT IS FURTHER ORDERED that because no just reason for delay exists, this
25 Court enters an express direction for the entry of judgment as to the Order filed on April 12,
26 2019 related to the Las Vegas Review-Journal's public record request of Patrol Officer Unit
27 Assignments for the years 2014-2016;

3. IT IS FURTHER ORDERED that LVMPD's Motion for Stay Pending Appeal is also GRANTED.

ORDER

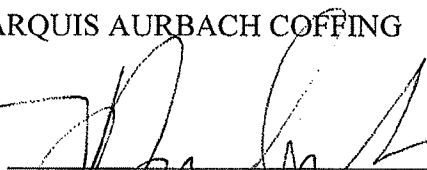
IT IS SO ORDERED this 28th day of May, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted By:

MARQUIS AURBACH COFFING


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