

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Case No.: 78967 Electronically Filed
Oct 28 2019 03:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, The Honorable Joe Hardy
Presiding.

APPELLANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S,
APPENDIX, VOLUME 4
(Bates Nos. 675-869)

Marquis Aurbach Coffing

Nick D. Crosby, Esq.

Nevada Bar No. 8996

Jackie V. Nichols, Esq.

Nevada Bar No. 14246

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Las Vegas, Nevada 89145

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jnichols@maclaw.com

Attorneys for Appellant, Las Vegas Metropolitan Police Department

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EXHIBIT 39

maggie

From: maggie
Sent: Wednesday, May 16, 2018 6:17 PM
To: 'Nick Crosby'
Cc: Suzanne Boggs; pharan@nvlitigation.com
Subject: RE: Sex Trafficking Cases [IWOV-iManage.FID1013982]

Nick: Thanks for providing the information below. As you know, I have been very busy with the 1 October PRA litigation and related matters but I wanted to follow up on this. I had asked about doing at least a trial run re redacting and making records available, or whether Metro would drop its "extraordinary use" argument as applied to making these records available for inspection. I haven't heard back about that, and am accordingly assuming there is no room for compromise on the costs. I think you have also indicated that Metro could take years to redact and make all the requested records available. Please get back to me immediately if I am incorrect on either of those fronts. As you know, while we often disagree and litigate the cases we have against each other zealously, I am always hoping we can work together to solve problems, save costs and fees, and avoid litigation if at all possible.

Regards,

Maggie



ATTORNEYS AT LAW

701 East Bridger Ave., Suite 520
Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

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From: Nick Crosby [mailto:NCrosby@maclaw.com]
Sent: Monday, March 19, 2018 9:05 PM
To: maggie <maggie@nvlitigation.com>
Cc: Suzanne Boggs <sboggs@maclaw.com>
Subject: Sex Trafficking Cases [IWOV-iManage.FID1013982]

Hi Maggie – My client was able to complete a rough review of the sex trafficking cases for December of 2016. There are approximately 35 closed cases with about 2,000 pages of documents. Roughly one-half of these cases are juvenile cases.

Thanks,

LVRJ604



MARQUIS AURBACH
COFFING

Nicholas D. Crosby, Esq.

10001 Park Run Drive

Las Vegas, NV 89145

t | 702.942.2158

f | 702.856.8932

ncrosby@maclaw.com | [vcard](#)

maclaw.com



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This email has been scanned for email related threats and delivered safely by Mimecast.
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EXHIBIT 40



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Fri, May 19, 2017 at 10:09 AM
Subject: Records request (2)
To: PIO <pio@lvmpd.com>

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
1111 West Bonanza Road
Las Vegas, NV 89125

May 19, 2017

Las Vegas Metropolitan Police Department
400 S. Martin L. King Boulevard
Las Vegas, NV 89106

To Whom It May Concern:

This is a public records request. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request access to and digital copies (PDFs if available) of:

- All investigative case files for all LVMPD pandering and accepting earnings of a prostitute investigations that were closed in calendar years 2014, 2015 and 2016;
- All LVMPD arrest reports for 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 that were produced in calendar years 2014, 2015 and 2016; and
- Any records LVMPD has relating to Robert Ryan Powell, DOB: 1/24/1984, SCOPE ID# 2505674, including but not limited to all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos related to his 7/25/2007 arrest for pandering, ITAG Booking No. 700002611, ITAG Case ID: 872634, District Court Case No. 07C236326, Justice Court Case No. 07F15144X.

For any record that includes juvenile information, I agree to have the juvenile's name redacted, but ask that the records preserve all other information, including the juvenile's DOBs and all event numbers.

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

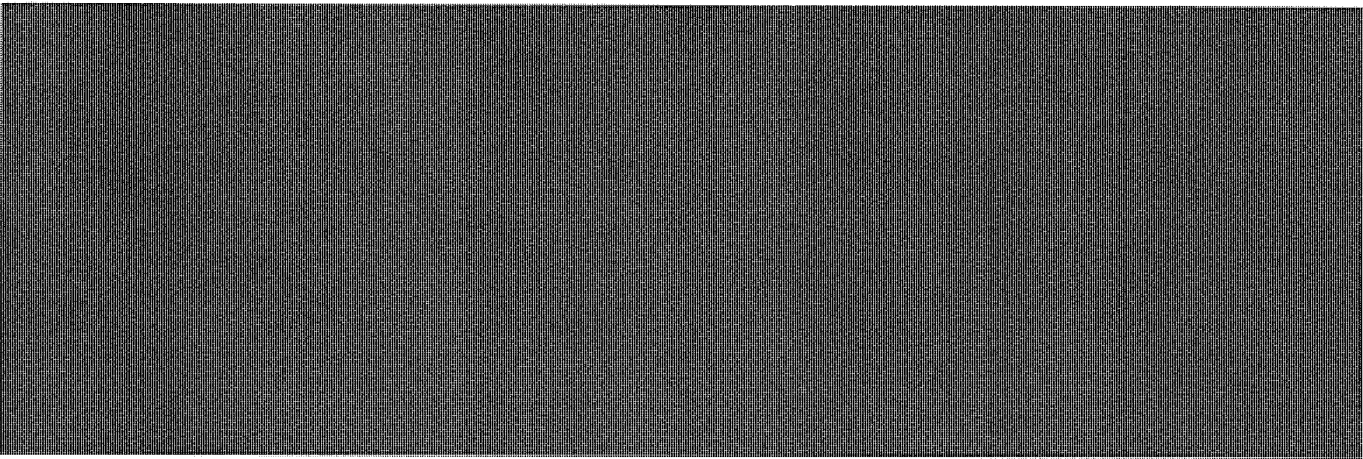
If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Thank you for your assistance.

Sincerely,

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

EXHIBIT 41



From: **PIO** <PIO@lvmpd.com>
Date: Fri, May 19, 2017 at 3:08 PM
Subject: Nev. Open Records Request -- 170519-08
To: Brian Joseph <bjoseph@reviewjournal.com>

See attached.

Office of Public Information

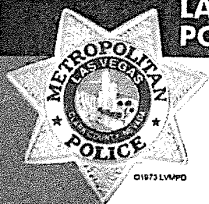
Las Vegas Metropolitan Police Department

400-B S. Martin L. King Blvd.

Las Vegas, NV 89106

Office: (702) 828-4082

MR



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

May 19, 2017

Brian Joseph
Staff Reporter
Las Vegas Review Journal
1111 W. Bonanza Rd.
Las Vegas, NV 89125

Re: Public records request 170519-08 dated 05-19-17

Mr. Joseph,

Your E-mail dated 5/19/2017 in which you requested:

"All investigative case files for all LVMPD pandering and accepting earnings of a prostitute investigations that were closed in calendar years 2014, 2015 and 2016;

All LVMPD arrest reports for 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 that were produced in calendar years 2014, 2015 and 2016; and

Any records LVMPD has relating to Robert Ryan Powell, DOB: 1/24/1984, SCOPE ID# 2505674, including but not limited to all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos related to his 7/25/2007 arrest for pandering, ITAG Booking No. 700002611, ITAG Case ID: 872634, District Court Case No. 07C236326, Justice Court Case No. 07F15144X.

For any record that includes juvenile information, I agree to have the juvenile's name redacted, but ask that the records preserve all other information, including the juvenile's DOBs and all event numbers."

-has been received by the Office of Public Information.

Please be advised 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.

Thank you for your courtesy in this matter.

Sincerely,

Joseph Lombardo, SHERIFF

By: Michael Rodriguez
Officer Michael Rodriguez
Office of Public Information



EXHIBIT 42



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Wed, May 31, 2017 at 12:49 PM
Subject: Records Request
To: PIO <pio@lvmpd.com>

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
1111 West Bonanza Road
Las Vegas, NV 89125

May 31, 2017

Las Vegas Metropolitan Police Department
400 S. Martin L. King Boulevard
Las Vegas, NV 89106

To Whom It May Concern:

This is a public records request. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request access to and digital copies (PDFs if available) of:

- All police reports, filed by citizens, in which the home address is listed as 1 West Owens, North Las Vegas, NV 89030, from Jan. 1, 2014 through the present.

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt

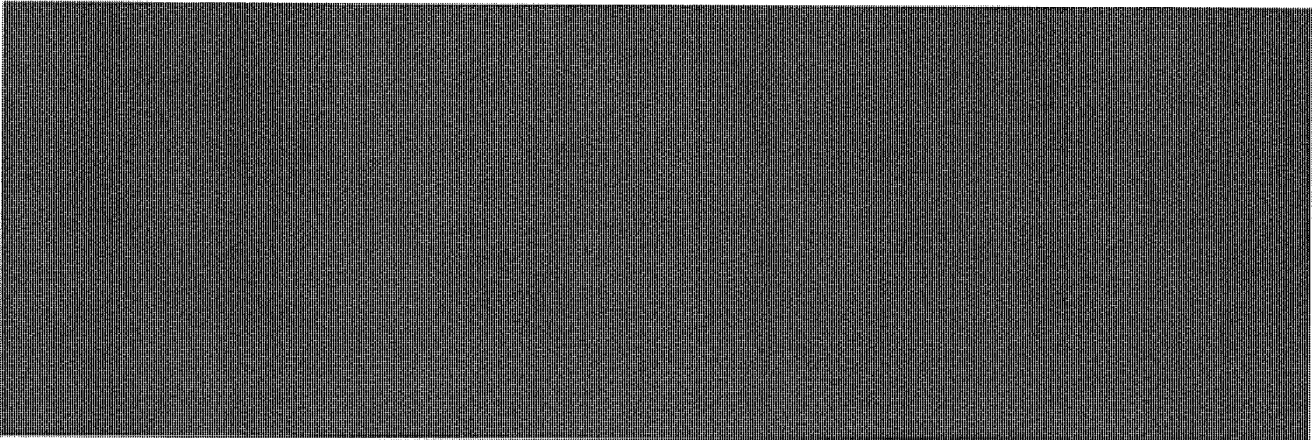
material.

Thank you for your assistance.

Sincerely,

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

EXHIBIT 43



From: **PIO** <PIO@lvmpd.com>
Date: Fri, Jun 2, 2017 at 3:01 PM
Subject: open records request
To: Brian Joseph <bjoseph@reviewjournal.com>

Good afternoon Brian,

I have received your request for information and your 5-day letter is attached. The request has been forwarded to the appropriate section for research.

Laura

Officer Laura Meltzer

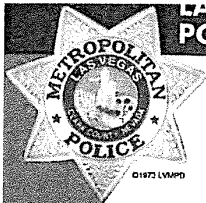
Office of Public Information

Las Vegas Metropolitan Police Department

400 S. Martin L. King Boulevard

Las Vegas, NV 89106

702-828-4082



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

June 2, 2017

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
Offices: 702-387-5208
bjoseph@reviewjournal.com

Re: Public record request 170531-18

Your E-mail dated May 31, 2017 in which you requested:

"This is a public records request. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request access to and digital copies (PDFs if available) of:

- All police reports, filed by citizens, in which the home address is listed as 1 West Owens, North Las Vegas, NV 89030, from Jan. 1, 2014 through the present.

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.


As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material. "



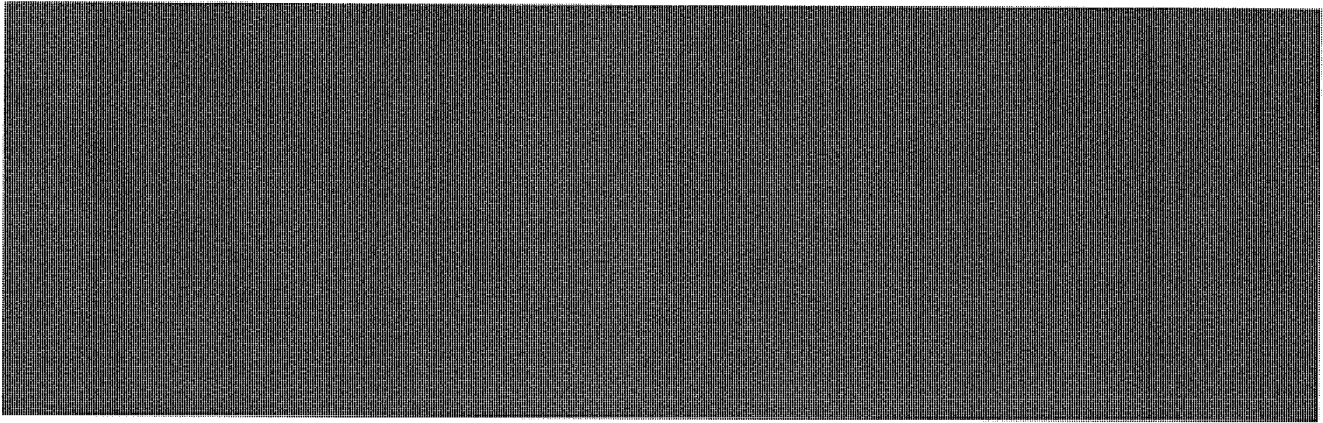
Sincerely,

Joseph Lombardo, SHERIFF

By: 
Officer Laura Meltzer
Office of Public Information

LVRJ614

EXHIBIT 44



From: **Lawrence Hadfield** <L7171H@lvmpd.com>

Date: Fri, Jul 7, 2017 at 8:48 AM

Subject: RE: Status update

To: Brian Joseph <bjoseph@reviewjournal.com>, PIO <PIO@lvmpd.com>, Jacinto Rivera <J4417R@lvmpd.com>, Laura Meltzer <L6428M@lvmpd.com>

Brian,

I have sent for a status check. By the looks of it, your requests are very labor intensive. Did you get any estimates?

Larry

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]

Sent: Friday, July 7, 2017 8:40 AM

To: PIO <PIO@LVMPD.COM>; Lawrence Hadfield <L7171H@LVMPD.COM>; Jacinto Rivera <J4417R@LVMPD.COM>; Laura Meltzer <L6428M@LVMPD.COM>

Subject: Status update

Hi, Brian Joseph here with the Review-Journal newspaper. I'm writing to ask for an update on the status of the following pending records requests I have with the LVMPD:

- 170306-08
- 170531-18
- Request filed by myself and Art Kane on 6/7/2017 (No tracking number provided)

I really appreciate your help. Thank you.

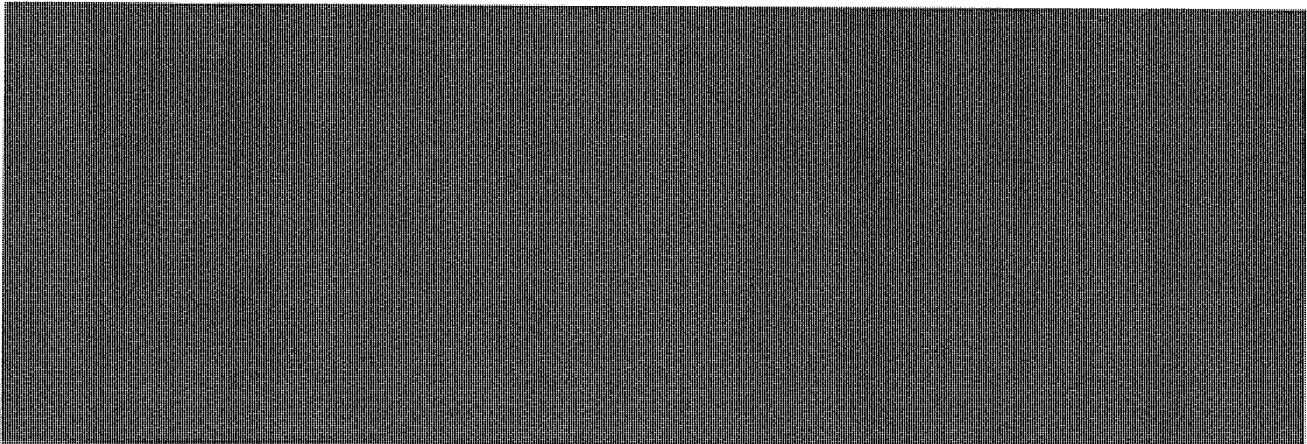
Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)

Cell: 916-233-9681

E-mail: bjoseph@reviewjournal.com

EXHIBIT 45



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Wed, Jul 12, 2017 at 5:50 PM
Subject: Records request
To: PIO <pio@lvmpd.com>

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
1111 West Bonanza Road
Las Vegas, NV 89125

July 12, 2017

Las Vegas Metropolitan Police Department
400 S. Martin L. King Boulevard
Las Vegas, NV 89106

To Whom It May Concern:

This is a public records request. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request access to and digital copies (PDFs if available) of:

- All LVMPD arrest reports for attempted Category B grand larcenies in casinos that were produced in calendar years 2014, 2015 and 2016
- All LVMPD incident reports for Category B grand larcenies and attempted Category B grand larcenies in casinos that were produced in calendar years 2014, 2015 and 2016

NOTE: This request is intended to attempt to capture so-called "trick rolls" (and attempted trick rolls) including trick rolls in which arrests were not made. LVMPD PIO Laura Meltzer has worked with me on a similar request (Request No. 170306-08) and devised a process for me to obtain relevant records. I provided for her a list of the addresses of 202 casinos and hotels in which I would like to survey. She provided for me an cost estimate associated with this request back in late April. I followed up with questions about how that estimate was derived, which still have not been answered, despite several requests for updates on this status of this request.

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Thank you for your assistance.

Sincerely,

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

EXHIBIT 46



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Thu, Jul 27, 2017 at 5:38 PM
Subject: Records request amendments
To: PIO <pio@lvmpd.com>
Cc: Karisa King <kking@reviewjournal.com>

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
1111 West Bonanza Road
Las Vegas, NV 89125

July 20, 2017

Las Vegas Metropolitan Police Department
400 S. Martin L. King Boulevard
Las Vegas, NV 89106

To Whom It May Concern:

This letter amends several pending records requests. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request the ability to view records I've requested in the following requests:

- 170223-14, requested on 2/23/2017;
- 170227-09, requested on 2/27/2017;
- 170306-08, requested on 3/3/2017;
- 170519-08, requested on 5/19/2017;
- 170531-18, requested on 5/31/2017;
- 170608-11, requested on 7/6/2017;
- 170707-02, requested on 7/6/2017;
- 170306-08, requested on 7/12/2017; and
- Unnumbered (any records LVMPD has relating to JoJon Harris, DOB: 5/20/1984, et al), requested on 7/20/2017

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

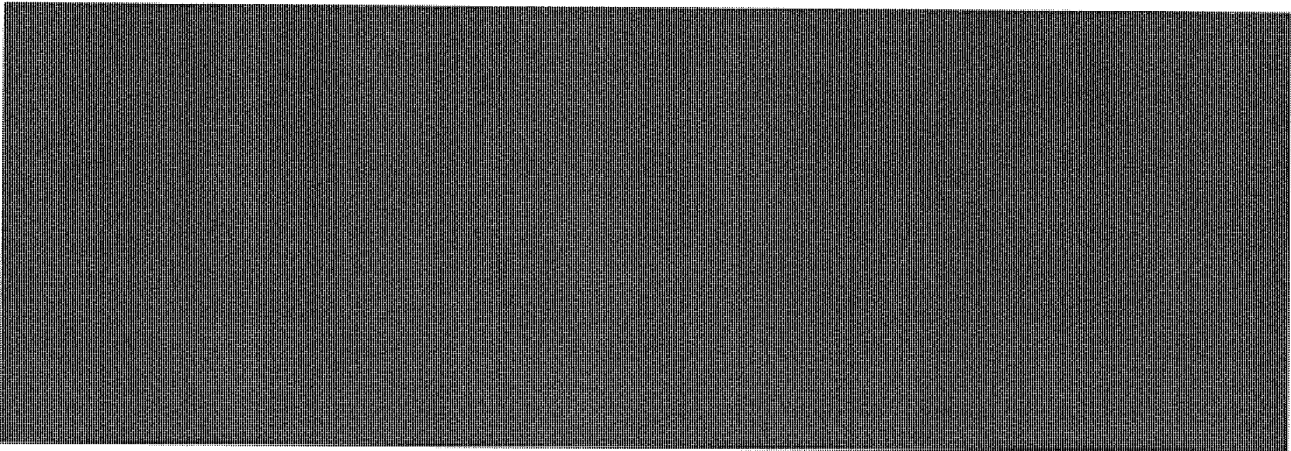
If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Thank you for your assistance.

Sincerely,

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

EXHIBIT 47



From: **PIO** <PIO@lvmpd.com>
Date: Wed, Aug 2, 2017 at 1:49 PM
Subject: open records requests 170519-08 and 170728-04
To: Brian Joseph <bjoseph@reviewjournal.com>

Good afternoon Brian,

It looks like Officer Rodriguez had been working on an open records request for your originally submitted in May. I am forwarding you the response for that request as well as the 5-day letter acknowledging receipt of your request to modify all of your previous requests.

Laura

Officer Laura Meltzer

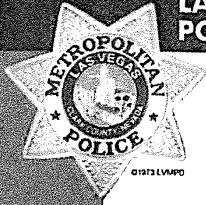
Office of Public Information

Las Vegas Metropolitan Police Department

400 S. Martin L. King Boulevard

Las Vegas, NV 89106

702-828-4082



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

August 2, 2017

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
Office: 702-387-5208
bjoseph@reviewjournal.com

Dear Mr. Joseph,

Your E-mail dated 07/28/2017 in which you requested:

"This letter amends several pending records requests. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request the ability to view records I've requested in the following requests:

- 170223-14, requested on 2/23/2017;
- 170227-09, requested on 2/27/2017;
- 170306-08, requested on 3/3/2017;
- 170519-08, requested on 5/19/2017;
- 170531-18, requested on 5/31/2017;
- 170608-11, requested on 7/6/2017;
- 170707-02, requested on 7/6/2017;
- 170306-08, requested on 7/12/2017; and
- Unnumbered (any records LVMPD has relating to JoJon Harris, DOB: 5/20/1984, et al), requested on 7/20/2017

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.



As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

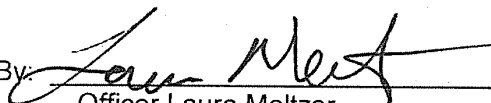
-has been received by the Office of Public Information.

Please be advised 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.

Thank you for your courtesy in this matter.

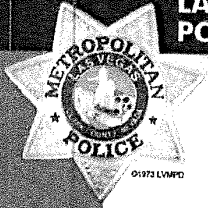
Sincerely,

Joseph Lombardo, SHERIFF

By: 
Officer Laura Meltzer
Office of Public Information

LVRJ623

EXHIBIT 48



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

July 28, 2017

Via: bjoseph@review-journal.com
Brian Joseph, Staff Reporter
Las Vegas Review-Journal
111 West Bonanza Road
Las Vegas, Nevada 89125

Re: Public Records Request dated May 19, 2017
LVMPD PIO Request No. 170519-08

Dear Mr. Joseph:

This correspondence is in response to your public records request received by the Las Vegas Metropolitan Police Department Office of Public Information on May 19, 2017. Your request consists of the below three (3) items:

- All investigative case files for all LVMPD pandering and accepting earnings of a prostitute investigations that were closed in calendar years 2014, 2015 and 2016;
- All LVMPD arrest reports for 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 that were produced in calendar years 2014, 2015 and 2016; and
- Any records LVMPD has relating to Robert Ryan Powell, DOB: 1/24/1984, SCOPE ID# 2505674, including but not limited to all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos related to his 7/25/2007 arrest for pandering, ITAG Booking No. 700002611, ITAG Case ID: 872634, District Court Case No. 07C236326, Justice Court Case No. 07F15144X.

In response to item #1, the LVMPD Vice Section determined there are approximately 304 closed cases just for the year 2014. An individual review of each case will be required to determine which cases pertain to pandering and/or accepting earnings of a prostitute. The review will also require the redaction of confidential information.



In response to item #2, only four (4) charges were researched to determine the volume of responsive records. There are approximately 7,061 arrests for the following charges: 1) False Information to Police Officer/Obstruction an Officer (6,185); 2) Pandering & Attempting Pandering (146); 3) Acting as a Masseuse without a Permit (6); and 4) Loitering for Purpose of Prostitution (724). Each arrest report costs \$9.00 pursuant to LVMPD's fee schedule. Because of the volume of records that would be responsive to your request for all arrest reports for charges listed above, extraordinary use of personnel, technological resources and information from a geographic information system will be required to fulfill your request. Please consider modifying and narrowing your request to enable LVMPD to readily identify records responsive to your request at the least cost to you and to prevent excessive interference with essential functions of LVMPD.

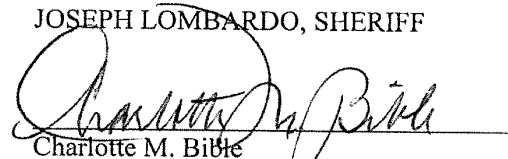
In response to item #3, my office was informed by the LVMPD Records and Fingerprint Bureau that records have already been provided in response to this request.

A deposit will be required before LVMPD proceeds with these requests. Please contact the LVMPD Office of Public Information with a decision concerning these requests.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By:


Charlotte M. Bible
Assistant General Counsel

CMB:sa

LVRJ625

EXHIBIT 49



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Fri, Aug 18, 2017 at 11:33 AM
Subject: Records request
To: PIO <pio@lvmpd.com>

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
1111 West Bonanza Road
Las Vegas, NV 89125

August 18, 2017

Las Vegas Metropolitan Police Department
400 S. Martin L. King Boulevard
Las Vegas, NV 89106

To Whom It May Concern:

This is a public records request. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request to view or digital copies of (PDFs if available)

- 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 traffic stops involving Robert Sharpe III (DOB: 1/12/1986) and Kariah Heiden (DOB: 5/15/1995) in May or June of 2014;
- All reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos of all witness interviews related to the investigation of Robert Sharpe III (DOB: 1/12/1986) and Kariah Heiden (DOB: 5/15/1995), including three interviews conducted by Detectives Ortega, Hui and Lucero at UMC Hospital between the dates of June 29, 2014 and July 7, 2014.

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's

name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Thank you for your assistance.

Sincerely,

Brian Joseph
Staff Reporter
Las Vegas Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

EXHIBIT 50



Las Vegas Metropolitan Police Department

Office of Public Information

400-B S. Martin L. King Blvd. Las Vegas, NV 89106

Office (702) 828-3394 Fax (702) 828-1550

August 23, 2017

Brian Joseph
Las Vegas Review Journal
1111 West Bonanza Road
Las Vegas, NV 89125
702-387-5208
bjoseph@reviewjournal.com

Re: Public records 170818-08 dated August 18, 2017

Dear Mr. Joseph,

Your email dated August 18, 2017 in which you requested:

"This is a public records request. Pursuant to the state open records law, Nev. Rev. Stat. Secs. 239.001 to 239.330, I request to view or digital copies of (PDFs if available)

- 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 traffic stops involving Robert Sharpe III (DOB: 1/12/1986) and Kariah Heiden (DOB: 5/15/1995) in May or June of 2014;
- All reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos of all witness interviews related to the investigation of Robert Sharpe III (DOB: 1/12/1986) and Kariah Heiden (DOB: 5/15/1995), including three interviews conducted by Detectives Ortega, Hui and Lucero at UMC Hospital between the dates of June 29, 2014 and July 7, 2014.

I request that these records be released to me serially, as you obtain them, instead of waiting to collect them all and then giving them to me in one large batch.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

###

Don't forget to visit our web sites
www.LVMPD.com or www.ProtectTheCity.com

LVRJ628

As provided by the open records law, I will expect your response within five (5) business days as provided by Nev. Rev. Stat. Sec. 239.0107.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material."


- has been received by the Office of Public Information.

Please be advised 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.

Thank you for your courtesy in this matter.

Sincerely,

Joseph Lombardo, SHERIFF

By: 

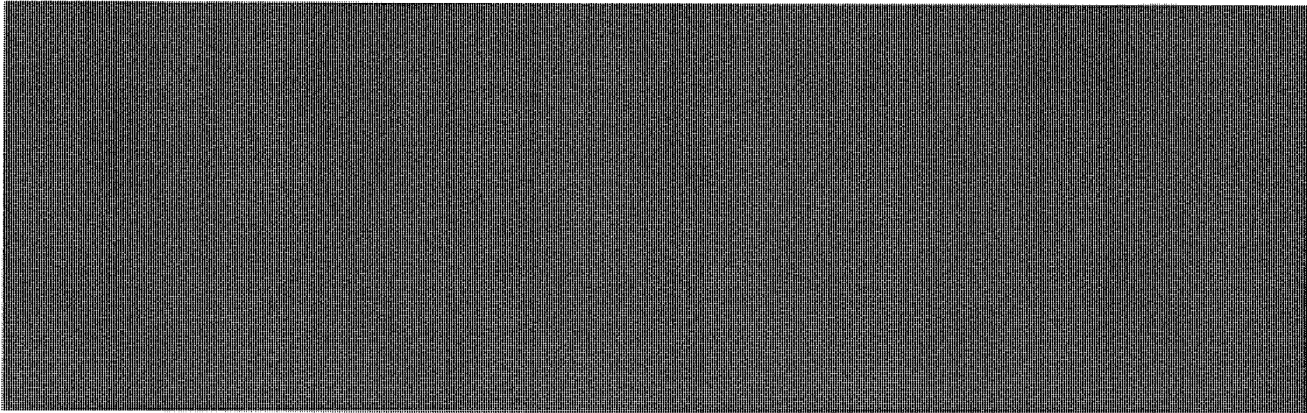
Officer Laura Meltzer
Office of Public Information

###

Don't forget to visit our web sites
www.LVMPD.com or www.ProtectTheCity.com

LVRJ629

EXHIBIT 51



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Thu, Sep 7, 2017 at 4:39 PM
Subject: Re: Media request
To: PIO <PIO@lvmpd.com>

Hi, this is a media request. I'd like to review:

- any records you have pertaining to incidents or arrests involving Branden Johnson, DOB: 3/27/86, ID #2887908

Deadline: Close of business Sept. 15.

Really appreciate the help. Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

On Thu, Sep 7, 2017 at 12:44 PM, Brian Joseph <bjoseph@reviewjournal.com> wrote:
Sure. Close of business Sept. 15. Thanks, Brian

Sent from my iPhone

On Sep 7, 2017, at 12:19 PM, PIO <PIO@LVMPD.COM> wrote:

Hello Brian,

Can you please provide a deadline for your request form?

Thank you,

Office of Public Information

Las Vegas Metropolitan Police Department

400-8 South Martin L. King Boulevard, Las Vegas, Nevada 89106

☎ [702.828.4082](tel:702.828.4082) office | 📠 [702.828.1550](tel:702.828.1550) fax | ✉ PIO@LVMPD.com

Follow us on [Facebook](#), [Twitter](#) and [Instagram](#)

mg

From: Brian Joseph [<mailto:bjoseph@reviewjournal.com>]
Sent: Thursday, September 7, 2017 11:07 AM
To: PIO <PIO@LVMPD.COM>
Subject: Media request

Hi, this is a media request. I'd like to review:

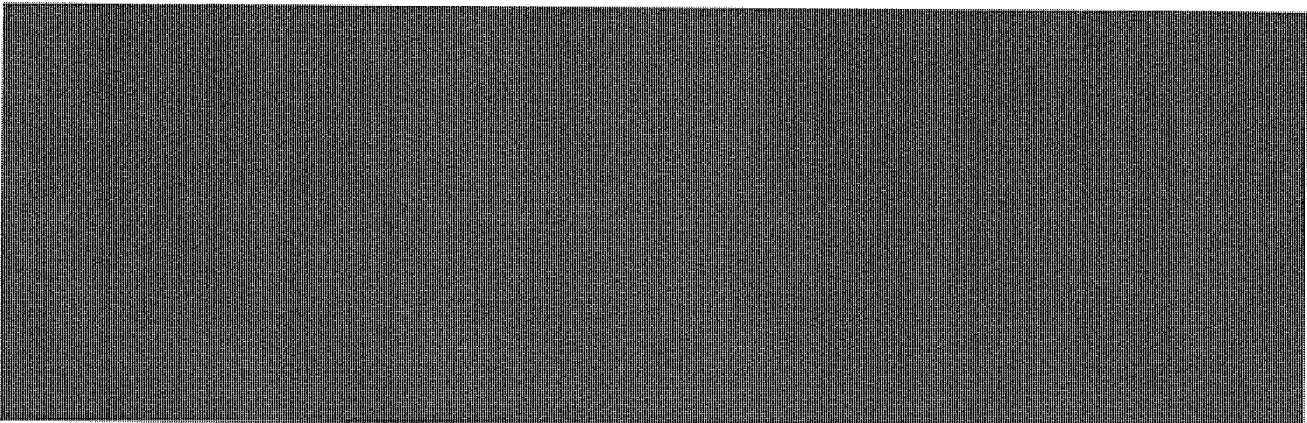
- any records you have pertaining to incidents or arrests involving Cindy Ross, DOB: 4/15/88, including but not limited to a check on a possible domestic violence incident at the Excalibur casino in June or July of 2013 as well as any stops for ID checks for appearing to be underage in a casino.
- any records you have pertaining to incidents or arrests involving Branden Johnson, DOB: 3/27/86.

Really appreciate the help. Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

EXHIBIT 52



From: **Brian Joseph** <bjoseph@reviewjournal.com>

Date: Fri, Sep 15, 2017 at 2:42 PM

Subject: Media request (3)

To: PIO <pio@lvmpd.com>

Hi, this is a media request. I'd like to know the following:

- The total number of women arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016;
- The total number of men arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016;
- The total number of men arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016;
- The total number of women arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016;
- The total number of men arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016; and
- The total number of women arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016.

Deadline: Close of business Sept. 22

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

EXHIBIT 53



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Fri, Sep 15, 2017 at 9:45 AM
Subject: Media request (2)
To: PIO <pio@lvmpd.com>

Hi, this is a media request. I'd like to inspect:

- Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Poppy Wellman, DOB: 8/29/1974, including her 12/7/2005 arrest.
- Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Kariah Heiden, DOB: 5/15/1995, including her arrests on 6/11/2013, 9/23/2013, 9/23/2014, 8/24/2016 and 1/22/2017.

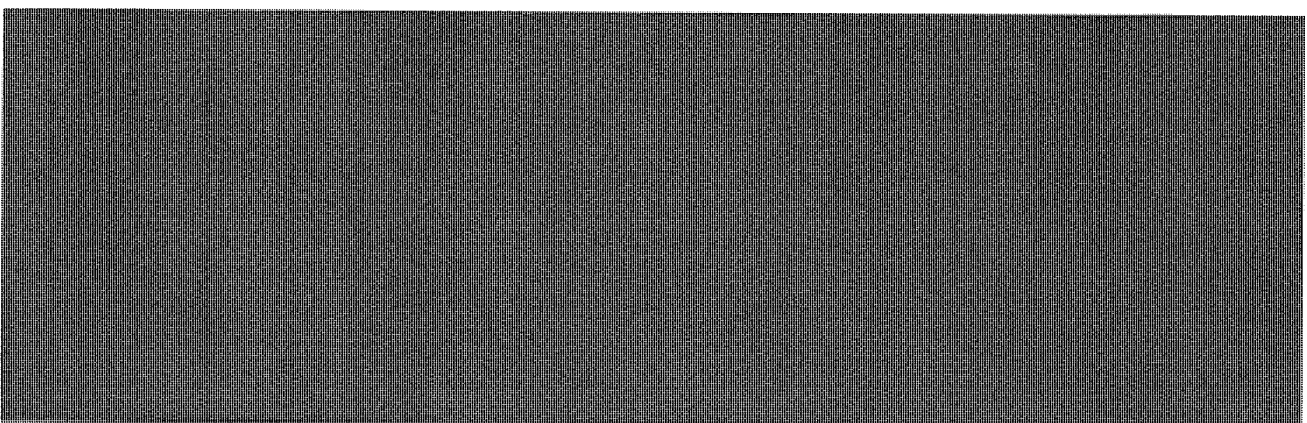
Deadline: Close of business Sept. 22

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

EXHIBIT 54



From: **Brian Joseph** <bjoseph@reviewjournal.com>

Date: Thu, Sep 21, 2017 at 11:24 AM

Subject: Re: open records requests

To: PIO <PIO@lvmpd.com>

Thanks for getting back to me, Officer Meltzer. Excluding the three records requests you mentioned, here's the other requests I need updates on:

- 170519-08. I sent you some questions about the department's response to this request on Aug. 3 but have received no follow up.
- 170531-18.
- 170306-08. You may be treating this request as an amendment to 170306-08. If so, please let me know so I can track it the same way you are.
- 170818-08.

I also would like updates on the following media requests.

- Filed 9/7/2017: any records you have pertaining to incidents or arrests involving Branden Johnson, DOB: 3/27/86, ID #2887908 Deadline: Close of business Sept. 15.
- Filed 9/15/2017: (1) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Poppy Wellman, DOB: 8/29/1974, including her 12/7/2005 arrest. (2) Any and all Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Kariah Heiden, DOB: 5/15/1995, including her arrests on 6/11/2013, 9/23/2013, 9/23/2014, 8/24/2016 and 1/22/2017. Deadline: Close of business Sept. 22
- Filed 9/15/2017: (1) The total number of women arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (2) The total number of men arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (3) The total number of men arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (4) The total number of women arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (5) The total number of men arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016; and (6) The total number of women arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016. Deadline: Close of business Sept. 22.

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

On Thu, Sep 21, 2017 at 10:58 AM, PIO <PIO@lvmpd.com> wrote:

Good morning Brian,

One of my partners Mike Rodriguez promoted and was transferred. He had a request from you that was received on July 28, 2017 that listed several previous requests and asked for the ability to review the records. The LVMPD Office of General Counsel advised that a response to the below request numbers has been forwarded to the Review Journal attorney Maggie McCletchie, so you should reach out to her for the responses:

170223-14

170227-09

170306-08

There were some other requests that other PIOs were handling, but I was under the impression those were for specific records and that you had picked those up from our Records Bureau. If you need follow up on any other records requests please let me know and I will pass to whoever is handling it.

Thank you,

Laura

Officer Laura Meltzer

Office of Public Information

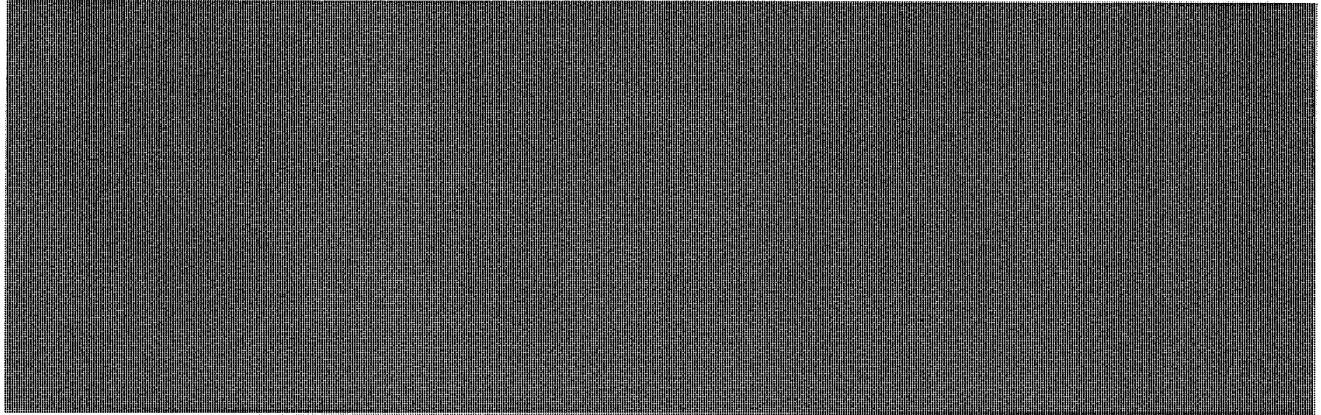
Las Vegas Metropolitan Police Department

400 S. Martin L. King Boulevard

Las Vegas, NV 89106

702-828-4082

EXHIBIT 55



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Tue, Nov 28, 2017 at 4:24 PM
Subject: Re: Request statuses
To: PIO <pio@lvmpd.com>

I sent the following email on Nov. 15. I sent a follow-up email on Nov. 17. I have received no response to either from this office.

I am simply asking for a status update on my records requests and media requests. I am entitled to know where my requests stand. Please respond with an update on my requests.

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

----- Forwarded message -----

From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Wed, Nov 15, 2017 at 8:16 AM
Subject: Request statuses
To: PIO <pio@lvmpd.com>

Hi, Brian Joseph here with the Review-Journal newspaper. I'm writing because I'd like a status update on my outstanding records requests and media requests.

Can you please tell me where the following records requests stand?

- 170223-14
- 170227-09
- 170306-08
- 170519-08
- 170531-18

- 170306-08
- 170818-08

Also, can you please tell me where the following media requests stand? I started filing my records requests as media requests at the direction of your office, with the understanding that doing so would be more expedient and easier for your office while at the same time I would lose no rights on my end.

However when I file this way, I no longer receive a tracking number or an acknowledgement that my request has been received and is being processed. As such, I have no sense of where these requests stand or when they will be fulfilled.

- Media request filed 8/18/2017, which sought to inspect "any records you have pertaining to incidents or arrests involving Branden Johnson, DOB: 3/27/86, ID #2887908"
- Media request filed 9/15/2017, which sought to inspect "the arrest report for Event No. 1702130079"
- Media request filed 9/15/2017, which sought to inspect "(1) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Poppy Wellman, DOB: 8/29/1974, including her 12/7/2005 arrest. (2) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Kariah Heiden, DOB: 5/15/1995, including her arrests on 6/11/2013, 9/23/2013, 9/23/2014, 8/24/2016 and 1/22/2017."
- Media request filed 9/15/2017, which sought the following statistics: "(1) The total number of women arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (2) The total number of men arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (3) The total number of men arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (4) The total number of women arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (5) The total number of men arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016; and (6) The total number of women arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016."

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

On Fri, Nov 17, 2017 at 8:07 AM, Brian Joseph <bjoseph@reviewjournal.com> wrote:
Hi. I'd like a response to my update request please. Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

On Wed, Nov 15, 2017 at 8:16 AM, Brian Joseph <bjoseph@reviewjournal.com> wrote:

Hi, Brian Joseph here with the Review-Journal newspaper. I'm writing because I'd like a status update on my outstanding records requests and media requests.

Can you please tell me where the following records requests stand?

- 170223-14
- 170227-09
- 170306-08
- 170519-08
- 170531-18
- 170306-08
- 170818-08

Also, can you please tell me where the following media requests stand? I started filing my records requests as media requests at the direction of your office, with the understanding that doing so would be more expedient and easier for your office while at the same time I would lose no rights on my end.

However when I file this way, I no longer receive a tracking number or an acknowledgement that my request has been received and is being processed. As such, I have no sense of where these requests stand or when they will be fulfilled.

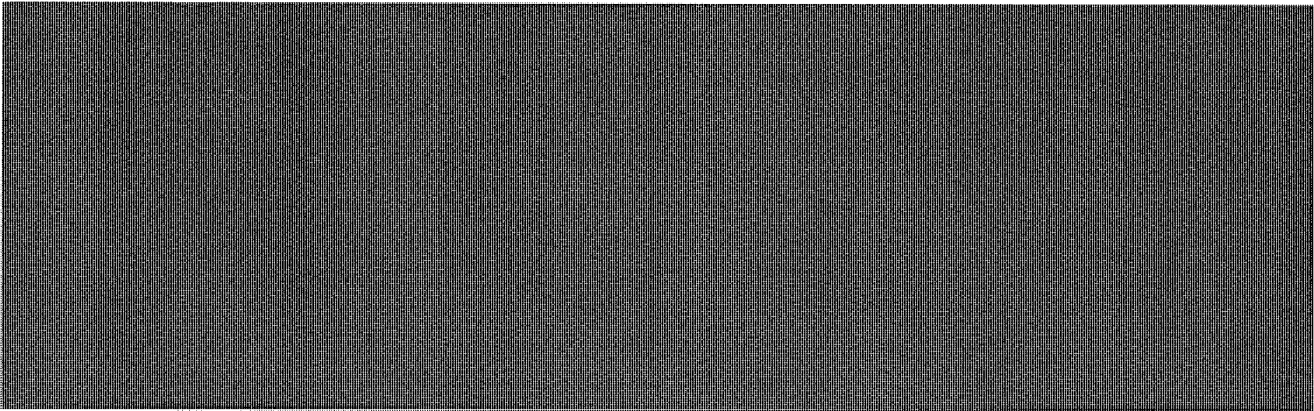
- Media request filed 8/18/2017, which sought to inspect "any records you have pertaining to incidents or arrests involving Branden Johnson, DOB: 3/27/86, ID #2887908"
- Media request filed 9/15/2017, which sought to inspect "the arrest report for Event No. 1702130079"
- Media request filed 9/15/2017, which sought to inspect "(1) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Poppy Wellman, DOB: 8/29/1974, including her 12/7/2005 arrest. (2) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Kariah Heiden, DOB: 5/15/1995, including her arrests on 6/11/2013, 9/23/2013, 9/23/2014, 8/24/2016 and 1/22/2017."
- Media request filed 9/15/2017, which sought the following statistics: "(1) The total number of women arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (2) The total number of men arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (3) The total number of men arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (4) The total number of women arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (5) The total number of men arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016; and (6) The total number of women arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016."

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

EXHIBIT 56



From: Jennifer Knight <j14549K@lvmpd.com>
Date: Fri, Dec 15, 2017 at 10:57 AM
Subject: RE: Following up
To: Brian Joseph <bjoseph@reviewjournal.com>

I don't know. I am conferring with Legal on this. I will let you know when I do.

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]
Sent: Friday, December 15, 2017 10:56 AM

To: Jennifer Knight <j14549K@LVMPD.COM>
Subject: Re: Following up

When can I expect updates? i.e. Your Dec. 5 email: "As for item #5, we will get back to you on those." When will I be getting that? Or the status of 170531-18, which as I noted, the only thing you've provided is a 5-day response. That request was filed a half a year ago.

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

On Fri, Dec 15, 2017 at 10:50 AM, Jennifer Knight <j14549K@lvmpd.com> wrote:

There are no updates.

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]

Sent: Friday, December 15, 2017 10:08 AM

To: Jennifer Knight <J14549K@LVMPD.COM>

Subject: Re: Following up

Hi, Ms. Knight. Do you have any updates on the statuses of my requests? Thank you.

Sincerely,

Brian Joseph

Staff reporter, Review-Journal

Office: [702-387-5208](tel:702-387-5208)

Cell: [916-233-9681](tel:916-233-9681)

E-mail: bjoseph@reviewjournal.com

On Wed, Dec 6, 2017 at 1:49 PM, Brian Joseph <bjoseph@reviewjournal.com> wrote:

OK. A 5-day response -- which again this doesn't technically state it is a 5-day response, it just reiterates the request -- doesn't tell me much other than you've received it. If you want to call that a response, fine. But the fact still remains I don't have any substantive response about when records will be made available on this request or where the request stands in the process.

On Wed, Dec 6, 2017 at 1:42 PM, Jennifer Knight <J14549K@lvmpd.com> wrote:

You stated that: Regarding Item 2: I've checked my correspondence log and the only message I have from LVMPD on 7/7 regarding request 170531-18 is an email from Officer Hadfield saying he will be looking into its status. What other correspondence are you referring to? From what email address was it sent? Because I have nothing that constitutes a response or update on this request, which was filed 5/31/2017.

That indicated you have not received a reply, which you did. Hence, that is why I sent you the document.

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]

Sent: Wednesday, December 06, 2017 1:24 PM

To: Jennifer Knight <J14549K@LVMPD.COM>

Subject: Re: Following up

Yes. I received it on 6/2/2017 from Officer Meltzer writing from the pio@lvmpd.com address.

I have received nothing since then, hence why I'm asking for an update.

Brian

On Wed, Dec 6, 2017 at 12:48 PM, Jennifer Knight <J14549K@lvmpd.com> wrote:

Did you already have that document?

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]
Sent: Wednesday, December 06, 2017 12:28 PM
To: Jennifer Knight <J14549K@LVMPD.COM>
Subject: Re: Following up

This literally just reiterates my request. It makes no statements about when your office will get back to me -- nothing. It frankly doesn't even state that my request has even been received, although I suppose you could argue that's implied.

I submitted this request on 5/31/2017. What is the current status of this request? What you've provided is not responsive.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

On Wed, Dec 6, 2017 at 12:06 PM, Jennifer Knight <J14549K@lvmpd.com> wrote:

Here you go. This is the correspondence for Media Request #170531-18 that was sent to you on June 2, 2017.

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]
Sent: Wednesday, December 06, 2017 8:32 AM
To: Jennifer Knight <J14549K@LVMPD.COM>
Subject: Re: Following up

Thank you for your response.

- Regarding Item 1: I have a 9/21/2017 email sent from Officer Meltzer on the pio@lvmpd.com email address stating, "The LVMPD Office of General Counsel advised that a response to the below request numbers has been forwarded to the Review Journal attorney Maggie McCletchie, so you should reach out to her for the responses: 170223-14, 170227-09, 170306-08" If that's what you're referring to that's fine. I was merely asking if there's been any update on that front on your end. But if you're maintaining that these requests are still in the hands of lawyers, that's fine. I will note, however, that this message from Officer Meltzer does not confirm that request 170306-08 incorporates both the initial request filed on 3/3/2017 and the addition filed on 7/12/2017. Please confirm that this is the case.
- Regarding Item 2: I've checked my correspondence log and the only message I have from LVMPD on 7/7 regarding request 170531-18 is an email from Officer Hadfield saying he will be looking into its status. What other correspondence are you referring to? From what email address was it sent? Because I have nothing that constitutes a response or update on this request, which was filed 5/31/2017.
- Regarding Item 3: The only response I have received to request 170818-08 is a five-day review letter dated 8/23/2017. If that is the response telling me that my request is under review, that is nearly four months old. I ask again: What is the status of this request and when can I expect to receive my documents?
- On sitting down with someone to learn how your records are organized: Thank you. When can I expect a response? You'll note I requested this in August, at the latest.
- Regarding the issue of a deposit, I told you that I had several unanswered questions in the wake of your office's response to request 170519-08. Your office's response to that request came in a letter dated 7/28/2017, although that letter was not emailed to me until 8/2/2017. Among other things, that letter concludes by saying: "A deposit will be required before LVMPD proceeds with these requests." I responded to this letter with several questions on 8/3/2017, including asking your office to please cite the NRS code that allows you to require a deposit for a records request. That 8/3/2017 email was never responded to -- which is a pattern for your office. In my email to 12/4/2017, I was merely reiterating my questions in the hope that your office might finally respond.
- Regarding Item 5: Thank you. When can I expect a response? You'll note these requests were made in September. It is now December. I have received no update on these requests.

Thank you again.

Sincerely,

Brian Joseph
 Staff reporter, Review-Journal
 Office: [702-387-5208](tel:702-387-5208)
 Cell: [916-233-9681](tel:916-233-9681)
 E-mail: bjoseph@reviewjournal.com

On Tue, Dec 5, 2017 at 6:11 PM, Jennifer Knight <j14549K@lvmpd.com> wrote:

Brian,

After further research, I have found that correspondence on item #1 was sent to you confirming which records were referred to the lawyer. We emailed you on 7/7 for item #2, so refer to that correspondence. On item #3, we sent you correspondence as well letting you know that request is under review.

On the issue of sitting down with someone to learn the system, that request is under review. On the issue of requiring a deposit, I don't remember discussing that issue with you, so please send me the letter that we sent you stating that.

As for item #5, we will get back to you on those.

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]
Sent: Monday, December 04, 2017 4:19 PM
To: Jennifer Knight <J14549K@LVMPD.COM>
Subject: Following up

Hi, Ms. Knight. Thank you for calling me to try to update me on the status of my requests.

(1) According to our discussion, I have the following records request in with legal. Can you please confirm that this is the case.

- 170223-14 (filed 2/23/2017)
- 170227-09 (filed 2/27/2017)
- 170306-08 (filed 3/3/2017 with an addition filed 7/12/2017)

(2) You told me that you had a response coming to me for 170531-18. That's fine.

(3) You told me that I should expect an extension letter for 170818-08. That too is fine.

(4) Regarding 170519-08, the request we spoke the most about. The July 28, 2017 response says that for item one of the request "an individual review of each case will be required to determine which cases pertain to pandering and/or accepting earnings of a prostitute. The review will also require the redaction of confidential information." No other information is provided. Questions and comments:

- I'm assuming you'll have some costs associated with these activities. I'd like to know what the cost and time estimates would be.

Regarding item 2, the response makes reference to 7,061 arrests reports for four charges, at \$9 a report. It then goes on to state that "Because of the volume of records that would be responsive to your request for all arrest reports for charges listed above, extraordinary use of personnel, technological resources and information from a geographic information system will be required to fulfill your request. Please consider modifying and narrowing

your request to enable LVMPD to readily identify records responsive to your request at the least cost to you and to prevent excessive interference with essential functions of LVMPD." It then goes on to state that a deposit is necessary to move forward with this request.

Questions and comments:

- At the suggestion of legal, I modified this request, and others, to ask simply that I be allowed to view the records in question. Given that amendment, I'd like to know what, if any, costs would be associated with fulfilling this request.
- I'd like to know why using a GIS is necessary to fulfill this request. NRS 239.054 defines a "geographic information system" as a system of hardware, software and data files on which spatially oriented geographical information is digitally collected..." I'm not asking for anything based on location. Therefore, I'm unclear why the use of a GIS is necessary.
- As I emailed to pio@lvmpd.com on 8/3/2017: "Can someone show me how your system works? I would imagine if someone would be willing to take the time to show me how your data is warehoused, it would allow me to better craft requests, especially if you're asking me to consider modifying my request(s). I can't consider making modifications until I better understand how your office manages its records." I haven't received a response to this request. It would seem that if someone was willing to work with me and show me exactly how searches are conducted and records are kept a lot of these problems could be addressed.
- Finally, please cite the NRS code that allows you to require a deposit for a records request. I see nothing in the NRS that allows for such a demand.

(5) You asked me for an accounting of my unnamed media requests.

- Media request filed 9/7/2017, which sought to inspect "any records you have pertaining to incidents or arrests involving Branden Johnson, DOB: 3/27/86, ID #2887908"
- Media request filed 9/15/2017, which sought to inspect "the arrest report for Event No. 1702130079"
- Media request filed 9/15/2017, which sought to inspect "(1) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Poppy Wellman, DOB: 8/29/1974, including her 12/7/2005 arrest. (2) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Kariah Heiden, DOB: 5/15/1995, including her arrests on 6/11/2013, 9/23/2013, 9/23/2014, 8/24/2016 and 1/22/2017."
- Media request filed 9/15/2017, which sought the following statistics: "(1) The total number of women arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (2) The total number of men arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (3) The total number of men arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (4) The total number of women arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (5) The total number of men arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016; and (6) The total number of women arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016."
- Media request filed 11/15/2017: Fulfilled last week. Disregard.

Thank you for your assistance.

Sincerely,

Brian Joseph

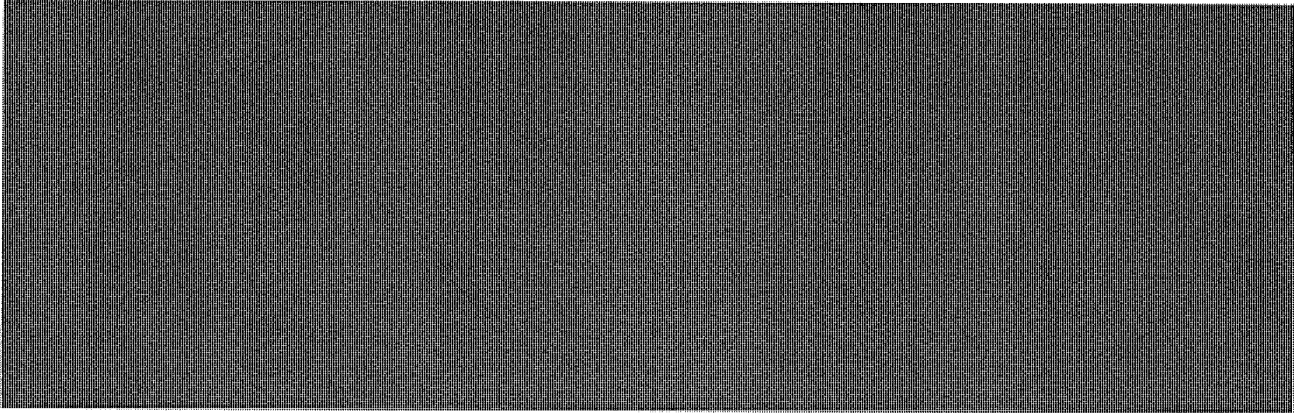
Staff reporter, Review-Journal

Office: 702-387-5208

Cell: 916-233-9681

E-mail: bjoseph@reviewjournal.com

EXHIBIT 57



From: **Brian Joseph** <bjoseph@reviewjournal.com>

Date: Tue, Dec 12, 2017 at 3:46 PM

Subject: Media request

To: PIO <pio@lvmpd.com>

Hi, this is a media request. I'd like to inspect:

- Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Brittani Stugart, DOB: 1/5/1990, including her arrest on 5/20/2011.
- Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Megan Lundstrom, DOB: 6/24/1985, including her arrests on 10/3/2011, 10/17/2011, 12/18/2011, 1/3/2012, 1/6/2012, 1/28/2012, 2/4/2012 and 5/16/2012.

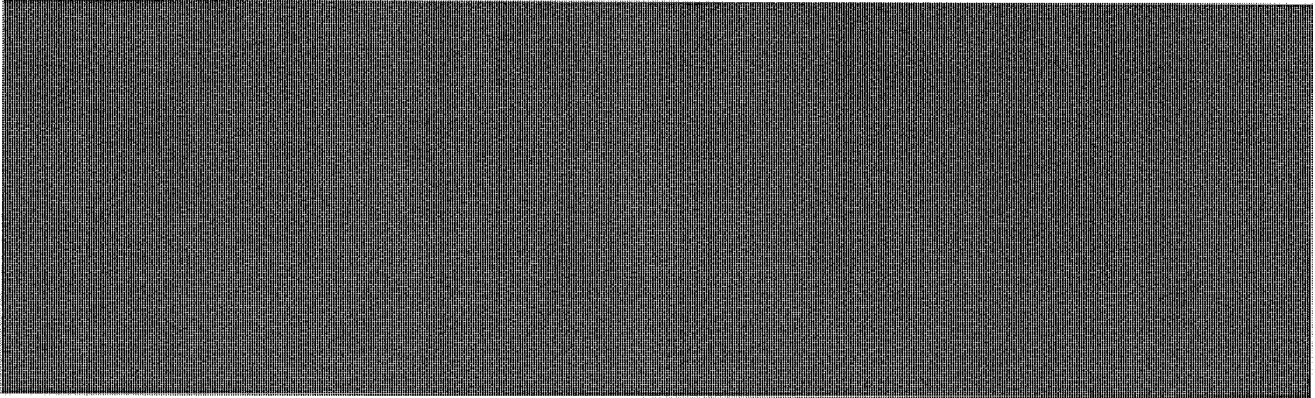
Deadline: Close of business Monday, December 18.

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

EXHIBIT 58



From: **Brian Joseph** <bjoseph@reviewjournal.com>

Date: Fri, Jan 26, 2018 at 2:17 PM

Subject: Re: Status of requests?

To: Jennifer Knight <J14549K@lvmpd.com>

That doesn't exactly answer my question.

In every other agency I've ever dealt with regarding records requests, I've dealt directly with PIOs when I want an update on the status of a request. Some higher-profile requests might get lawyers involved, in which case I deal with the lawyers.

You seem to telling me that whenever I want an update on the status of a request to LVMPD that has not yet been fulfilled that my request for a status update is going to be kicked up to the lawyers. Is that right?

If that's the case, that's fine. I just want to know how exactly this is going to work.

Thanks,

Brian

On Fri, Jan 26, 2018 at 2:11 PM, Jennifer Knight <J14549K@lvmpd.com> wrote:

Brian,

I will refer you to counsel on any existing requests that you feel are outstanding. If you have any new requests that you have not submitted yet, then go through the normal process of opening up a new request with PIO.

From: Brian Joseph [<mailto:bjoseph@reviewjournal.com>]

Sent: Friday, January 26, 2018 2:03 PM

To: Jennifer Knight <J14549K@LVMPD.COM>

Subject: Re: Status of requests?

OK. Are you telling me now that every request I have to LVMPD is being routed through your attorneys? I was under the impression that only a handful of my request were being elevated to that level. If it is indeed the case that every request I've made to your department is now going through lawyers I'd like to know. Thank you.

Sincerely,

Brian Joseph

Staff reporter, Review-Journal

Office: 702-387-5208

Cell: 916-233-9681

E-mail: bjoseph@reviewjournal.com

On Fri, Jan 26, 2018 at 1:18 PM, Jennifer Knight <J14549K@lvmpd.com> wrote:

Your request has been forwarded to our lawyers for follow-up.

From: Brian Joseph [mailto:bjoseph@reviewjournal.com]
Sent: Tuesday, January 23, 2018 11:00 AM
To: Jennifer Knight <J14549K@LVMPD.COM>
Subject: Status of requests?

Ms. Knight, can you please tell me the status of the following requests I've made to LVMPD? None of these should be particularly complicated or labor-intensive, as they're all relatively specific in nature. When can I expect to receive the records associated with these requests?

- Filed on 8/18/2017, 170818-08: (1) 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; (2) All arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos related to traffic stops involving Robert Sharpe III (DOB: 1/12/1986) and Kariah Heiden (DOB: 5/15/1995) in May or June of 2014; (3) All reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos of all witness interviews related to the investigation of Robert Sharpe III (DOB: 1/12/1986) and Kariah Heiden (DOB: 5/15/1995), including three interviews conducted by Detectives Ortega, Hui and Lucero at UMC Hospital between the dates of June 29, 2014 and July 7, 2014.
- Filed on 9/7/2017, No ID Number: any records you have pertaining to incidents or arrests involving Branden Johnson, DOB: 3/27/86, ID #2887908
- Filed on 9/15/2017, No ID Number: (1) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Poppy Wellman, DOB: 8/29/1974, including her 12/7/2005 arrest. (2) Any and all arrest reports, audio and video

recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Kariah Heiden, DOB: 5/15/1995, including her arrests on 6/11/2013, 9/23/2013, 9/23/2014, 8/24/2016 and 1/22/2017

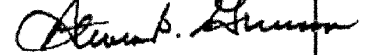
- Filed on 9/15/2017, No ID Number: (1) The total number of women arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (2) The total number of men arrested by LVMPD officers for selling sex (engaging in prostitution) in 2014, 2015 and 2016; (3) The total number of men arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (4) The total number of women arrested by LVMPD officers for buying sex (soliciting for prostitution) in 2014, 2015 and 2016; (5) The total number of men arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016; and (6) The total number of women arrested by LVMPD officers for sex trafficking in 2014, 2015 and 2016.
- Filed on 12/12/2017, No ID Number: (1) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Brittani Stugart, DOB: 1/5/1990, including her arrest on 5/20/2011. (2) Any and all arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, notes, records, documents and memos involving Megan Lundstrom, DOB: 6/24/1985, including her arrests on 10/3/2011, 10/17/2011, 12/18/2011, 1/3/2012, 1/6/2012, 1/28/2012, 2/4/2012 and 5/16/2012.

Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: 702-387-5208
Cell: 916-233-9681
E-mail: bjoseph@reviewjournal.com

EXHIBIT 59



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **AMERICAN BROADCASTING COMPANIES,**
7 **INC., et al.,**

8 **Plaintiffs,**

9 **vs.**

10 **LAS VEGAS METROPOLITAN POLICE**
11 **DEPARTMENT, et al.,**

12 **Defendants.**

Case No.: A-17-764030-W
Dept. No.: II

Date: March 7, 2018
Time: 9:00 a.m.

**ORDER REGARDING PUBLIC
RECORDS REQUEST**

13 **I. INTRODUCTION**

14 This action involves Petitioners' request for records from the Las Vegas Metropolitan
15 Police Department ("Metro") pursuant to Nevada's Public Records Act. Petitioners include
16 the Las Vegas Review Journal, American Broadcasting Companies, Associated Press, Cable
17 News Network, Inc., New York Times, and other press (hereinafter referred to as the
18 "Media"). This Court already held that Metro must produce several categories of records,
19 including body cam recordings, dash cam recordings, CCTV recordings, 911 calls, dispatch
20 logs, evidence logs, interview reports, and search warrant data.

21 The Court set the hearing conducted on Wednesday, March 7, 2018, to determine the
22 fee that Metro could charge for the gathering and copying of the documents and audio/visual
23 data. Having considered the briefs and arguments of counsel, the Court hereby interprets the
24 Nevada Public Records Act and determines the fees that Metro may charge.

25 As a prelude to the findings that follow, this Court holds Metro and its individual
26 officers in very high esteem; understands the dangerous encounters that Metro officers face
27 every day; and regrets the limited budget that has been given to Metro to not only protect the
28 health, welfare, and safety of the public, but to respond to massive requests for production of

1 documents. Nevertheless, the purview of the responsibility of this Court is only to apply the
2 law as given to the facts at hand, leaving it to others to determine whether the law should be
3 changed.

4 Explained below, with one exception, Metro is not allowed to charge the Media for
5 staff time to get the records ready for copying. Accordingly, the Court DENIES Metro's
6 demand for its range of fees from \$233,750 to \$458,159 to comply with the records request.
7 Metro must reevaluate and report back to this Court with the proper fee that it proposes to
8 charge the Media, consistent with this Order. Despite the need for such further reevaluation,
9 Metro must immediately begin complying with the Media's request.

10 **II. PURPOSE OF THE PUBLIC RECORDS ACT**

11 This Court, in reaching its interpretation of the relevant portions of the Nevada Public
12 Records Act, first searched the Constitutional underpinnings of the Act. The Act does not
13 have any direct basis in either the United States or Nevada Constitutions. As stated by Potter
14 Stewart, former Associate Justice of the United States Supreme Court, the public's right to
15 access public records only indirectly springs from the Constitution:

16 There is no constitutional right to have access to particular
17 government information, or to require openness from the
18 bureaucracy. . . . The public's interest in knowing about its
19 government is protected by the guarantee of a Free Press, but the
20 protection is indirect. The Constitution itself is neither a Freedom
21 of Information Act, nor an Official Secrets Act.

22 Potter Stewart, *Or of the Press*. 26 Hastings LJ 631, 636 (1975).

23 Although there is no direct Constitutional requirement of the government to provide
24 the public with easy access to public records, the public's right to know is essential to our
25 democracy. In the Preamble to Nevada's Public Records Act, the Nevada Legislature
26 declared: "The Legislature hereby finds and declares that: 1. the purpose of this chapter is to
27 foster democratic principles by providing members of the public with access to inspect and
28 copy public books and records to the extent permitted by law; [and that] 2. [t]he provisions of
this chapter must be construed liberally to carry out this important purpose." NRS 239.001.

...

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

1 The Nevada Supreme Court has held that the purpose of the Nevada Public Records
2 Act is to “ensure the accountability of the government to the public by facilitating public
3 access to vital information about governmental activities.” *DR Partners v. Board of County*
4 *Com'rs. Of Clark County*, 116 Nev, 616, 621 (2000). *See also John Doe Agency v. John Doe*
5 *Corp.*, 493 U.S. 146, 152 (1989) (“The basic purpose of FOIA is to ensure an informed
6 citizenry, vital to the functioning of a democratic society, needed to check against corruption
7 and to hold the governors accountable to the governed.”). Although the Media has not
8 accused Metro of wrongdoing, and neither has the Court in even the slightest manner, there
9 need not be any corruption or unaccountability as a precondition to production of documents.
10 *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) (“[C]itizens
11 should not be required to explain why they seek the information. A party requesting the
12 information needs no preconceived idea of the uses of data might serve. The information
13 belongs to the citizen to do with as they choose.”).

14 Given the strong public policy in favor of production, the Media must never be
15 compelled to pay an exorbitant fee to obtain records, even if the Media elects not to give any
16 reason for the request. An excessive fee is the antithesis to government accountability.

17 The Public Records Act is undoubtedly a culmination of political thought that the
18 Media best performs its watchdog function when it has ease of access to government records.
19 The government cannot frustrate the Media’s efforts to obtain information on behalf of the
20 public by charging exorbitant fees.

21 **III. THE PARTIES’ DIFFERING VIEWS**

22 The Media contends that Metro cannot charge more than 50 cents per page of
23 documents. The Media also contends that Metro must provide the electronic records (such as
24 the body cam data, 911 calls, and the dispatch logs) for free. In contrast, Metro contends that
25 the Media’s request requires an extraordinary use of personnel and technological resources,
26 thereby entitling Metro to charge its actual cost to compile and copy the requested documents
27 and data. Both sides are wrong.

28 . . .

1 Metro tries to get to Nevada's legislative history to reveal tidbits of words that it might
2 support its position to charge the Media for its staff time to gather the requested documents.
3 To do so, Metro claims the Act is ambiguous. Metro sees an ambiguity because the first part
4 of NRS 239.055 permits Metro to charge an extra 50 cents per page fee if the request requires
5 Metro to use extraordinary services. Metro then sees an inconsistency because the second part
6 of NRS 239.055 restricts Metro to charging no more than its actual costs for the extraordinary
7 use.

8 The various rules of statutory construction do not support Metro's argument.

9 First, this Court must interpret the Act in a manner that avoids an absurd or
10 unreasonable result. *Leven v. Frye*, 123 Nev. 399 (2007). It would be both absurd and
11 unreasonable to think the Legislature in one breath said the government could charge 50 cents
12 per page and then in the very next breath ignore the "50 cent" rule in favor of a much more
13 expansive "actual cost" rule.

14 Second, the Court must examine the context of the Act by "considering the reason or
15 spirit of the law or the causes which induced the legislation to enact it." *Welfare Div. of State*
16 *Dept. of Health, Welfare and Rehabilitation v. Washoe County Welfare Dept.*, 88 Nev. 635,
17 637 (1972). The evident purpose of the legislation in enacting the Public Records Act was to
18 limit fees to insure the public's ease of access to government documents – the people's
19 documents. Metro's interpretation gives an unreasonably expansive "actual cost" entitlement
20 to the government entity in responding to records request. This interpretation is plainly
21 inconsistent with the Legislators' expressed intent in the preamble to the Act. NRS 239.001.

22 Third, "this [C]ourt must give [the Act's] terms their plain meaning, considering its
23 provisions as a whole, so as to read them in a way that would not render words or phrases
24 superfluous or make a provision nugatory." *Arguello v. Sunset Station*, 127 Nev. 365, 370
25 (2011). Metro's interpretation would render the "50 cent" rule nugatory, when a more
26 reasonable interpretation could be found by reading the Act as a whole, giving reasonable
27 meaning to all terms.

28 . . .

1 “When a statute is clear on its face, [the Court] will not look beyond the statute’s plain
2 language.” *Washoe Medical Center v. Second Judicial District Ct.*, 122 Nev. 1298, 1303
3 (2006). Given the clarity of the Act, it is not the role or responsibility of this Court to
4 consider the propriety of the Act as adopted by the Nevada Legislature; it is not the role or
5 responsibility of this Court to insure the Nevada Legislature properly considered and weighed
6 the public policies implicated by the Act; it is not the role or responsibility of this Court to
7 consider the impact the Act might have on the resources of Metro. The Court must presume
8 that the Nevada Legislature already did all of this. All that remains for this Court is to
9 correctly apply the Act as written to the specific facts of this case.

10 Below the Court has grouped the various categories of records based on the various
11 rules that apply to each group.

12 **IV. THE “50 CENT” RULE AS APPLIED TO EVIDENCE LOGS AND**
13 **INTERVIEW REPORTS**

14 By referencing a per “page” fee, the Nevada Legislature clearly expressed its intent
15 that NRC 239.055 applies only to hard copies of documents, and pages of documents that are
16 stored electronically. This provision encompassed the evidence logs and the interview
17 reports.

18 The starting point in determining fees for documents such as evidence logs and
19 interview reports is NRS 239.052. This provision permits Metro to charge its “actual cost”
20 “for providing a copy,” “except as otherwise provided [in other sections of the Act].” Metro
21 and the Media both agree that these words allow the government to bill for the actual cost of
22 making duplicates of the records, and the cost of the medium used (*i.e.* DVD, CD, flash drive,
23 hard drive, etc.). The Court agrees. The Nevada Legislature already showed that it
24 recognized the difference between – on the one hand: the cost of merely duplicating the
25 records and providing them on some form of medium (hereinafter the “COPY COSTS”), and
26 on the other hand: the costs for staff to gather the documents, maintain and update the data
27 system to facilitate the production, consultations necessary to comply with the request, and
28 quality control (hereinafter referenced as the “PRE-COPY PREPARATIONS”).

1 As already stated above, it bears repeating here that NRS 239.055 allows the
2 government to charge an additional amount above and beyond the "COPY COSTS" if the
3 project required the government entity to incur "extraordinary" use of personnel and
4 technological resources. It says: "[T]he government entity may, in addition to any other fee
5 authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such
6 extraordinary use." The provision goes on to say that the government cannot bill for more
7 than its actual costs for extraordinary use of staff. In sum, in the event of extraordinary use,
8 Metro can charge for its "COPY COSTS," plus its "PRE-COPY PREPARATIONS," not to
9 exceed 50 cents per page. This part of the Act could not be clearer.

10 The court finds that the Media's request here does indeed require Metro to incur
11 extraordinary use of staff time, thereby implementing the "50 cent" rule for documents.
12 Petitioner has requested a massive amount of documents and information. Petitioner has
13 requested several different categories of documents. Petitioners' request will require several
14 Metro officers, technological personnel, equipment and supervisors. Petitioners' request will
15 require Metro to conduct extensive redactions of confidential and private data. Petitioners'
16 request will require an effort by Metro over a period of at least six (6) months. Finally,
17 Petitioners' request might interfere with Metro's ability to protect the health, welfare, and
18 safety of the public. For all these reasons, the Court finds that the Media's request will
19 involve "extraordinary use," and triggers the 50 cents per page additional allowance.

20 Recognizing that Metro will incur "extraordinary use" of staff and resources, it is easy
21 to calculate the rate that Metro may charge. In its published list of rates, Metro stated that its
22 basic "COPY COSTS" are 31 cents per page.¹ Since the work is extraordinary here, Metro is
23 entitled to charge an extra 50 cents, for a total charge of 81 cents to comply with the Media's
24 obligation to turnover copies of the evidence logs and interview reports.²

25 ¹ At the next hearing, Metro must provide proof that its 31 cents per page charge is equal
26 to or less than its actual costs.

27 ² In giving Metro the full 50 cents, the Court makes the assumption that Metro's
28 extraordinary use of staff would exceed 50 cents when amortized over the total number of
copies to be made.

1 **V. "GEOGRAPHIC INFORMATION SERVICES" RULE AS APPLIED TO**
2 **DISPATCH LOGS**

3 NRS 239.054 carves out one exception which permits Metro to charge the "pre-copy
4 preparations." This exception applies to data that is part of a "geographic information
5 systems." A "geographic information system" is "a system of hardware, software and data
6 files on which spatially oriented geographical information is digitally collected, stored,
7 managed, manipulated, analyzed and displayed." Metro concedes that only the dispatch logs
8 fall into this category.

9 The Nevada Legislature in NRS 239.054 made it clear that the government may
10 charge for the pre-copy preparations (limited to actual costs) plus the actual COPY COSTS,
11 and there is no 50 cent limit.

12 **VI. "FEE FOR PROVIDING" RULE AS APPLIED TO BODY CAM, AND 911**
13 **CALLS**

14 As for the body cam recordings, and 911 calls, these recordings are electronic forms of
15 data not capable of being printed out on a "per page" basis. As previously stated, NRS
16 239.052 permits the government to charge only the COPY COSTS, capped by actual costs.
17 This rule applies to electronic data, and is not subject to the 50 cent cap.

18 There is nothing in the Act that permits Metro to bill the Media for pre-copy
19 preparations. NRS 239.054 applies to geographic information systems – not applicable to
20 body cam data or 911 calls. NRS 239.055 applies to documents – not electronic records that
21 are not susceptible to being printed out on a page by page basis. There is simply nothing in the
22 Act other than NRS 239.052 that applies to body cam recordings or 911 calls. The Nevada
23 Legislature has spoken quite clearly on this issue. The Court cannot go beyond the language
24 and recreate in Metro an entitlement to bill for the staff and other resources needed as part of
25 the pre-copy preparations.

26 Metro sought to bill the Media to compile and produce 748 hours of body cam
27 recordings. Metro argued that it needs to assign personnel to spend from 4675 to 9163 hours
28 to perform initial reviews of the data, to redact confidential and privileged portions of the

1 data, and to perform quality control, all at a rate of \$50 per hour. This translates to a fee of
2 \$233,750 to \$458,159. Nevada law does not permit Metro to charge the Media these amounts
3 to compile the body cam data. Metro is limited to charging the Media only its actual cost to
4 make duplications of the recordings, and the actual cost of the medium to which the
5 recordings are transferred.

6 **VII. SUMMARY OF FEES ALLOWED**

7 In sum, Metro is allowed by law to charge the following fees, but no greater, to
8 properly respond the Media's request pursuant to the public records request:

9 **Evidence Logs, and Interview Reports:** COPY COSTS of 31 cents per page, plus an
10 additional 50 cents for extraordinary services, for a total of 81 cents.

11 **Body Cams, and 911 Calls:** COPY COSTS – meaning only the actual
12 costs to reproduce the records onto the
13 medium for transfer, and the cost of such
medium (such as DVD, CD, flash drive, hard
drive, etc.).

14 **Dispatch Logs:** PRE-COPY PREPARATIONS, meaning
15 actual cost to gather, discuss, supervise and
16 insure quality control, as part of the effort to
comply with the Media's request.

17 The Court grants Metro the minimum period of six months to produce all of the
18 requested documents. Metro must begin its production of records to the Media within three
19 (3) business days from the date of this Order. Metro must make a rolling production, meaning
20 groups of documents must be produced as they become available. Metro must provide the
21 Media with an estimate of the allowable fees that are charged to the Media, consistent with
22 this Order, within three (3) business days from the date of this Order. The Media may pay
23 this amount in six monthly equal installments. The Media must pay each month at least one
24 sixth of the anticipated total charge at the beginning of each month of production.

25 . . .

26 . . .

27 . . .

28

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

1 The Court hereby sets a further Status Check for March 28, 2018 at 10:00 a.m. to
2 handle any lingering issues, to address any party's request for a modification of this Order,
3 and requests for any clarification.

4 **IT IS SO ORDERED.**

5 Dated this 9th day of March, 2018.

6 
7
8 RICHARD F. SCOTTI
DISTRICT COURT JUDGE

9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on or about the date signed, a copy of this Order was electronically
12 served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or
13 transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper
14 parties as follows:

15 Joel E. Tasca, Esq.
16 Justin A. Shiroff, Esq.
BALLARD SPAHR
17 *Counsel for Petitioner*

18 Margaret A. McLetchie, Esq.
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20 Craig R. Anderson, Esq.
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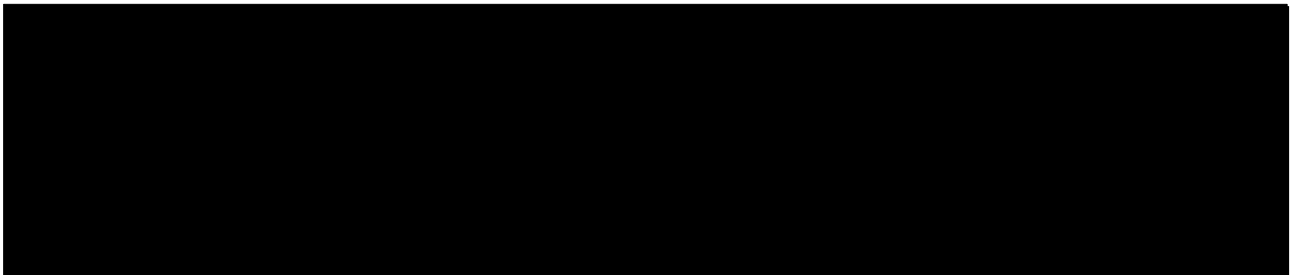
23
24
25 */s/ Melody Howard*

26 Melody Howard
27 Judicial Executive Assistant
28

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

EXHIBIT 60



From: **Brian Joseph** <bjoseph@reviewjournal.com>
Date: Tue, Mar 14, 2017 at 5:08 PM
Subject: Re: Nevada Open Records Request - RESPONSE
To: PIO <PIO@lvmpd.com>

Officer Cordero, I appreciate receiving this response. However, I received the email below from Clark County which indicates that Clark County is not the custodian of SCOPE, but rather LVMPD is. As you can see, Clark County is directing me to work with your office to obtain the database. So I'm coming back to you to obtain the database. What do I need to do to move my request forward? Thank you.

Sincerely,

Brian Joseph
Staff reporter, Review-Journal
Office: [702-387-5208](tel:702-387-5208)
Cell: [916-233-9681](tel:916-233-9681)
E-mail: bjoseph@reviewjournal.com

----- Forwarded message -----

From: **Dan Kulin** <DKulin@clarkcountynv.gov>
Date: Tue, Mar 14, 2017 at 1:41 PM
Subject: SCOPE request
To: "bjoseph@reviewjournal.com" <bjoseph@reviewjournal.com>

Brian,

After discussing your request in depth with you, it has become clear that we are not the custodian of the records and you must make your request to the Las Vegas Metropolitan Police Department. (It appears Metro misunderstood your initial request.) Let me know if you have any questions or need anything else. Thanks,

Dan Kulin
Clark County Office of Public Communications
[\(702\) 455-5534](tel:702-455-5534) – office
[\(702\) 376-3764](tel:702-376-3764) – cell

On Mon, Mar 13, 2017 at 10:36 AM, PIO <PIO@lvmpd.com> wrote:

Please see the attached letter.

LVRJ661

Office of Public Information

Las Vegas Metropolitan Police Department

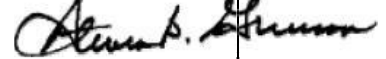
400-B South Martin L. King Boulevard, Las Vegas, Nevada 89106

☎ 702.828.4082 office | 📠 702.828.1550 fax | ✉ pio@lvmpd.com



dc

LVRJ662



PTOB
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DISTRICT COURT
CLARK COUNTY NEVADA

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-18-775378-W

Petitioner,

Dept. No.: XV

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

**OPENING BRIEF IN SUPPORT OF
PUBLIC RECORDS ACT
APPLICATION PURSUANT TO NEV.
REV. STAT. § 239.001/ PETITION
FOR WRIT OF MANDAMUS**

Respondent.

Hearing Date: August 8, 2018
Hearing Time: 9:00 a.m.

COMES NOW Petitioner the Las Vegas Review-Journal by and through its undersigned counsel and hereby submits this Opening Brief in support of its Petition for Writ of Mandamus. This Opening Brief is supported by the attached memorandum of points and authorities, any attached exhibits, and the pleadings and papers on file with this Court.

DATED this the 5th of July, 2018.

/s/ Margaret A. McLetchie

MARGARET A MCLETCHIE, Nevada Bar No. 10931
MCLETCHIE SHELL LLC
Counsel for Petitioner, Las Vegas Review-Journal

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Police are tasked with the difficult and important job of investigating crimes and helping tackle important social issues such as sex trafficking. As taxpayer-funded organizations, police departments such as the Las Vegas Metropolitan Police Department (“Metro”) are also accountable to the public they serve. Journalistic organizations such as the Las Vegas Review-Journal (the “Review-Journal”) provide valuable information to readers regarding whether Metro is sufficiently serving the public—both by effectively fighting crime and following the law itself. The Nevada Public Records Act (“NPRA”) provides journalists, media outlets, and other members of the public with a legal mechanism for obtaining public records from governmental entities such as Metro.

The records sought in this case could provide a wealth of insight into how sex trafficking cases are handled by Metro, an important issue in Southern Nevada. As the United States Supreme Court has explained, transparency increases the public’s confidence in its institutions and promotes peaceful, productive discourse. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 571 (1980). Despite extensive effort by the Review-Journal and despite ultimately not generally contesting that the records sought are public records,¹ Metro has resisted production of public records pertaining to sex trafficking records for months, in violation of the NPRA. The Las Vegas community deserves access to information about how its police department investigates and prevents sex trafficking—and the Review-Journal is entitled to related records under the law. To provide the public with the information it deserves and to fulfill the NPRA’s important purpose, the Review-Journal requests that this Court order Metro to **immediately produce records and work with the Review-Journal** to develop a cost-effective mechanism allowing the Review-Journal to access the records without further delay. The Review-Journal also requests that this Court handle this matter on

¹ (See, e.g., Exhibit (“Exh.”) 20 to Petition.) Unless otherwise indicated, all exhibit references are to the exhibits to the Petition.

1 an expedited basis. This is vital because the NPRA provides for expeditious access to public
2 records (Nev. Rev. Stat. § 239.011(2)), and because this case also implicates the First
3 Amendment right of the Review-Journal to report on how Metro investigates and fights sex
4 trafficking crimes. *Cf. Nebraska Press Assoc. v. Stuart*, 427 U.S. 539 (1976) (First
5 Amendment right of access raises “profound constitutional implications demanding
6 immediate resolution”). Moreover, the Review-Journal first began seeking records in
7 February of 2017—and should not have to wait any longer.

8 **II. FACTS AND PROCEDURAL HISTORY**

9 As detailed in the Petition filed by the Review-Journal on May 31, 2018 (the
10 “Petition”), the Review-Journal has sent Metro a series public records requests regarding
11 Metro’s investigation of sex trafficking crimes and related matters. Rather than complying
12 with the plain terms of the NPRA and providing the requested records (or providing specific
13 bases for denying the requests), Metro has failed to respond to the records requests in the
14 manner prescribed by the NPRA. Instead Metro has denied requests on the basis of
15 conjecture and/or incorrect interpretations of Nevada Supreme Court precedent, and has
16 altogether failed to respond to several records requests. After extensive meet-and-confer
17 efforts by counsel for the Review-Journal, the paper brought the instant petition to seek an
18 order from this Court directing Metro to disclose the requested records.

19 **A. The Review-Journal Begins Seeking Sex Trafficking Records In February of** 20 **2017; Metro Fails To Meaningfully Respond, In Violation of the NPRA.**

21 **1. The Review-Journal Begins Seeking Records In February, 2017.**

22 On February 23, 2017, Review-Journal reporter Brian Joseph sent Metro a request
23 pursuant to the NPRA, Nev. Rev. Stat. § 239.001 et seq. (the “February 23 Request”) (Exhibit
24 (“Exh.”) 1 to Petition) requesting:

- 25 • All investigative case files for all Metro sex trafficking cases that were closed in
26 calendar years 2014, 2015, and 2016;
- 27 • All Metro arrest reports for solicitation or trespass that were produced in
28 calendar years 2014, 2015, and 2016; and

- All names, badge numbers, and unit assignments of all Metro officers for calendar years 2014, 2015 and 2016.

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

2. Metro Delays and Evades Responding.

Metro did not respond to the February 23 Request in the manner required by Nev. Rev. Stat. § 239.0107(1). Rather, on February 28, 2017, Metro Public Information Officer ("PIO") Laura Meltzer sent an email acknowledging receipt of the February 23 Request. (Exh. 2.) PIO Meltzer indicated that Metro was "in the process of collecting the information" the Review-Journal requested. PIO Meltzer indicated it would take "at least 30 days to compile any public records" responsive to the request. (*Id.* at p. 2.) PIO Meltzer did not cite any statute, case law, or privilege which allowed Metro to withhold the requested arrest reports. As detailed below, this response does not comport with the response the NPRA mandates that a governmental entity provide within five (5) business days.

Rather than meaningfully respond, Metro instead misdirected Mr. Joseph with regard to the arrest reports. PIO Meltzer told Mr. Joseph that the District Attorney's Office had legal custody of those records. (Exh. 3, p. 2 (noting that a Metro official told him he needed to request records from the District Attorney's Office).) As detailed in the Petition (pp. 4:27-5:7), Mr. Joseph then attempted to obtain the requested arrest records from the District Attorney but was told that that the District Attorney's Office did not have "legal custody" of the requested arrest reports and was directed back to Metro to obtain the records from Metro. (Exh. 3, p. 1.) Mr. Joseph forwarded the District Attorney's response email to PIO Meltzer on March 9, 2017. (*Id.*) More than two weeks later, on March 23, 2017, PIO Meltzer emailed Mr. Joseph about a different public records request. (Exh. 4, p. 4.) In her email, PIO Meltzer stated she was seeking legal advice. (*Id.* at p. 4.) Mr. Joseph then again explained that, while Metro said the District Attorney had custody of records, the District Attorney's Office stated that it was not the legal custodian. (Exh. 4, p. 1.)

In response, PIO Meltzer reiterated that Metro does not release arrest reports and

1 that Mr. Joseph needed to obtain those records from the District Attorney’s Office. (Exh. 4,
2 p. 1.) PIO Meltzer still did not cite any statute, case law, or privilege which authorized Metro
3 to withhold the requested arrest reports. (*Id.*) On March 28, 2017, Mr. Joseph again followed
4 up about the request. (Exh. 5, p. 1.) PIO Meltzer responded on March 29, 2017 by simply
5 attaching to an email a letter which contained language identical to the letter she sent to Mr.
6 Joseph on February 28, 2017. (*Compare* Exh. 5, p. 7 and Exh. 2, p. 2.)

7 **3. Metro’s General Counsel Continues Resisting Production.**

8 On April 14, 2017, Mr. Joseph received a letter from Liesl Freedman, Metro’s
9 General Counsel, regarding the three categories of documents in the February 23 Request
10 (sex trafficking investigative files, solicitation and trespass arrest reports, and unit
11 assignments). (Exh. 6.) Not only was this letter untimely, it—like PIO Meltzer’s
12 communications—did not meaningfully respond to the public records requests.

13 Regarding sex trafficking investigative case files, Ms. Freedman stated Metro’s
14 Gangs/Vice Bureau would provide an estimate of the time it would take to identify
15 responsive files. (*Id.*, p. 1.) Ms. Freedman further indicated that once the Gangs/Vice Bureau
16 had identified responsive files, each file would be reviewed to (1) ensure the matters had
17 been fully adjudicated, and (2) redact confidential and personal identifying information. (*Id.*)
18 She also stated the Review-Journal would need to pay for the costs associated with pulling,
19 reviewing, and redacting files. (*Id.*) While Ms. Freedman speculated the sex trafficking
20 investigative files may contain “personal and identifying information” and “identifying
21 information for confidential informants, investigative techniques and/or intelligence,” she
22 did not cite any statutory or legal authority for withholding the files. (*Id.*) In a subsequent
23 (April 27, 2017) letter, Ms. Freedman reiterated Metro’s position that investigative files and
24 arrest reports are not public records until a prosecutor has “used the investigative
25 document[s] in court.” (Exh. 7, p. 2.) In support of this assertion, Ms. Freedman only cited
26 the Nevada Supreme Court’s opinion in *Donrey v. Bradshaw*, 106 Nev. 630, 798 P.2d 144
27 (1990). *Donrey* does not make any specific records confidential; rather, it sets forth a
28 balancing test, which has subsequently been strengthened in favor of disclosure.

Ms. Freedman 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.*) Ms. Freedman failed to cite to any statute or other legal authority for this assertion. 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 Metro 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.*)

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

4. Metro Produces Officer Names and Personnel Numbers, But Not Unit Assignments.

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 2016. (Exh. 7.) However, the list did not include any information regarding unit assignments. On June 5, 2017, Metro also provided a list of officer names and badge numbers for 2014, 2015, and 2016. (Exh. 15.) Again, however, Metro did not provide unit assignments. Without officer unit assignments, the lists did not provide the Review-Journal with the information it was seeking in the February 23 Request

B. The Review-Journal’s February 27, 2017 Request for SCOPE Information and Metro’s Failure to Meaningfully Respond.

On February 27, 2017, Mr. Joseph also requested access to and digital copies of “the record layout and data dictionary of the LVMPD’s SCOPE (Shared Computer Operations for Protection and Enforcement) database.” (Exh. 8.) In an apparent pattern of misdirecting of public records requesters, Metro responded that Metro “is not the owner of the SCOPE system” and told Mr. Joseph to contact the Information Technology Department for Clark County. (Exh. 9.) Mr. Joseph thus contacted Dan Kulin with the Clark County Office of Public Communications to discuss this request. (Exh. 60.) Mr. Kulin emailed Mr.

1 Joseph on March 14, 2017 that Clark County was “not the custodian of records” and directed
2 Mr. Joseph to request the SCOPE records from Metro. (*Id.*)

3 **C. The Review-Journal’s March 3, 2017 Request for Grand B Larceny Arrest**
4 **Reports; Metro’s Failure to Meaningfully Respond.**

5 On March 3, 2017, Mr. Joseph submitted an additional records request to Metro
6 requesting “access to and digital copies (PDFs if available) of: All Metro arrest reports for
7 Category B grand larcenies in casinos that were produced in calendar years 2014, 2015 and
8 2016.” (the “March Request”) (Exh. 10.) As with the February Request, Metro failed to
9 comply with Nev. Rev. Stat. § 239.0107(1)(d). Instead, on behalf of Metro, PIO Meltzer just
10 acknowledged receipt of the March Request via email on March 8, 2017. (Exh. 11.)

11 While PIO Meltzer represented that she was working on the March Request in her
12 March 8, 2017 email (Exh. 11), Metro did not actually begin compiling records. Instead of
13 providing records, twenty (20) days after the March Request, on March 23, 2017, PIO
14 Meltzer informed Mr. Joseph via email that due to the scope of his request, she had forwarded
15 it to Metro’s General Counsel for advice. (Exh. 4, pp. 3-4.) PIO Meltzer also asked Mr.
16 Joseph to provide specific addresses for the grand larceny reports he had requested. (Exh. 4,
17 p. 4.) In response, Mr. Joseph provided PIO Meltzer a list of addresses on March 27, 2017.
18 (Exh. 5.) PIO Meltzer responded on March 28, 2017, stating that extraordinary resources
19 would be required, and indicating that Metro would send a cost estimate. (*Id.*, p. 1.)

20 On April 20, 2017, almost two months after the March Request was made, Metro
21 Assistant General Counsel Ms. Charlotte Bible finally sent Mr. Joseph a letter addressing the
22 March Request. (Exh. 12.) Ms. Bible stated, “LVMPD does have a specific document
23 responsive to your request,” and indicated that fulfilling the request would require a Metro
24 analyst to dedicate 16 hours of “dedicated effort” to compile the requested information. (*Id.*)
25 To conduct this research, Metro demanded the Review-Journal remit payment in the amount
26 of \$843.04, reflecting an hourly rate of \$52.69 per hour for 16 hours of time. (*Id.*) Unlike
27 Ms. Freedman’s April 14 correspondence, Ms. Bible’s April 20 correspondence did not argue
28 that arrest reports are confidential until they are introduced in a court proceeding.

D. The Review-Journal's Extensive Attempts to Obtain Access to the Records.

As detailed in the Petition (*see* Petition, pp. 9:1-13:14; Exhs. 13-39), beginning in May of 2017, counsel for the Review-Journal has repeatedly contacted and met and conferred with counsel for Metro to attempt to resolve disputes over access to the requested records. The Review-Journal has also endeavored to obtain information to allow it to narrow requests and efficiently obtain records. Counsel for the Review-Journal offered several ideas for reducing costs, including first asking Metro to allow the Review-Journal to conduct an in-person inspection of the records. A possible mechanism for enabling efficient production of the sex trafficking investigative file would be first (immediately) producing the key aspects of sex trafficking investigative files: (1) the requests for prosecution; and (2) the officer reports (arrest reports, case reports, and crime scene reports). This would allow the Review-Journal to discern if production of the entire file is necessary. Notably, the Review-Journal lacks the information Metro has about what records exist and how they are stored. In addition to providing an index of the records withheld (as detailed below), Metro should provide information to the Review-Journal about how and where it stores responsive records to the Review-Journal via depositions or other mechanisms if necessary.

Despite possible common-sense solutions, the parties have been unable to reach any resolution to date largely because Metro asserts that it can charge extensive costs for just reviewing and redacting records, and that it can take as much time as it wants (thirteen months and counting) to produce the requested records.

E. Metro's Failure to Meaningfully Respond to Several Other Public Records Requests Made by Mr. Joseph.

While counsel for the Review-Journal was trying to work with Metro, Mr. Joseph made other public records requests, which Metro has only partially fulfilled. Indeed, Metro has only become more intransigent and less responsive to requests.

1. The May 19, 2017 Request Seeks Pandering Records.

On May 19, 2017, Mr. Joseph requested "[a]ll investigative case files for all LVMPD pandering and accepting earnings of a prostitute investigations that were closed in calendar years 2014, 2015, and 2016;" along with arrest reports for "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” that were produced in calendar years 2014, 2015, and 2016. (Exh. 40 (the “May 19 Request”).) Mr. Joseph also requested records pertaining to a particular criminal defendant. (*Id.*)²

Again here, Metro did not provide a specific response, instead sending him a form letter via email on May 19, 2017 acknowledging receipt of the request and indicating it would take “at least 30 days” to compile responsive records. (Exh. 41, p. 2.) More than 30 days—indeed, more than 400 days—have passed, and Metro has not provided responsive records.

2. The May 31, 2017 Request for Property-Specific Records.

On May 31, 2017, Mr. Joseph sent a request for “[a]ll police reports, filed by citizens, in which the home address is listed as 1 West Owens, North Las Vegas, NV 89030, from Jan. 1, 2014 through the present.” (Exh. 42 (the “May 31 Request”).) PIO Meltzer acknowledged receipt of the May 31, 2017 request on June 2, 2017. (Exh. 43.) Metro’s acknowledgment did not include any information required under the NPRA.

3. Mr. Joseph’s July 7, 2017 Follow-Up.

On July 7, 2017, Mr. Joseph emailed PIO Meltzer to follow up on the May 19, 2017 Request and May 31, 2017 Request. (Exh. 44.) PIO Meltzer responded that she had “sent for a status check,” but did not explain further. (*Id.*)

4. The July 12, 2017 Request Seeks Grand B Larceny Records.

On July 12, 2017, Mr. Joseph sent another records request to Metro asking for “[a]ll

² Metro has produced corresponding arrest reports.

1 LVMPD arrest reports for attempted Category B grand larcenies in casinos that were
2 produced in calendar years 2014, 2015 and 2016” and “[a]ll LVMPD incident reports for
3 Category B grand larcenies and attempted grand larcenies in casinos that were produced in
4 calendar years 2014, 2015 and 2016[.]” (Exh. 45 (the “July Request”).)

5 **5. Metro Fails to Respond Further; Mr. Joseph Follows Up Again On July**
6 **27, 2017.**

7 On July 27, 2017, Mr. Joseph emailed Metro’s PIO to inquire regarding the status
8 of his outstanding records requests from February through July of 2017. (Exh. 46.) On
9 August 2, 2017, PIO Meltzer told Mr. Joseph that another PIO officer she identified as
10 “Officer Rodriguez” was working on one of Mr. Joseph’s May requests—although she did
11 not specify which request. (Exh. 47.) PIO Meltzer also included in her response a letter
12 acknowledging receipt of the July 27, 2017 inquiry and stating that it would take “at least 30
13 days” for Metro to compile responsive records. (*Id.* at pp. 2-3.)

14 **6. Metro’s General Counsel’s July 28, 2017 Letter**

15 Rather than work to provide responsive records, Metro again delayed responding,
16 then had counsel write a formal letter further resisting production. On July 28, 2017, Metro
17 Assistant General Counsel Charlotte Bible sent Mr. Joseph a letter regarding the May 19,
18 2017 Request. In this letter, Ms. Bible indicated Metro had located 304 closed cases for 2014
19 that were responsive to his request for “[a]ll investigative case files for all LVMPD pandering
20 and accepting earnings of a prostitute investigations that were closed in calendar years 2014,
21 2015, and 2016,” but did not indicate whether Metro had determined how many responsive
22 closed cases it had for 2015 or 2016 (despite previously indicating it could only produce such
23 files). (*Id.*) Ms. Bible also indicated that with regard to Mr. Joseph’s requests for arrest
24 reports, Metro had researched only four of the offenses and determined it had thousands of
25 responsive arrest reports, each of which would cost \$9.00 pursuant to Metro’s fee schedule.
26 (*Id.* at p. 2.)

27 **7. The August 18, 2017 Request Regarding the Aria.**

28 On August 18, 2017, Mr. Joseph sent another records request to Metro, this time

requesting copies of “arrest reports, audio and video records, interview transcripts, investigatory records, incidents reports, notes, records, documents and memos related to all incidents or reports of trespassing at the Aria Resort and Casino on May 28, 2014,” as well as the same records related to the arrest and investigation of Robert Sharpe, III and Kariah Heiden. (Exh. 49 (the “August Request”).) PIO Meltzer responded via letter on August 23, 2017. (Exh. 50.) Metro again indicated that it would “take at least 30 days” for Metro to compile responsive records (*id.*) but never produced records.

8. September Requests for Records (Specific Individuals and Statistics).

On September 7, 2017, Mr. Joseph sent another records request to Metro for records pertaining to Branden Johnson. (Exh. 51 (the “September 7 Request”).) On September 15, 2017, Mr. Joseph sent a records request for statistical information pertaining to the total numbers of men and women arrested for engaging in prostitution, soliciting for prostitution, and sex trafficking for 2014, 2015, and 2016. (Exh. 52.) Mr. Joseph sent another records request on September 15, 2017 asking for “arrest reports, audio and video recordings, interview transcripts, investigatory records, incident reports, records, documents and memos” for two individuals: Poppy Wellman and Kariah Heiden. (Exh. 53.) (Exh. 52 and 53 are collectively referred to as the “September 15 Requests”). Metro did not respond to any of these requests. Mr. Joseph emailed PIO Meltzer on September 21, 2017, noting that Metro had not responded to several of his records requests, and asking for a status update on multiple pending requests. (Exh. 54, p. 1.)

9. Mr. Joseph’s November / December Follow-Ups.

Subsequently, on November 15, 17, and 28, 2017, Mr. Joseph sent emails to the PIO requesting an update on his multiple pending requests. (Exh. 55.) Between December 4, 2017 and December 15, 2017, Mr. Joseph exchanged multiple emails with PIO Jennifer Knight inquiring about the status of multiple pending requests. (Exh. 56.)

10. Mr. Joseph’s December Request for Records Pertaining to Specific Individuals.

On December 12, 2017, Mr. Joseph sent another request asking for “arrest reports,

1 audio and video recordings, interview transcripts, investigatory records, incident reports,
2 records, documents and memos” for two individuals: Brittani Stugart and Megan Lundstrom.
3 (Exh. 57 (the “December Request”).)

4 **11. Mr. Joseph’s January Follow-Up.**

5 On January 23, 2018, Mr. Joseph sent another email to Metro to inquire about the
6 status of his requests. (Exh. 58, pp. 2-3.) 101. On January 26, 2018, PIO Knight responded
7 that she had forwarded his request to legal counsel. (Id., p. 2.)

8 **F. The Review-Journal Petitions for a Writ of Mandamus.**

9 Metro has provided very few responsive documents to any of the requests Mr.
10 Joseph made.³ On May 31, 2018, the Review-Journal filed a Petition for a Writ of Mandamus
11 requesting that this Court mandate pursuant to the NPRA that Metro, *inter alia*, produce the
12 public records at issue without charging exorbitant fees to do so.

13 **III. ARGUMENT**

14 Pursuant to the NPRA, all governmental records are presumed to be public unless
15 explicitly deemed confidential by law. Nev. Rev. Stat. § 239.010. To overcome that
16 presumption, a governmental entity bears a heavy burden. In this case, Metro has not met its
17 burden of proving that the withheld records are confidential. Moreover, Metro did not
18 provide timely notice of the legal bases for its assertion that the records requested are
19 confidential. Thus, Metro has waived its right to assert that privilege attaches to any of the
20 withheld records. Even if it had not, the records are public records—a matter which the
21 Review-Journal understands Metro does not generally contest. Thus, the records should be
22 produced without delay—and without exorbitant fees that hinder access.

23 **A. The NPRA Starts from the Presumption that Public Records Must Be Open;
24 Metro Bears a Heavy Burden in Overcoming that Presumption.**

25 The NPRA sets forth that public records are to be made available to the public for
26 inspection or copying. Nev. Rev. Stat. § 239.010(1); *Reno Newspapers, Inc. v. Gibbons*, 127

27 ³ On information and belief, Metro did provide some records responsive to the portion of the
28 May 19, 2017 Request requesting documents related to a particular criminal defendant. (*See*
Exh. 40 (the May 19, 2017 Request).)

Nev. 873, 882, 266 P.3d 623, 628 (2011). The purpose of the NPRA is to “foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]” Nev. Rev. Stat. § 239.001(1). Thus, the NPRA 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); *see also Gibbons*, 127 Nev. at 882, 266 P.3d at 629 (“the provisions of the NPRA place *an unmistakable emphasis on disclosure*”) (emphasis added). Despite Metro’s delays, the law surrounding the NPRA is well-settled—in particular with the regard to the burden Metro bears in justifying nondisclosure. In accordance with the presumption of openness and “emphasis on disclosure” that underpins the NPRA, both the Act itself and the Nevada Supreme Court place a high burden on a governmental entity to justify non-disclosure (and have done so for decades).

Specifically, the NPRA mandates that, if a governmental entity intends to withhold records (or parts thereof) on the basis of confidentiality, it must, within five business days, provide written notice of that fact and “[a] citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.” Nev. Rev. Stat. § 239.0107(1)(d)(1) and (2). The NPRA also bars wholesale withholding where lesser measures can be taken. *See* Nev. Rev. Stat. § 239.010(3) (requiring redactions).

If a statute explicitly makes a record (or portion thereof) confidential or privileged, the public entity need not produce it. *Id.* A governmental entity seeking to withhold or redact records on some other basis, however, has a heavy burden. First, the governmental entity must prove by a **preponderance of the evidence** that the record or portion thereof that it seeks to redact is confidential. *See* Nev. Rev. Stat. § 239.0113; *see also, e.g., 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). 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 Nev. 662, 668, 856 P.2d 244, 247 (1993)). This is especially so in the public records context: pursuant to the mandates of the NPRA, any restriction on disclosure “must be construed narrowly.” Nev. Rev. Stat. § 239.001(3).

Second, after establishing the existence of the privilege it asserts and applying it narrowly, unless the privilege is absolute, the governmental entity bears the burden of establishing that the interest in withholding documents clearly “clearly outweighs the public’s interest in access.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011). This is so because “the provisions of the NPRA place an unmistakable emphasis on disclosure.” 127 Nev. at 882, 266 P.3d. at 629.

In evaluating claims of confidentiality, courts must take the NPRA’s emphasis on disclosure into consideration. Further, a governmental entity cannot rely on conjecture or hypothetical concerns to justify nondisclosure of public records. *DR Partners v. Bd. of County Com’rs of Clark County*, 116 Nev. 616, 628, 6 P.3d 465, 472–73 (2000) (County cannot meet “its burden by voicing non-particularized hypothetical concerns”) (citation omitted); *see also Reno Newspapers v. Sheriff*, 126 Nev. 211, 219, 234 P.3d 922, 927 (2010) (“A mere assertion of possible endangerment does not ‘clearly outweigh’ the public interest in access to these records.”) (quotation omitted). Further, if a public record contains confidential or privileged information only in part, a governmental entity shall redact the confidential information and produce the record in redacted form. Nev. Rev. Stat. § 239.010(3).

Metro did not (and cannot) establish by a preponderance of the evidence that any claim of confidentiality applies to any of the records sought in this matter, let alone that any claim of confidentiality outweighs the presumption in favor of disclosure. Accordingly, the requested records must be disclosed.

B. Metro Has Waived Its Ability to Assert Any Privilege It Did Not Timely Assert.

As noted above, the NPRA provides that a governmental entity must provide a meaningful response to a request for public records—including an assertion of

confidentiality—within five (5) days of a request.⁴ If a governmental entity refuses to provide part or all of a request on confidentiality grounds, the NPRA specifically states that, within five (5) business days of receiving a request, the governmental entity must provide written notice of that fact and a citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential Nev. Rev. Stat. § 239.0107(1)(d).

Section 239.0107(1) of the NPRA outlines the actions a governmental entity may take in responding to a public records request: not later than the end of the fifth business day after receiving a records request, a governmental entity can (1) allow the requester to inspect or copy the record; (2) provide written notice that the entity does not possess the requested records and provide the requester with the name and address of the governmental entity that does possess the record; (3) provide written notice that the requested records will not be available within five business days, and a specific date and time the records will be available for copying or inspection; or (4) if the governmental entity believes the requested records (or any parts thereof) are confidential, written notice of that fact, with specific statutory or legal authority that makes the requested records confidential. *See* Nev. Rev. Stat. § 239.0107(1)(a)-(d). Thus, an entity that withholds records must provide timely and specific notice—and must do so within five (5) business days.

As the Nevada Supreme Court has explained, “the waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished.” *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007). Here, Metro’s failure to timely assert any claims of confidentiality is “inconsistent with an intent to enforce” its right to make any such assertions. Thus, Metro has waived its right to assert that privilege attaches to any of the requested documents. Further, Metro’s failure to adequately respond evidences bad faith.

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⁴ *See* Nev. Rev. Stat. § 239.0107(1)(a)-(d).

1 The Eighth Judicial District Court has held, on two separate occasions, that when a
2 government agency fails to follow this mandate, it is thereby barred from raising any non-
3 cited statute or legal authority in responding to a filed lawsuit. First, in *Las Vegas Review-*
4 *Journal v. Clark County School District*, Eighth Judicial Dist. Ct. Case No. A-17-750151-
5 W, the Clark County School District failed to timely respond to requests and failed to assert
6 any claims of confidentiality within the period mandated by Nev. Rev. Stat. § 239.0107(d)
7 in response to a request from the Review-Journal seeking records about Trustee Kevin Child.
8 (**Exh. 61**, p. 2, ¶ 4.) In granting the Review-Journal’s petition for a writ of mandamus, the
9 district court cited this failure to timely assert any claim of confidentiality as a basis for its
10 determination that CCSD had failed to meet its burden of demonstrating the existence of any
11 claim of confidentiality that justified withholding the requested records. (*Id.*, p. 6, ¶ 29.)

12 Second, in *Las Vegas Review-Journal v. Clark County Office of the*
13 *Coroner/Medical Examiner*, Eighth Judicial Dist. Ct. Case No. A-17-758501-W, the
14 Review-Journal sent a public records request to the Coroner’s Office requesting copies of
15 certain autopsy reports (**Exh. 62**, p. 2, ¶ 1.) Although the Coroner’s Office timely responded,
16 it failed to cite binding legal authority within five (5) days as required. The Court explained
17 that the Coroner’s Office “cannot rely on privileges, statutes, or other authorities that it failed
18 to assert within five (5) business days to meet its burden of establishing that privilege attaches
19 to any of the requested records.” (*Id.* at p. 7, ¶ 33.) While these district court orders are not
20 binding precedent, they are nevertheless instructive.

21 In this case, as set forth above, the Review-Journal submitted multiple records
22 requests to Metro for public records pertaining to Metro’s investigations of sex trafficking
23 crimes. In none of these instances did Metro respond within five days by citing to a specific
24 statute justifying a claim of confidentiality. Because Metro did not respond within five
25 business days of receiving the NPRA requests from the Review-Journal with specific
26 statutory citation or other legal authority to justify withholding records and has still not
27 provided sufficient authority, under the plain language of the statute and the authorities
28 above, Metro is precluded from relying on any previously uncited authorities.

C. Metro Has Failed to Demonstrate by a Preponderance of the Evidence That the Requested Records Are Confidential.

The NPRA mandates more than a “we will get back to you later” response within five days—it mandates a *meaningful* response. Even when it did respond, Metro failed to meet its obligation of specifically explaining the bases of its denials. *See* Nev. Rev. Stat. § 239.0107 (1)(d) (requiring that, within five (5) days, a governmental entity denying records provide “[a] citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential”). Thus, it did not meet its heavy burden in overcoming the presumption in favor of access—and it acted in bad faith. None of the records requested in any of the records requests above are expressly confidential by law and, thus, the public is presumptively entitled to access. Nev. Rev. Stat. § 239.010(1); *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (“we begin with the presumption that *all government-generated records are open to disclosure*”) (emphasis added). Metro’s cursory reliance on *Donrey*—which merely sets forth a balancing test—does not support nondisclosure of these public records. As noted above, none of the factors set forth in *Donrey* as potentially supporting nondisclosure are present in this case.

In sum, Metro has not met its heavy burden of establishing that the requested records (or portions thereof) are confidential. Even if the records were confidential, the interests in disclosure outweigh any hypothetical claims of confidentiality. Accordingly, all the records and related documentation that Metro has in its possession should be produced.

1. Metro Has Not Established That the Investigative Case Files Are Exempt From Disclosure.

In the February 23 Request, the Review-Journal requested all investigative case files for Metro sex trafficking cases that were closed in 2014, 2015, and 2016. (Exh. 1.) Similarly, in the May 19 Request, the Review-Journal requested all investigative case files for pandering and accepting earnings of a prostitute that were closed in 2014, 2015, and 2016. (Exh. 40.) As noted above, in her April 27, 2017 letter, Ms. Freedman opined that investigative files and arrest reports are not public records until they are introduced or filed in court or become part of a closed case. (Exh. 7, p. 2.) In support of this assertion, Ms.

1 Freedman only cited the Nevada Supreme Court’s opinion in *Donrey v. Bradshaw*, 106 Nev.
2 630, 798 P.2d 144 (1990). Subsequently, during a July 5, 2017 phone conference, counsel
3 for Metro conceded that the requested investigative file are public records pursuant to the
4 NPRA, but that some information contained in the files may be confidential and subject to
5 redaction. (Exh. 20.)

6 With respect to Ms. Freedman’s assertion that investigative case files are only
7 subject to disclosure after they are introduced in court or become part of a closed case, there
8 is no case law to support this position. Case law from the Nevada Supreme Court instead
9 indicates that investigative case files are public records subject to disclosure regardless of
10 whether they are used in court, so long as they do not reveal confidential sources or
11 investigative techniques.

12 In *Donrey*—the case cited by Ms. Freedman in her April 27, 2017 letter—the
13 petitioner media entities requested an investigative report into bribery of a public official. *Id.*
14 at 631, 798 P.2d at 145. This investigative report (which concluded that there was no criminal
15 wrongdoing) was sent to various governmental agencies, but not used in court. *Id.* at 631,
16 795 P.2d at 145. After the Reno City Attorney’s Office and Reno Police Department refused
17 to disclose the investigative report, the media entities filed a petition for a writ of mandamus
18 in the district court, asserting that the NPRA required the disclosure of the investigative
19 report. *Id.* at 632, 798 P.2d at 145. The district court denied the petition, determining that the
20 report was confidential based upon Nev. Rev. Stat. Chapter 179A, which contains provisions
21 concerning the dissemination of criminal history records. *Id.*

22 On appeal, the Nevada Supreme Court found that the confidentiality provisions
23 contained in Nev. Rev. Stat. Chapter 179A did not cover the record at issue. *Id.* at 634, 798
24 P.2d at 147. As a consequence, the Court held that “a balancing of the interests involved is
25 necessary” before any common law limitations on disclosure could be applied. *Id.* at 635,
26 798 P.2d at 147. Under this balancing test, the Court concluded that the investigative report
27 should be released to the media entities. *Id.* at 636, 798 P.2d at 148. This conclusion was
28 based on the facts that no criminal proceeding was pending or anticipated, no confidential

sources or investigative techniques were contained in the report, there was no possibility of denying anyone a fair trial, and disclosure did not jeopardize law enforcement personnel. *Id.* Thus, the fact that the investigative report was never introduced in court was irrelevant to the Court's determination of whether it was a public record. *See also Reno Newspapers v. Sheriff*, 126 Nev. 211, 234 P.3d 922 (2010) (holding that the Reno Sheriff's assertion that release of records relating to concealed firearms permits might increase the vulnerability of permit holders did not satisfy his burden of proof to show that the government interest clearly outweighs the public's right to access).

Applying this guidance here, Metro has not met its burden of demonstrating by a preponderance of evidence that the requested investigative case files—which it has conceded are public records—cannot be released in unredacted form. First, Metro's initial assertion that investigative case files only become public records upon their introduction in court or upon the closing of a case is undermined by the very case it cited in support of this position. Second, Metro has not established that the investigative case files contain information about confidential sources or investigative techniques that preclude their release. As discussed above, Metro cannot rely on conjecture or speculation about the contents of the requested investigative files to justify withholding them. *See DR Partners v. Bd. of County Com'rs of Clark County*, 116 Nev. 616, 628, 6 P.3d 465, 472–73 (2000). Instead, Metro can only meet its burden by providing specific information about any portions of the investigative files that contain confidential information that would jeopardize an ongoing case. It has not provided such specific information; accordingly, the records must be released.

2. Metro Has Not Established That the Requested Arrest Reports Are Not Subject to Disclosure.

Nevada law makes plain that arrest reports are public records and may be disseminated to reporters without any restrictions. While the Review-Journal recognizes that Nevada law does provide that certain information in records of criminal history is presumptively confidential, Metro has not met its burden of demonstrating that the requested arrest records are confidential. *See Nev. Rev. Stat. §§ 239.0107(1)(d) and 239.0113(2).*

1 Under Nev. Rev. Stat. § 179A.070, an arrest report is a record of criminal history.

2 That statute defines a “record of criminal history” as:

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

20 Nev. Rev. Stat. § 179A.070(1) (emphasis added). Based on this definition, an arrest report is
21 a “record of criminal history.”

22 Additionally, Nev. Rev. Stat. § 179A.100 provides for the dissemination of records
23 of criminal history. Pursuant to Nev. Rev. Stat. § 179A.100(1)(b), records of criminal history
24 . . . may be disseminated by an agency of criminal justice without any
25 restriction pursuant to this chapter:

- 26 (a) Any which reflect records of conviction only; and
27 (b) *Any which pertain to an incident for which a person is currently within*
28 *the system of criminal justice*, including parole or probation.

Thus, arrest reports may be disseminated without restriction if the person who is the subject
of the record is currently within the system of criminal justice. That includes pending
criminal matters—not just fully adjudicated matters.

Further, under Nev. Rev. Stat. § 179A.100(7)(l), “[r]ecords of criminal history *must*
be disseminated by an agency of criminal justice, upon request, to . . . [a]ny reporter for the
electronic or print media in a professional capacity for communication to the public.”

(emphasis added).⁵ Metro has not provided any justification for withholding arrest records that overcomes the statutory presumption of access to arrest reports or the advisory opinion holding that arrest reports are presumptively public records. Accordingly, this Court should order Metro to disclose the requested records.

3. Metro Has Not Established That the Requested Unit Assignments Are Not Subject to Disclosure.

Metro has asserted—without elaboration or any citation to statute or case law—that “LVMPD does not provide unit assignments for its officers due to safety concerns.” (Exh. 6, p. 3.) This does not comply with the NPRA’s requirement that a governmental entity must provide a citation to “the specific statute or other legal authority that makes the public records, or a part thereof, confidential.” Nev. Rev. Stat. § 239.0107(1)(d); *see also* Nev. Rev. Stat. § 239.0113(2). Thus, Metro has not met its burden of establishing that its interests in withholding officer unit assignments outweighs the public’s right of access.

4. Metro Has Not Established that the Other Requested Records Are Not Subject to Disclosure.

Metro has also not met its burden of establishing that the other requested records—including the February 27 Request for SCOPE database information, the May 31 Request for police reports filed by citizens, and the September 15 Request for statistical information about arrests⁶—are not subject to disclosure. In fact, Metro has never provided a meaningful response to the February 27 Request, and failed altogether to respond to either the May 31 or September 15 Requests. With respect to the February 27 Request for SCOPE information, Metro has only played hide-the-ball rather than providing a meaningful response. As noted above, Metro denied having the requested records and told Mr. Joseph to request the

⁵ While not binding, the Review-Journal notes that the Nevada Attorney General reached the same conclusion in a 1983 Opinion. See 1983 Nev. Op. Atty. Gen. 9, Nev. Op. Atty. Gen. 3, 1983 WL 171440. Even under the less robust version of the NPRA that existed in 1983, the Attorney General concluded that arrest reports are public records subject to the provisions of the NPRA.

⁶ (*See* Exhs. 42, 10, and 52.)

1 information from Clark County. (Exh. 9.) When Mr. Joseph followed Metro's instructions
2 and requested the SCOPE information from Clark County, the County's PIO told him that
3 Metro possessed the requested records. (Exh. 60.) Because Metro has failed to respond to
4 these requests, as discussed above in Section III(B), Metro has waived its ability to assert
5 that any of these records are confidential.

6 **5. Metro has Not Established Redaction is Not a Feasible Alternative to**
7 **Withholding the Requested Records**

8 In addition to failing to meet its burden of demonstrating its interest in
9 nondisclosure outweighs the strong presumption in favor of public access as mandated by
10 *Donrey v. Bradshaw* and its progeny, Metro has failed to demonstrate that redaction of
11 alleged confidential information is not a feasible alternative to withholding any of the
12 requested records. Nev. Rev. Stat. § 239.010(3) mandates that "[a] governmental entity that
13 has legal custody or control of a public book or record shall not deny a request made pursuant
14 to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis
15 that the requested public book or record contains information that is confidential if the
16 governmental entity can redact, delete, conceal or separate the confidential information from
17 the information included in the public book or record that is not otherwise confidential." In
18 this case, Metro has not demonstrated that redaction is not a feasible alternative to
19 withholding the requested records in their entirety.

20 **D. Metro Is Not Entitled to the Costs and Fees It is Demanding; Exorbitant and**
21 **Illegal Fees Operate as a Denial.**

22 The only fees a governmental entity can charge for copies of public records are set
23 forth in Nev. Rev. Stat. § 239.052(1)) (copies) and Nev. Rev. Stat. § 239.055(1)
24 (extraordinary use). Pursuant to those provisions, a governmental entity may pass on to the
25 requester the actual cost of a copy and may also pass on costs of up to 50 cents per page if a
26 request involves the extraordinary use of resources. No fees can be charged for inspection
27 because the only charges authorized by the NPRA are the copying fees and the extraordinary
28 use provisions.

This is the law. It is not vague; it is straightforward and plain. Yet it is the practice

of Metro to impose costs that exceed the limits set forth in the NPRA. This at odds with both the stated purpose of the NPRA and the letter of the law. This Court should only allow charges in connection with the production of records in this case as follows:

- A per page charge for paper copies, based on any actual costs related to the copies (e.g., if Metro leases copiers, the per page cost that the company which owns the copying machine charges Metro);⁷
- If copies are provided via an electronic medium, the Review-Journal may provide a USB drive or other medium, or Metro may assess a charge based on the actual cost of the medium; and
- Metro cannot assess charges for compiling, reviewing, or redacting records.

1. The NPRA’s Mandates Regarding Liberal Statutory Interpretation in Favor of Access Apply to the Costs Provisions.

The Nevada Legislature saw fit to explicitly include the NPRA’s purpose and its directives regarding interpretation in the text of law itself. The NPRA states that its purpose is to foster democratic principles by ensuring easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) (“The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law”); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are designed to promote government transparency and accountability”).

To fulfill the NPRA’s goal of transparency and accountability, the NPRA must be construed and interpreted liberally; not only are government records presumed public records subject to the Act, any limitation on the public’s access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2) and 239.001(3); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada legislature intended the provisions of the NPRA to

⁷ Metro must also provide evidence of its “actual costs” before being entitled to any costs.

1 be “liberally construed to maximize the public’s right of access”). The cost provisions in the
2 NPRA thus must construed in a manner that promotes access.

3 **2. It Is Part of a Governmental Entity’s Mandate to Comply with the**
4 **NPRA.**

5 To justify exorbitant demands for fees to respond to NPRA requests, governmental
6 agencies often complain about the time involved in having to respond to the request. This
7 ignores that, while the extraordinary use provision is in place to deter abuse of the NPRA, it
8 is taxpayer dollars that fund governmental entities and public records are supposed to readily
9 be available to the public. Thus, it is an implicit part of the duties of public entities to
10 *cooperate* with requests for public records—not to instinctively fight them or assess high
11 fees to deter requests. Further, swift and cooperative responses avoid litigation, which is an
12 even larger burden on the taxpayer. Again, as explicitly stated in Nev. Rev. Stat. §
13 239.001(1), the NPRA is designed to promote transparency and democratic principles.
14 Transparency should not be viewed as secondary to, or as a hindrance to, the functioning of
15 the people’s government.

16 **3. Metro Cannot Charge Fees for Inspection.**

17 The NPRA dictates that all public records be available to the public for inspection
18 during business hours. *See* Nev. Rev. Stat. § 239.010(1) (“Except [as explicitly declared to
19 be confidential pursuant to law], all public books and public records of a governmental entity
20 must be open at all times during office hours to inspection by any person, and may be fully
21 copied or an abstract or memorandum may be prepared from those public books and public
22 records.”) No fees can be charged for inspection because the only charges provided for are
23 the copying fees and the extraordinary use provisions.

24 **4. The NPRA Limits Copying Costs to the Actual Costs of the Copies.**

25 Nev. Rev. Stat. § 239.052(1) provides that “a governmental entity may charge a fee
26 for providing a *copy* of a public record.” (Emphasis added.) This fee must also “not exceed
27 the *actual cost of the governmental entity* to provide the copy of a public record unless a
28 specific statute or regulation sets a fee that the governmental entity must charge for the copy.”

1 *Id.* (emphasis added). According to the Metro’s Service Charges List, its default is to charge
2 \$0.31 per page for copies. (*See* Exh. 1, bottom of second page.) It is unclear if this is Metro’s
3 actual cost: it must provide support for the actual costs of the copies for any charges it
4 imposes and should not be permitted to charge for labor associated with copies.

5 When records are provided via an electronic medium, there is no copying cost—
6 whether the records contain hundreds or hundreds of thousands of pages.⁸ Thus, a per-page
7 cost for such “copies” in excess of the actual cost of producing these electronic copies would
8 result in a windfall profit to Metro and be inconsistent with the NPRA.

9 **5. This Case Does Not Involve Extraordinary Use.**

10 Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring
11 requesters to pay public entities “extraordinary use” fees for making good faith NPRA
12 requests is inconsistent with the plain terms of the statute and with the mandate to interpret
13 the NPRA broadly. Further, charging a requester for redactions is also at odds with the overall
14 scheme of the NPRA. As the Nevada Supreme Court has explained, “[w]hen a legislature
15 sees fit to adopt a general scheme for the regulation of particular subject, local control over
16 the same subject, through legislation, ceases.” *Lamb v. Mirin*, 90 Nev. 329, 332, 526 P.2d
17 80, 82 (1974); accord *Crowley v. Duffrin*, 109 Nev. 597, 605, 855 P.2d 536, 541 (1993). This
18 “plenary authority of a legislature operates to restrict and limit the exercise of all municipal
19 powers.” *Lamb*, 90 Nev. 329, 333, 526 P.2d 80, 82 (citation omitted). Thus, once the
20 legislature has adopted a scheme to regulate a particular subject—in this case, a general
21 scheme for accessing public records—“[i]n no event may a [municipal entity] enforce
22

23 ⁸ While not binding on this Court, another decision by this Court is instructive on this point.
24 (*See* Exh. 62 (November 9, 2017 Order in Case No. A-17-758501-W) at ¶¶ 56-57 (holding
25 that NPRA does not permit a per-page fee to be charged for electronic copies of public
26 records, and that because the Review-Journal had requested electronic copies of records, the
27 Clark County Office of the Coroner/Medical Examiner could only charge for the cost of the
28 medium on which the records were produced); *see Camreta v. Greene*, 563 U.S. 692, 709,
n. 7 (2011) (“A decision of a federal district court judge is not binding precedent in either a
different judicial district, the same judicial district, or even upon the same judge in a different
case.”) (quotation omitted).

regulations which are in conflict with the clear mandate of the legislature.” *Lamb*, 90 Nev. 329, 333, 526 P.2d 80, 82 (citing *Mabank Corporation v. Board of Zoning Appeals*, 143 Conn. 132, 120 A.2d 149 (1956)); see also *Falcke v. Douglas Cty.*, 116 Nev. 583, 588, 3 P.3d 661, 664 (2000) (recognizing that “[b]ecause counties obtain their authority from the legislature, county ordinances are subordinate to statutes if the two conflict”); *Boulware v. State, Dep’t Human Resources*, 103 Nev. 218, 219, 737 P.2d 502, 502 (1987) (noting that an entity “may not act outside the meaning and intent of [its] enabling statute”).

The term “extraordinary use of personnel or technological resources” is not defined in Chapter 239 of the Nevada Revised Statutes, or within Nev. Rev. Stat. § 239.055 specifically. However, Nevada case law indicates that the term “extraordinary use” refers to the creation of new documents or a computer program for the purposes of informational retrieval—not redacting records or compiling responsive records. In *PERS v. Reno Newspapers*, 129 Adv. Op. 88, 313 P.3d 221 (2013), this Court considered “the applicability of [the NPRA] to information stored in the individual files of retired employees that are maintained by [an agency].” *PERS*, 313 P.3d at 222. After concluding that such information must be disclosed, the Court held that to the extent that a records request required “PERS to create new documents or customized reports by searching for and compiling information from individuals’ files or other records,” the NPRA did not require their production and disclosure. *Id.* at 225. In contrast with this case law and the NPRA’s mandate that its terms be interpreted consistently with promoting access, Metro’s charges are impermissible.

6. Metro Cannot Charge Fees for Locating and Redacting Records.

Metro appears to be demanding payment simply for locating documents responsive to a request and redacting them. Not only is this practice prohibited by the plain terms of the NPRA, requiring a requester to pay a public entity to withhold documents (or parts thereof) would be an absurd result. See *S. Nevada Homebuilders Assn v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (noting that courts must “interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect

to the Legislature’s intent”) (quotation omitted); *see also Cal. Commercial Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003) (“When a statute is not ambiguous, this court has consistently held that we are not empowered to construe the statute beyond its plain meaning, unless the law as stated would yield an absurd result.”). 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.

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

///

7. Extraordinary Use Fees Are Capped at 50 Cents Per Page.

Even if extraordinary use fees were appropriate in this case, which they are not, Metro’s fees are impermissible if they exceed 50 cents a page. Nev. Rev. Stat. § 239.055(1) only permits governmental entities to charge fees for the “extraordinary use” of personnel or resources. It provides that “... if a request for a copy of a public record would require a governmental entity to make extraordinary use of its personnel or technological resources, the governmental entity may, in addition to any other fee authorized pursuant to this chapter, *charge a fee not to exceed 50 cents per page* for such extraordinary use....” (emphasis added).

E. Metro’s Fees Demand Operates as a *De Facto* Denial of the Review-Journal’s Records Requests.

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 a request—and constitutes bad faith. Even if Metro could, as it has asserted, charge for its privilege review as “extraordinary use,” such fees would be capped at 50 cents per page for copies. Nev. Rev. Stat. § 239.055(1). Metro has not provided sufficient support for its claimed copying and other costs. For electronic copies, there is no copying cost, other than the cost of the medium and the costs to transfer the records to the medium. Thus, the fees Metro demands the Review-Journal pay before it even begins compiling the requested records conflicts with the NPRA.

Although not binding on this Court, a recent order from another court provides some guidance regarding the fees Metro can and cannot charge in producing records pursuant to the NPRA. On March 9, 2017 the Honorable Richard Scotti issued an order in *American Broadcasting Companies, Inc., et al. v. Las Vegas Metropolitan Police Department, et al.*, Dist. Ct. Case No. A-17-764030-W, outlining the fees Metro is permitted to charge in responding to requests from the Review-Journal and other media entities for public records pertaining to the 1 October shooting (“1 October Costs Order”). (See Exh. 59.) In that case, as here, Metro asserted that it could charge its actual cost for compiling and reviewing

1 responsive records and its copying costs. (*Id.* at p. 3:26-27.)

2 In the 1 October Costs Order, Judge Scotti found that with regard to records such
3 as evidence logs and interview reports, the plain language of the NPRA only permits Metro
4 to charge the actual costs for copying the responsive records and the 50-cent-per-page
5 “extraordinary use” fee set forth in Nev. Rev. Stat. § 239.055 and could not charge the media
6 entities for time Metro staff expended in gathering and reviewing the requested records. (*Id.*,
7 pp. 5:12-6:9; *see also id.* at p. 8:9-11.) Judge Scotti also found that Metro cannot charge costs
8 for electronic copies, other than the actual costs to transfer records to an electronic medium.
9 (*Id.*, p. 8:11:13.)

10 **F. Metro Must Provide an Index of the Documents It is Withholding.**

11 When a government agency either redacts or refuses to provide public records
12 subject to a request made under the NPRA, it must provide an explanation to the requesting
13 party as to why the records have been withheld or redacted, including “citation to legal
14 authority that justifies nondisclosure.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873,
15 876, 266 P.3d 623, 625 (Nev. 2011). Although the explanation does not have to take the form
16 of a Vaughn Index,⁹ the explanation provided must cite to specific legal authority and be
17 detailed enough to allow the requesting party to evaluate the claim of confidentiality and
18 argue the issue without being reduced to “a nebulous position where it is powerless to contest
19 a claim of confidentiality.” 127 Nev. at 882, 266 P.3d at 629. “[M]erely pinning a string of
20 citations to a boilerplate declaration of confidentiality [does not satisfy] the State’s
21 prelitigation obligation under Nev. Rev. Stat. § 239.0107(1)(d)(2) to cite to ‘specific’
22 authority ‘that makes the public book or record, or a part thereof, confidential.’” 127 Nev. at
23 885, 266 P.3d at 631.

24 ///

25 _____
26 ⁹ “A Vaughn index is a submission commonly utilized in cases involving the Freedom of
27 Information Act (FOIA), the federal analog of the NPRA. This submission typically contains
28 ‘detailed public affidavits identifying the documents withheld, the FOIA exemptions
claimed, and a particularized explanation of why each document falls within the claimed
exemption.’” 127 Nev. at 881, 266 P.3d at 628.

1 Although the *Gibbons* Court declined to require governmental entities to produce a
2 Vaughn index whenever withholding records prior to litigation, the Court made clear that a
3 governmental entity seeking to withhold records is generally required to provide the
4 requesting party with a log which details the records and sufficient information about the
5 bases for withholding. 127 Nev. at 882-83, 266 P.3d at 629; *see also id.* at 883 (“[A] claim
6 that records are confidential can only be tested in a fair and adversarial manner, and in order
7 to truly proceed in such a fashion, a log typically must be provided to the requesting party”).

8 Accordingly, while the Review-Journal contends that Metro has failed to timely
9 meet its burden, should it continue to withhold records, Metro must produce a log identifying
10 the documents being withheld and setting forth the specific bases for withholding so that the
11 Review-Journal has a meaningful opportunity to contest—and this Court has an adequate
12 foundation to review—the propriety of the withholdings. Metro must produce this log in
13 connection with its response in the case, in light of the authority above.

14 **G. This Matter Should Be Expedited, and the Review-Journal Should Be**
15 **Provided With Records Without Delay.**

16 The legislative intent underpinning the NPRA is to foster democratic principles by
17 ensuring easy *and expeditious* access to public records. Nev. Rev. Stat. § 239.001(1); *see*
18 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011)
19 (holding that “the provisions of the NPRA are designed to promote government transparency
20 and accountability”). Indeed, the importance of access—specifically, speedy access—is
21 reflected in the NPRA’s mandate that courts prioritize public records matters. Nev. Rev. Stat.
22 § 239.001(2) (“The court shall give this matter priority over other civil matters to which
23 priority is not given by other statutes...”). A specific legislative interest in *swift* disclosure is
24 woven throughout the NPRA. For example, as discussed above, Nev. Rev. Stat. §
25 239.0107(1) mandates that, by not later than the end of the fifth business day after receiving
26 a records request, a governmental entity must respond to a request. Nev. Rev. Stat. §
27 239.0107(1)(a)-(d). In addition to this timely notification and disclosure scheme, the NPRA
28 specifically provides for expedited court consideration of a governmental entity’s denial of

1 a records request. Nev. Rev. Stat. § 239.011(2) (mandating that a court give an application
2 for public records “priority over other civil matters”).) Thus, the NPRA is designed to
3 provide quick access to withheld public records, not to reward non-compliance or delay.
4 Further, the NPRA specifically provides that the public has a presumptive right of access to
5 public records. *See* Nev. Rev. Stat. § 239.001(1). The continued withholding of the requested
6 records violates that right, and are not congruous with the mandates of the NPRA.

7 Additionally, the continued withholding of the requested documents thwarts one of
8 the central roles of journalism: publicizing information about issues that affect the public
9 interest. The denial of access to public records also impinges on the media’s First
10 Amendment rights to access public records and report on them—and any violation of a First
11 Amendment right is irreparable harm. *See, e.g., Globe Newspaper Co. v. Pokaski*, 868 F.2d
12 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First
13 Amendment”); *see also Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126-27 (2d Cir.
14 2006) (“Our public access cases and those in other circuits emphasize the importance of
15 immediate access where a right of access is found.”) (emphasis added) (citations omitted);
16 *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (public
17 access to documents in court’s file “should be immediate and contemporaneous”).

18 **IV. CONCLUSION**

19 For all the reasons set forth above, the Review-Journal respectfully requests that
20 this Court grant the relief requested in the Petition, and also that this Court specifically
21 require Metro to: (1) provide information regarding the records that are withheld; and (2)
22 work with the Review-Journal in good faith to develop a mechanism for streamlining and
23 expediting the production of records to the Review-Journal.

24 Respectfully submitted this the 5th of July, 2018.

25 /s/ Margaret A. McLetchie

26 MARGARET A MCLEITCHIE, Nevada Bar No. 10931

27 **MCLEITCHIE SHELL LLC**

28 701 East Bridger Ave., Suite 520

Counsel for Petitioner, Las Vegas Review-Journal

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th of July, 2018, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing OPENING BRIEF IN SUPPORT OF PUBLIC RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. § 239.001/ PETITION FOR WRIT OF MANDAMUS 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 electronic filing service system, to all parties with an email address on record.

I hereby further certify that on this the 5th of July, 2018, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing OPENING BRIEF IN SUPPORT OF PUBLIC RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. § 239.001/ PETITION FOR WRIT OF MANDAMUS by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
Email: canderson@maclaw.com; ncrosby@maclaw.com; jnichols@maclaw.com
Attorneys for Las Vegas Metropolitan Police Department

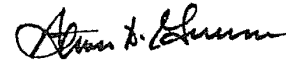
/s/ Pharan Burchfield
An Employee of MCLEITCHIE SHELL LLC

INDEX OF EXHIBITS¹⁰

Exh.	Description	Date	Bates Nos.
61	Order Granting Writ of Mandate in <i>Las Vegas Review-Journal v. Clark County School District</i> , Case No. A-17-750151-W.	02/22/2017	LVRJ663-LVRJ670
62	Order Granting Petitioner LVRJ's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/ Petition for Writ of Mandamus in <i>Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner</i> , Case No. A-17-758501-W.	11/09/2017	LVRJ670-LVRJ682

¹⁰ As indicated above, the other exhibits were submitted in connection with the Petition.

EXHIBIT 61



CLERK OF THE COURT

1 **ORDR**

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*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

ORDER GRANTING WRIT OF

15 CLARK COUNTY SCHOOL DISTRICT,

MANDATE

16 Respondent.

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

26 ///

27 ///

28 ///



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I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 12. Nev. Rev. Stat § 239.010 " does not explicitly provide that the records are
26 confidential, and provides that, unless expressly provided for in the NPRA or other listed
27 statutes, Nev. Rev. Stat § 239.010, or "unless otherwise declared by law to be confidential,"
28

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

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

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

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

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

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

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

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

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II.

ORDER

19. The purpose of the NPRA is to “foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]” Nev. Rev. Stat. § 239.001(1). To that end, the NPRA must be construed liberally, and any limitation on the public’s access to public records must be construed narrowly. Nev. Rev. Stat. § 239.001(2) and § 239.001(3).

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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


HONORABLE JUDGE TIMOTHY C. WILLIAMS



Respectfully submitted,

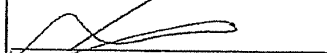

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EXHIBIT 62

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DISTRICT COURT

CLARK COUNTY NEVADA

10 LAS VEGAS REVIEW-JOURNAL,

11 Petitioner,

12 vs.

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

15 Respondent.

Case No.: A-17-758501-W

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

ORDER GRANTING

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

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

26 ///

27 ///

28 ///

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

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

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

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

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

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

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

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

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

1 9. On May 23, 2017, counsel for the LVRJ wrote to the Coroner's Office to
2 address concerns with the Coroner's Office's refusal to provide access to any of the
3 requested juvenile autopsy reports.

4 10. On May 26, 2017, the Coroner's Office (via the District Attorney)
5 responded to the May 23, 2017 letter, again relying on the legal analysis in AGO 82-12, and
6 agreed to consider providing redacted versions of autopsies of juveniles if the LVRJ
7 provided a specific list of cases it wished to review.

8 11. In its May 26, 2017 response, the Coroner's Office for the first time also
9 asserted that the records may be protected by Nev. Rev. Stat. § 432B.407 and that privacy
10 interests outweighed public disclosure.

11 12. The LVRJ provided the Coroner's Office with a list of specific cases it
12 wanted reports for via email on May 26, 2017.

13 13. The Coroner's Office responded to the May 26, 2017 email on May 31,
14 2017.

15 14. In its May 31, 2017 response, the Coroner's Office stated that responsive
16 records were "subject to privilege will not be disclosed" and that it would also redact other
17 records. However, it did not assert any specific privilege.

18 15. The Coroner's Office also asked the LVRJ to specify the records it wanted
19 to receive first, which the LVRJ did on June 12, 2017.

20 16. On July 9, 2017, in a response to a further email from the LVRJ inquiring
21 on the status of the records, the Coroner's Office indicated it would not produce any records
22 that pertained to any case that was subsequently handled by a child death review team
23 pursuant to Nev. Rev. Stat. § 432B.407. By that time, the Coroner had determined which
24 cases were not handled by the child death review team and provided a list to the LVRJ.

25 17. On July 11, 2017, the Coroner's Office provided sample files of redacted
26 autopsy reports for other autopsies of juveniles that were not handled by a child death review
27 team. The samples files were heavily redacted; the Coroner's Office asserted that the
28 redacted language consisted of information that was medical, related to the health of the

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

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

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

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

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

24 II.

25 CONCLUSIONS OF LAW

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

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

23. To fulfill that goal, the NPRA must be construed and interpreted 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); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada legislature intended the provisions of the NPRA to be “liberally construed to maximize the public’s right of access”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ***HIPAA Does Not Justify Non-Disclosure.***

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

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

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

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

27 ///
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B. The NPRA Does Not Permit Government Entities to Charge to Redact or Withhold Records or to Conduct a Privilege Review.

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

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

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

53. 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).

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

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

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

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

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

III.

ORDER

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

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

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

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

///


A75B501 - ORDER GRANTING
PETITIONER LVRT'S PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NRS 239.001
PETITION FOR WRIT OF
MANDAMUS

ORDER

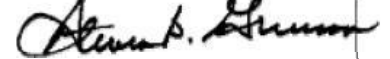
It is so ORDERED this 8 day of July, 2017.


DISTRICT COURT JUDGE

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

13 LAS VEGAS REVIEW-JOURNAL,

14 Petitioner,

15 vs.

16 LAS VEGAS METROPOLITAN POLICE
17 DEPARTMENT,

18 Respondent.

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

19 **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S**
20 **RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S OPENING BRIEF REGARDING**
21 **NRS § 239.001/PETITION FOR WRIT OF MANDAMUS**

22 Respondent Las Vegas Metropolitan Police Department ("LVMPD" or the
23 "Department"), by and through its attorneys of record Nicholas Crosby, Esq. and Jackie Nichols,
24 Esq., of the law firm of Marquis Aurbach Coffing, hereby files its Response to Las Vegas
25 Review-Journal's Opening Brief Regarding NRS § 239.001/Petition for Writ of Mandamus.
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1 This Response 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 26 day of July, 2018.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court must enforce all provisions of the Nevada Public Records Act (“NPRA”), not just those that are convenient for the Las Vegas Review-Journal (“LVRJ”). Not once has LVMPD denied any of the public records requests at issue. As the record demonstrates, LVMPD has made countless efforts to accommodate LVRJ’s requests. The truth of the matter is, LVRJ refuses to pay for public records, despite the clear language within the NPRA that permits LVMPD to charge for costs it incurs in relation to producing records. Even though LVMPD has endeavored to work with LVRJ in producing records, it does not waive any privileges explicitly provided by law. Contrary to LVRJ’s position, the NPRA’s remedy is judicial intervention—not waiver.

As a result of the 2013 amendments to the NPRA, investigative information is exempt from public disclosure. In 2013, the Legislature amended NRS 239.010(1) to specifically include NRS 179A.070 within the statutes that are exempted from the NPRA. If there is any doubt that this is what the Legislature intended, the legislative history clarifies that the explicit provision to be excluded from the NPRA is NRS 179A.070(2)(a), which deals with investigative information. The inclusion of NRS 179A.070 effectively overrules the Supreme Court’s *Donrey* decision as to investigative information.

LVRJ’s requests regarding records of criminal history, such as arrest reports, are governed by Chapter 179A and not the NPRA. When dealing with two statutory provisions that conflict, the Supreme Court has held that specific statutes control. Therefore, Chapter 179A controls the dissemination of criminal history records and payment for the same—not the NPRA. Other requests by LVRJ are similarly not subject to the NPRA because such requests are not directed at public records, including LVRJ’s SCOPE request and request for numbers related to arrests. Furthermore, LVRJ’s May 31, 2017 request falls outside LVMPD’s jurisdiction.

In addition to these objections, LVMPD’s interest in nondisclosure significantly outweighs the public’s interest in access. LVMPD’s interests in keeping officer unit assignments confidential pertain to officer safety concerns. This interest substantially outweighs any interest

1 the public has in disclosure. Additionally, LVRJ's requests are overly broad and unduly
2 burdensome. Responding to LVRJ's requests, as they stand, would cost LVMPD significant
3 time and resources. Certainly, the NPRA never intended for public record requests to displace
4 government function. Thus, LVMPD requests that this Court require LVRJ to amend its requests
5 so that LVMPD can readily identify responsive records.

6 Finally, LVRJ's attempt to evade payment for public records does not equate to a denial
7 of access and is inconsistent with the NPRA. The NPRA explicitly provides that a governmental
8 entity may charge for actual costs incurred, in addition to a reasonable fee for costs incurred as a
9 result of extraordinary use of personnel. Given the volume of information requested in this case,
10 LVRJ must submit payment prior to production to alleviate any burden on LVMPD. In
11 accordance with the NPRA, the Court should deny LVRJ's Petition.

12 **II. STATEMENT OF FACTS**

13 **A. THE FEBRUARY 2017 REQUESTS.**

14 On February 23, 2017, LVRJ submitted a public records request for the following
15 records:

- 16 • All investigative case files for all LVMPD sex trafficking investigations that were
17 closed in 2014-2016;
- 18 • All LVMPD arrest reports for solicitation or trespass that were produced in 2014-
2016;
- 19 • All names, badge numbers, and unit assignment of officers 2014-2016.

20 *See Exhibit 1.* Within five days, LVMPD informed LVRJ that it received the request and it
21 would take at least 30 days to respond. *See Exhibit 2.*

22 At some point, LVMPD directed LVRJ to the District Attorney's office to obtain copies
23 of arrest reports. *See Exhibit 3.* Generally, because the District Attorney is responsible for
24 prosecuting criminal cases, the District Attorney is in a better position to determine what arrest
25 reports can be released. LVMPD does not dispute it is the author of the arrest reports.
26 Nonetheless, LVMPD cannot search for the arrest reports related to trespass violations because
27 there are several different crimes which involve trespassing and there is no call for service code
28 (also known as a 400 code). As General Counsel explained to LVRJ initially, records are usually

1 searched by event number or arrestee name (or other personal identifiers). *See Exhibit 6.*
2 Moreover, LVRJ's request is unclear because it states solicitation *or* trespass, which are entirely
3 separate from one another. LVMPD did notify LVRJ that between July 1, 2016 and December
4 31, 2016 the Department's Vice Unit made 1,471 arrests of prostitutes. *See* Letter dated May 8,
5 2017 attached hereto as **Exhibit A**. A conservative estimate of 2,400 solicitation arrests per year
6 for the years requested was also given. *Id.* LVMPD suggested that LVRJ should consider
7 narrowing its request so LVMPD could readily identify records responsive to the request. *Id.*

8 With respect to the sex trafficking investigative files, LVMPD informed LVRJ that there
9 were approximately 757 cases responsive to its request. *Id.* Given the volume of cases, it would
10 cost LVMPD significant time and resources to review, redact and produce each case. To gauge
11 the time to produce the requests, LVMPD reviewed and redacted a single file and Mr. Crosby
12 produced the same, approximately 200 pages, on July 11, 2017. *See Exhibit 21.* In an effort to
13 come to a resolution on the production of the case files, counsel for the Parties discussed the
14 costs involved in producing the files in accordance with the NPRA. According to Ms.
15 McLetchie's interpretation, LVMPD could not charge for staff time and was limited to charging
16 a maximum of \$0.50 per page. Although Mr. Crosby disagreed, and for the sake of the argument
17 that there was such a cap, averaging each case file to be 200 pages at the cap of \$0.50 per page,
18 LVRJ was still looking at over \$67,000 for the cost of producing the files. Ms. McLetchie then
19 suggested that LVRJ could simply inspect the records and avoid payment altogether. To the
20 contrary, Mr. Crosby explained that given the nature of information requested, it was impossible
21 to expect LVMPD to review, redact, and make the files available for inspection at no cost and,
22 moreover, confidential information would still need to be redacted even during an in-person
23 inspection.

24 Prior to the filing of the instant lawsuit, counsel for the Parties attempted to narrow the
25 requests for the investigative files. Previously, LVRJ had done an expose on officer involved
26 shootings and made similar broad requests for information. LVMPD and LVRJ took a tiered
27 approach where LVMPD first provided relevant officer reports so that LVRJ could determine
28 what records it actually needed. LVMPD attempted to take the same tiered approach here. On

1 March 19, 2018, Mr. Crosby informed Ms. McLetchie that for December 2016, there were 35
2 closed cases, ranging at approximately 2,000 pages. **Exhibit 38.** Two months later, Ms.
3 McLetchie claimed there was no room for compromise and initiated this suit. **Exhibit 39.** After
4 filing the Petition for Writ of Mandamus, Ms. McLetchie asked if LVMPD would be willing to
5 produce the officers' reports and requests for prosecutions for the December cases at a rate of
6 \$0.10 per page. It is evident that LVMPD has not denied LVRJ access to the records, but that
7 LVRJ refuses to come out of pocket for copies of the records.

8 On April 27, 2017, LVMPD provided the names and badge numbers of officers on the
9 force from 2014-2016. *See Exhibit 7.* Prior to this disclosure, however, General Counsel
10 informed LVRJ that it was not providing unit assignments due to safety concerns. *See Exhibit 6.*
11 After Ms. McLetchie became involved, Mr. Crosby also explained that unit assignments would
12 not be produced because of officer safety and it would reveal identities of officers working in
13 covert positions. *See Exhibit 20.*

14 On February 27, 2017, LVRJ submitted another public records request for the record
15 layout and data dictionary of the LVMPD's SCOPE database. *See Exhibit 8.* Due to the
16 confusion surrounding LVRJ's request, LVMPD directed LVRJ to the Clark County IT. *See*
17 **Exhibit 9.** LVMPD later on requested that LVRJ clarify its request because it was unclear as to
18 what record was being requested. *See Letter dated April 27, 2017 attached hereto as Exhibit B.*
19 LVMPD never received any clarity from LVRJ regarding the SCOPE request. After attempting
20 to resolve the underlying issues related to several of LVRJ's requests, Mr. Crosby inquired with
21 Ms. McLetchie as to the intended meaning of "record layout" and "data dictionary." Ms.
22 McLetchie explained that LVRJ wanted all the search and data fields within the SCOPE
23 database. In turn, Mr. Crosby clarified that such a request was not for a record as required by the
24 NPRA.

25 **B. THE MARCH 2017 REQUESTS.**

26 On March 3, 2017, LVRJ made a request for all arrest reports related to Category B
27 Grand Larcenies in casinos in 2014-2016. *See Exhibit 10.* Initially, LVMPD informed LVRJ
28 that it was working on the request. *See Exhibit 11.* On March 23, 2017, LVMPD notified LVRJ

1 that its request had been forward to General Counsel to determine how to proceed given the large
2 scope of the request. See **Exhibit 4**. LVMPD further explained that it needed specific addresses
3 to facilitate the request. *Id.* In response, LVRJ stated it was unclear why arrest reports could not
4 be searched by charges. *Id.* After speaking on the phone with LVRJ, LVMPD clarified that
5 “trick rolls,” which was the charge LVRJ was seeking in relation to Grand Larcenies, was not an
6 official charge. And, because LVRJ was seeking records related to casinos, actual addresses were
7 needed. *Id.*

8 On March 27, 2017, LVRJ produced a list of 213 casino addresses to be used in
9 performing the search for its request. Upon receiving this information, LVMPD informed LVRJ
10 that, for a one year period, it would take LVMPD approximately 16 hours to compile the
11 information. See **Exhibit 12**. Because the search is by address, a geographical information
12 system (“GIS”) must be utilized to obtain the information. *Id.* LVMPD requested payment, in
13 advance, for \$843.04, the approximate cost to research the records for a one year period. *Id.*
14 Despite LVMPD’s efforts to satisfy LVRJ’s request, LVRJ responded with several questions
15 concerning how the GIS works, why was it necessary to use a GIS, and how did LVMPD arrive
16 at the hourly rate for its employee. *Id.* Although not required, LVMPD once more explained
17 that for each address provided, a query is created. See letter dated May 4, 2017, attached hereto
18 as **Exhibit C**. This process will only identify the events, not produce responsive records. *Id.*
19 The information is then forwarded to the Records Bureau to retrieve the requested records. *Id.*
20 The estimated cost was for performing the necessary queries. *Id.* LVMPD never received
21 payment to begin researching.

22 However, on July 12, 2017, LVRJ amended this request to include the following records:

- 23 • All arrest reports for attempted Category B Grand Larcenies in casinos from
24 2014-2016; and
- 25 • All incident reports for Category B Grand Larcenies and attempted Category B
26 Grand Larcenies in casinos from 2014-2016.

27 See **Exhibit 45**. Because LVMPD had already explained the process and provided an estimate to
28 begin processing the request, LVMPD was waiting for advance payment prior to commencing
research and production.

1 **C. THE MAY 2017 REQUESTS.**

2 On May 19, 2017, LVRJ submitted the following public records request to LVMPD:

- 3 • All investigative files for all LVMPD pandering and accepting earnings of a
4 prostitute investigations that were closed 2014-2016;
- 5 • All arrest reports for loitering, being a minor in a gambling establishment, acting
6 as a masseuse without a permit, pandering, advertising prostitution, transporting a
7 prostitute, attempted loitering, attempted being a minor in a gaming
8 establishment, attempted acting as a masseuse without a permit, attempted
9 pandering, attempted advertising prostitution, attempted transporting a prostitute,
10 attempted soliciting, attempted trespass, sex trafficking, attempted sex trafficking,
11 giving false information to a police officer, attempt to give false information to a
12 police officer, obstructing an officer, attempting to obstruct an officer, aid and
13 abetting a prostitute and attempted aid and abetting a prostitute that were
14 produced in 2014-2016; and
- 15 • All records relating to Robert Ryan Powell.¹

16 **Exhibit 40.** On the same day, LVMPD responded that it would take at least 30 days to
17 compile records responsive to the request. **Exhibit 41.** LVMPD notified LVRJ on July 28, 2017
18 of several issues with LVRJ's requests. **See Exhibit 48.** First, LVMPD indicated that for
19 LVRJ's first request, there were 304 closed cases for 2014.² *Id.* Like many other requests LVRJ
20 submitted, production of these records would necessarily require review of each individual file
21 and redaction of confidential information. *Id.* With respect to LVRJ's second request itemizing
22 26 different crime categories, LVMPD advised that for only 4 categories for the three requested
23 years, there were 7,061 arrests. *Id.* Once more, LVMPD suggested that LVRJ narrow its request
24 so that LVMPD may readily identify records responsive to the request. *Id.* Because of the
25 volume of records requested and research necessary to locate responsive records, LVMPD
26 requested that LVRJ contact the Public Information Office (PIO), which handles public records
27 requests, with a decision about the requests as LVMPD required a deposit to proceed. *Id.*
28 LVMPD did not receive confirmation regarding moving forward with the requests.

 On May 31, 2017, LVRJ requested records for all police reports, filed by citizens, in
which the home address is listed as 1 West Owens from 2014 through present. **See Exhibit 42.**

¹ LVMPD produced the relevant records to this request.

² There are a total of 860 closed cases involving sex trafficking, pandering, and accepting earnings of a prostitute for the three years combined.

1 LVMPD acknowledged that it had received LVRJ's request. *See Exhibit 43.* After LVRJ
2 followed up with the status of its request on July 7, 2017, LVMPD PIO Larry Hadfield,
3 contacted Mr. Brian Joseph directly and explained that this address fell outside the jurisdiction of
4 LVMPD because it was in North Las Vegas. Mr. Hadfield indicated that if Mr. Joseph provided
5 names or event numbers, LVMPD could process his request. LVRJ never provided any
6 additional information as to this request.

7 **D. THE AUGUST 2017 REQUEST.**

8 On August 18, 2017, LVRJ requested the following records:

- 9 • All arrest reports, audio and video recordings, interview transcripts, investigatory
10 records, incident reports, notes, records, documents and memos related to all
11 incidents or reports of trespassing at the Aria Resort and Casino on May 28, 2014;
- 12 • All arrest reports, audio and video recordings, interview transcripts, investigatory
13 records, incident reports, notes, records, documents and memos related to all
14 incidents or reports of traffic stops involving Robert Sharpe III and Kariah Heiden
15 in May or June of 2014;
- 16 • All reports, audio and video recordings, interview transcripts, investigatory
17 records, incident reports, notes, records, documents and memos related to the
18 investigation of Robert Sharpe III and Kariah Heiden, including three interviews
19 conducted by Detective Ortega, Hui and Lucero at UMC Hospital between the
20 dates of June 29, 2014 and July 7, 2014.

21 **Exhibit 49.** Although LVMPD informed LVRJ that it would need at least 30 days to
22 compile the responsive records, Mr. Crosby had already produced the entire case file regarding
23 Sharpe and Heiden to Ms. McLetchie on July 11th. *See Exhibits 50 and 21.* LVMPD is in the
24 process of researching the records related to the Aria request and will produce the same if there
25 are responsive records.

26 **E. THE SEPTEMBER 2017 REQUESTS.**

27 On September 7, 2017, LVRJ requested to inspect records relating incidents or arrests
28 involving Braden Johnson. *See Exhibit 51.* LVRJ also requested to review 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. *Id.*

1 Approximately one week later, LVRJ requested statistics for the number of men and
2 women arrested for selling sex, buying sex, and for sex trafficking in 2014-2016. *See Exhibit*
3 **52**. Because this request seeks information that must be compiled, and not an actual record, a
4 response by LVMPD is not required under the NPRA. Furthermore, such a search cannot be
5 compiled with the use of a database because LVMPD does not include gender as a search field.
6 Thus, LVMPD would have to review each file to compile that information, which is also not
7 required under the NPRA.

8 On September 15, 2017, LVRJ also sought the following:

- 9 • All and all arrest reports, audio and video recordings, interview transcripts,
10 investigatory records, incident reports, notes, records, documents and memos
involving Poppy Wellman, including her 12/7/2005 arrest; and
- 11 • All and all arrest reports, audio and video recordings, interview transcripts,
12 investigatory records, incident reports, notes, records, documents and memos
involving Kariah Heiden including her arrests on 6/11/2013, 9/23/2013,
13 9/23/2014, 8/24/2016, and 1/22/2017.

14 **Exhibit 53.** While LVMPD did not provide a direct response to this request or the
15 September 7th request, LVMPD was in contact with LVRJ regarding all outstanding requests,
16 including the September 15 request. *See Exhibits 54 and 56.*

17 **F. THE DECEMBER 2017 REQUESTS.**

18 On December 12, 2017, LVRJ requested to inspect:

- 19 • 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; and
- 20 • All and all arrest reports, audio and video recordings, interview transcripts,
21 investigatory records, incident reports, notes, records, documents and memos
involving Megan Lundstrom, including her arrests on 10/3/2011, 10/17/2011,
22 12/18/2011, 1/3/2012, 1/6/2012, 1/28/2012, 2/4/2012, and 5/16/2012.

23 **Exhibit 57.** Although LVMPD did not directly respond to this request, counsel for the Parties
24 were working together to resolve the outstanding issues with LVRJ's requests up and until May
25 2018. *See Exhibits 27-39.*

III. LEGAL ARGUMENT

A. LEGAL STANDARD.

Under the Nevada Public Records Act (“NPRA”), a person may request to inspect or have a copy made of a public record from a governmental entity. *See* NRS 239.010. A governmental agency may deny a public records request if the public record sought is deemed confidential. NRS 239.0107(1)(d). In doing so, the governmental entity must inform the requester that the requested records are confidential and cite to the legal authority that renders the records confidential. *Id.* The governmental agency may also notify the requester that a public record cannot be made available within the 5-day time period. NRS 239.0107(1)(c). If this is the case, the governmental entity must provide a date when the record withheld will be made available. *Id.* In the event the record is not made available by that date, “the person may inquire regarding the status of the request.” *Id.*

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

³ It is important to note that LVRJ has misstated the standard for NPRA cases. In LVRJ’s view, a governmental entity is required to demonstrate confidentiality and that its interest in withholding documents clearly outweighs the public’s interest in access. *See* Opening Brief at 13:4-9. The Nevada Supreme Court, however, has reiterated that the balancing test is an alternative to nondisclosure if no statute renders the requested records confidential. Furthermore, LVRJ incorrectly presumes that prior to a judicial proceeding LVMPD must establish by a preponderance of the evidence that any claim of confidentiality applies and outweighs the public’s interest in access. In contrast, the statutory scheme clearly provides that LVMPD must notify the requester of confidentiality and cite to legal authority regarding the same. NRS 239.0107(d). The burden of proof does not apply until a judicial or administrative proceeding is initiated. NRS 239.0113(1).

1 **B. WAIVER IS NOT A REMEDY PROVIDED BY THE NPRA.**

2 Nothing within the NPRA explicitly provides for waiver as to an agency's failure to
3 timely deny a request. Rather, the remedy is to submit an application with the court and request
4 to inspect, copy, or obtain a copy of the records. NRS 239.011. The Freedom of Information
5 Act ("FOIA") also supports this concept. The Nevada Supreme Court has used the policy and
6 purpose of FOIA in support of NPRA. *See DR Partners v. Board of Cnty. Comm'rs*, 116 Nev.
7 616, 622, 6 P.3d 465, 469 (2000). Under FOIA, it is rare that an agency complies with the 20-
8 day deadline. *Litigation Under Freedom of Information Act*, 110 Am. Jur. Trials. 367, § 4, ¶ 3,
9 (Updated December 2017). Although FOIA now provides for an "extraordinary circumstance"
10 exception, if an agency fails to respond within the time limitation, the remedy is to commence a
11 lawsuit. *Id.* at ¶ 6.

12 In support of its waiver-theory, LVRJ relies on authority that addresses waiving a
13 conflict. *See Nevada Yellow Cab Corp. v. Eighth Jud. Dist. Court. ex rel. Cnty. of Clark*, 123
14 Nev. 44, 49-50, 152 P.3d 737, 740-41 (2007). The *Nevada Yellow Cab* court determined that a
15 party did not waive its right to file a disqualification motion by first attempting to settle the
16 matter through mediation. *Id.* Unlike the NPRA, there is no specific statute governing the filing
17 of a motion for disqualification. Instead, the Nevada Rules of Professional Conduct describe
18 what constitutes a conflict, without providing a remedy to address the same. *Id.* The NPRA
19 clearly provides that judicial intervention is the appropriate remedy when a governmental agency
20 denies a request.

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8 of a motion for disqualification. Instead, the Nevada Rules of Professional Conduct describe
9 what constitutes a conflict, without providing a remedy to address the same. *Id.* The NPRA
10 clearly provides that judicial intervention is the appropriate remedy when a governmental agency
11 denies a request.

12 More importantly, the Nevada Supreme Court has expressly established that if a statute
13 provides a remedy, it will not read any additional remedies into the statute. *Richardson Const.,*
14 *Inc. v. Clark Cnty. School Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 24 (2007). In *Richardson Const.*,
15 the court analyzed NRS 338.1381 in determining whether the statutory scheme at issue permitted
16 a private cause of action. *Id.* The court concluded that NRS 338.1381 expressly authorized a
17 means of remedying any wrongful prequalification denial: an administrative hearing, followed,
18 if necessary, by judicial review. *Id.* Because the statute provides an express remedy, the Court
19 refused to read any additional remedies into the statute, finding there was no private cause of
20 action. *Id.* This analysis applies with equal strength to the NPRA. The NPRA directly provides
21 for judicial intervention as a remedy when public records requests are denied. Because the
22 NPRA provides an express remedy, this Court is prohibited from reading any additional
23 remedies, including waiver, into the statute.

24 Finally, LVRJ's contention that other judges have accepted its waiver argument is
25 unpersuasive. Quite tellingly, LVRJ did not cite to its cases where the courts denied to apply its
26 waiver theory. For instance, the Honorable Judge Richard Scotti recently rejected LVRJ's
27 waiver argument in relation to the 1 October Massacre records. *See LVRJ, et al., v. LVMPD*,
28 Eighth Judicial District Court, Case No. A-17-764030-W; *see also LVRJ v. City of Henderson*,

1 Eighth Judicial District Court, Case No. A-16-747289-W; and *LVRJ, et al., v. Clark County*
2 *Office of the Coroner/Medical Examiner*, Eighth Judicial District Court, Case No. A-17-764842-
3 W. Moreover, the orders cited by LVRJ are not binding precedent and should not be considered
4 by this Court on its determination of waiver.

5 **C. LVMPD HAS ACTED IN GOOD FAITH.**

6 The term “good faith” has been defined as an honest, lawful intent, and as the opposite of
7 fraud and bad faith. *Hulse v. Sheriff, Clark Cnty.*, 88 Nev. 393, 398, 498 P.2d 1317, 1320
8 (1972). Bad faith is defined as dishonesty of belief, purpose, or motive. Black’s Law Dictionary
9 (10th ed. 2014); *see also Land Resources Development v. Kaiser Aetna*, 100 Nev. 29, 33, 676
10 P.2d 235, 237-38 (1984) (determining that bad faith is synonymous with fraud) (citing *Schaffer*
11 *v. Wolbe*, 148 S.E.2d 437 (1966) (“... bad faith involves actual or constructive fraud or a design
12 to mislead or deceive another, or a neglect or a refusal to fulfill some duty or some contractual
13 obligation, not prompted by an honest mistake, but prompted by some sinister motive.”); *Pabst*
14 *Brewing Co. v. Nelson*, 236 P. 873 (1925) (the term “bad faith” means with actual intent to
15 mislead or deceive another; “bad faith” and “fraud” synonymous)).

16 LVRJ’s allegations of bad faith are entirely meritless. Other than a blanket statement
17 within its Opening Brief, LVRJ has not provided any support to show LVMPD has acted in bad
18 faith in working with LVRJ to provide access to the requested public records. To the contrary,
19 the record demonstrates LVMPD has made many attempts to resolve the issues with LVRJ’s
20 requests. The truth of the matter is, LVRJ refuses to pay for public records, despite the clear
21 language within the NPRA permitting LVMPD to charge requesters. *See* NRS 239.052; NRS
22 239.055.

23 **D. LVMPD’S INVESTIGATIVE INFORMATION IS EXEMPT FROM THE**
24 **NPRA.**

25 LVRJ seeks investigative case files related to all sex trafficking, pandering, and accepting
26 earnings of a prostitute cases from 2014 through 2016. *See Exhibits 1 and 40.* LVRJ also made
27 requests for “any and all records” relating to certain individuals. *See Exhibits 49, 51, 53, and 57.*
28 To the extent the case files and records include investigative information; such information is

1 excluded from the NPRA and must be redacted prior to disclosure. See NRS 239.010(1); NRS
2 179A.070(2)(a); and NRS 179A.100.

3 Chapter 179A of the Nevada Revised Statutes, in part, governs the dissemination of
4 criminal history records. Records of criminal history are defined as:

5 [I]nformation contained in records collected and maintained by agencies of
6 criminal justice, the subject of which is a natural person, **consisting of**
7 **descriptions which identify the subject and notations of summons in a**
8 **criminal action, warrants, arrests, citations for misdemeanors issued**
9 **pursuant to NRS 171.1773, citations issued for violations of NRS 484C.110,**
10 **484C.120, 484C.130 and 484C.430, detentions, decisions of a district attorney**
11 **or the Attorney General not to prosecute the subject, indictments,**
12 **informations or other formal criminal charges and dispositions of charges,**
13 including, without limitation, dismissals, acquittals, convictions, sentences,
14 information set forth in NRS 209.353 concerning an offender in prison, any
postconviction relief, correctional supervision occurring in Nevada, information
concerning the status of an offender on parole or probation, and information
concerning a convicted person who has registered as such pursuant to chapter
179C of NRS. The term includes only information contained in a record,
maintained in written or electronic form, of a formal transaction between a person
and an agency of criminal justice in this State, including, without limitation, the
fingerprints and other biometric identifiers of a person who is arrested and taken
into custody and of a person who is placed on parole or probation and supervised
by the Division of Parole and Probation of the Department.

15 NRS 179A.070(1)(emphasis added). Importantly, records of criminal history do not include
16 investigative or intelligence information, reports of crime or other information concerning
17 specific persons collected in the course of the enforcement of criminal laws. NRS
18 179A.070(2)(a).

19 The Supreme Court previously addressed whether an investigative report created by a
20 police department was subject to the NPRA. *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev.
21 630, 798 P.2d 144 (1990). In *Donrey*, appellants argued that the investigative report is a public
22 record subject to disclosure because no statute deems the report confidential. *Id.* at 632, 798
23 P.2d 145. Respondents contended that NRS 179A.070(2)(a) declares investigative information
24 confidential because such information is not subject to dissemination as part of criminal history
25 records. *Id.* In analyzing NRS 179A.070(2), the Court found that nothing within the statute
26 specifically declared investigative material confidential., as required by NRS 239.010 at the time.
27 *Id.* at 634, 798 P.2d at 147. Importantly, in 1990 NRS 239.010 provided:

1 All books and records of . . . county. . . . officers and offices of this state, the
2 contents of which are *not otherwise declared by law to be confidential*, shall be
open at all times [to inspection or may be fully copied].

3 (emphasis added). The Court determined that because nothing expressly declared investigative
4 reports confidential, a balancing test must be applied to determine whether disclosure is
5 appropriate. *Id.* at 635-36, 798 P.2d at 147-48. The investigative report at issue concerned the
6 circumstances of dismissed charges of a public official. *Id.* at 631, 798 P.2d at 145. The Court
7 concluded that interests weighed in favor of disclosure because there was no pending or
8 anticipated criminal proceeding; no confidential sources or investigative techniques to protect;
9 no possibility of denying someone a fair trial; and no potential jeopardy to law enforcement
10 personnel. *Id.* at 635-36, 798 P.2d at 147-48.

11 In 2013, the Legislature made significant changes to the NRPA, and specifically to NRS
12 239.010 based upon recent Supreme Court decisions. Today, NRS 239.010 provides:

13 Except as otherwise stated in this section and . . . NRS 179A.070 . . . and unless
14 otherwise declared by law to be confidential . . . all public books and public
15 records of a governmental entity must be [subject to inspection] and may be fully
copied . . .

16 There is no doubt that the lists of statutes now enumerated within NRS 239.010 serve as
17 exceptions from the NPRA. Based on the inclusion of NRS 179A.070 within the statutes
18 exempted from the NPRA, it is clear that the Legislature intended to create an exception to the
19 NPRA for investigative material.

20 In the event this Court finds that the statute is ambiguous as to the exemption of
21 investigative information, the legislative history clarifies any ambiguity. The court may only
22 look beyond the plain language of the statute if it is ambiguous or silent on the issue in question.
23 *Segovia v. Eighth Jud. Dist. Ct. in and for Cnty. of Clark*, 407 P.3d 783, 787 (2017). A statute's
24 language is ambiguous when it is capable of more than one reasonable interpretation. *Id.*
25 (citation omitted). When construing an ambiguous statute, legislative intent is controlling, and
26 the court looks to legislative history for guidance. *Griffith v. Gonzales-Alpizar*, 132 Nev. Adv.
27 Op. 38, 373 P.3d 86 (2016). Limited resort to reports of legislative committee hearings is
28 appropriate to clarify or interpret legislation that is doubtful import or effect. *Baliotis v. Clark*

1 Cnty., 102 Nev. 568, 570, 729 P.2d 1338, 1339-40 (1986). Here, NRS 239.010 simply lists NRS
2 179A.070 and does not reference a subsection.⁴ While it is LVMPD's position that NRS
3 179A.070 specifies what is subject to dissemination, the legislative history nonetheless clarifies
4 that NRS179A.070 within NRS 239.010(1) refers to investigative information.

5 With no definition of "public record" within the NPRA, supporters proposed an
6 amendment to NRS 239.010(1) in 2013. See Legislative History of AB 31 from 2013 attached
7 hereto as **Exhibit D** at p.7. Due to the confusion between the public and governmental agencies
8 concerning what is subject to the NPRA, the Legislature codified a list of statutory exceptions.
9 *Id.* at p. 8. Importantly, the list of statutes would not be exhaustive and the statute would
10 maintain a catch-all phrase "and otherwise declared by law to be confidential" to ensure there
11 were no unintended consequences for failing to include all statutes. *Id.* at 285-287. After the
12 first two hearings, additional amendments to NRS 239.010(1) were proposed and accepted by the
13 Legislature. *Id.* at 270. In particular, Jennifer Ruedy submitted a Bill Draft Resolution to
14 include NRS 179A.070(2)(a) within the exemptions of NRS 239.010(1). *Id.* at 274.

15 Throughout the several hearings, the Assembly Committee of Government Affairs
16 reiterated that the Legislature was not changing the statutes of confidentiality, but affirming
17 which statutes are exempt from the NPRA based on the language within the statute. The
18 inclusion of NRS 179A.070 within NRS 239.010(1) does not change the confidential nature of
19 the statute but effectively overrules *Donrey's* decision regarding the application of NRS
20 179A.070(2)(a).

21 **E. LVRJ'S REQUESTS CONCERNING ARREST REPORTS ARE**
22 **GOVERNED BY CHAPTER 179A AND ARE TOO BURDENSOME TO**
PRODUCE.

23 LVMPD does not dispute that arrest reports are subject to dissemination in specific
24 instances, such as in closed cases or in circumstances where an arrest report has been made a
25 court record. The dissemination of these records is governed by Chapter 179A and not the
26 NPRA. Nevertheless, if the Court applies the NPRA to the subject requests, the public policy

27 _____
28 ⁴ None of the statutes within NRS 239.010(1) reference subsections.

1 considerations addressed by the *Donrey* court undoubtedly apply to these requested records.
2 Disclosure of an arrest report, during an active case and prior to disclosure by the District
3 Attorney, could jeopardize the accused's ability to receive a fair and impartial trial.
4 Furthermore, premature disclosure of each arrest report would need to be viewed on a case-by-
5 case basis. However, prior to reaching this issue, LVMPD requests that this Court find LVRJ's
6 requests are too burdensome to produce and order LVRJ to amend its requests with specificity.

7 **1. Chapter 179A Governs the Dissemination of Criminal History**
8 **Records.**

9 "When two statutory provisions conflict, this court employs the rules of statutory
10 construction and attempts to harmonize conflicting provisions so that the act as a whole is given
11 effect." *State v. Eighth Jud. Dist. Court*, 129 Nev. 492, 508, 306 P.3d 369, 380 (2013) (internal
12 citations omitted). "Under the general/specific canon, the more specific statute will take
13 precedence and is construed as an exception to the more general statute, so that, when read
14 together, the two provisions are not in conflict, but can exist in harmony." *Williams v. State,*
15 *Dep't of Corr.*, 133 Nev. ___, ___, 402 P.3d 1260, 1265 (internal citations and quotation
16 marks omitted); *see also Piroozi v. Eighth Jud. Dist. Court*, 131 Nev. 1004, 1009, 363 P.3d
17 1168, 1172 (2015) (providing that "[w]here a general and a special statute, each relating to the
18 same subject, are in conflict and they cannot be read together, the special statute controls"
19 (internal quotation marks omitted)). Because Chapter 179A, in part, governs the dissemination
20 of records of criminal history, it is the more specific statute and governs the requested records.

21 **2. LVMPD's Interest in Non-Disclosure Significantly Outweighs the**
22 **Public's Interest in Access.**

23 Absent a statute rendering a record confidential, the Court must balance the interests of
24 the governmental agency in nondisclosure against the public's interest in access. *See Donrey*,
25 106 Nev. at 635, 798 P.2d at 145. Here, the Court should weigh LVMPD's burden to search and
26 review hundreds of thousands of records against the public's interest in access. LVMPD is not
27 claiming that the records are confidential, but rather the scope of LVRJ's requests are so broad
28

1 that it cannot meaningfully conduct a search of the requested records, resulting in LVRJ's
2 requests for arrest reports being unduly burdensome.

3 The Nevada Supreme Court has previously considered LVMPD's burdensome argument.
4 *See LVMPD v. Blackjack Bonding*, 343 P.3d 608, 614 (2015). In *Blackjack*, however, LVMPD's
5 burdensome argument involved the costs associated with production. The Supreme Court
6 determined that the district court had mitigated any burdens because it ordered Blackjack to pay
7 the costs associated with the production of the requested documents pursuant to NRS 239.052.
8 *Id.* In addition to the financial burden LVMPD would incur in producing the requested records,
9 discussed *infra*, the burden to search and review the records at issue will take years to
10 accomplish.

11 Other courts have considered whether requests are too burdensome to produce prior to
12 requiring production. *See Lunney v. State*, 418 P.3d 943, 954 (Ct. App. Ariz. 2017) (recognizing
13 that the agency was not required to respond to the burdensome request); *Shehadeh v. Madigan*,
14 996 N.E.2d 1243, 1249 (Ill. App. Ct. 2013) (holding that the Attorney General satisfied its
15 burden by explaining that its staff members would have to go through all of the 9,200 potentially
16 responsive documents by hand); *Beckett v. Serpas*, 112 So.3d 348, 353 (La. App. Ct. 2013)
17 (determining that segregating 10 years worth of files is unreasonably burdensome).

18 California courts recognize that an agency may legitimately raise an objection that a
19 request is overbroad or unduly burdensome. *Community Youth Athletic Ctr. v. City of Nat'l City*,
20 164 Cal.Rptr.3d 644, 676, 220 Cal.App.4th 1385, 1425 (2013). An agency is obliged to comply
21 so long as the record can be located with reasonable effort. *Id.* Such reasonable efforts do not
22 require that agencies undertake extraordinarily extensive or intrusive searches, and in general,
23 the scope of an agency's search for public records need only be reasonably calculated to locate
24 responsive documents. *City of San Jose v. Superior Court*, 214 Cal.Rptr.3d 274, 288, 389 P.3d
25 848, 860 (2017).

26 To determine if producing documents "poses an unreasonable administrative burden,"
27 courts consider whether the general presumption in favor of disclosure is overcome by: "(1) the
28 resources and time it will take to locate, compile, and redact the requested materials; (2) the

1 volume of materials requested; and, (3) the extent to which compliance with the request will
2 disrupt the agency's ability to perform its core functions.” *Lunney*, 418 P.3d at 954.

3 In this case, LVRJ seeks arrests reports from a three-year period for 26 different
4 categories of crime. The main issue with LVRJ’s requests is that a search for the majority of
5 categories is nearly impossible. By way of example, LVRJ seeks arrest reports related to
6 “Trespass.” First, there is no call code for Trespass.⁵ Thus, CAD cannot be utilized to search for
7 arrest reports.⁶ CCDC, however, maintains a system where searches for arrests can be queried.
8 These searches can be performed by reference to a specific statute or keywords to a statute.
9 There are, at least, 20 statutes that involve trespass. Aside from LVMPD’s inability to conduct
10 reasonable searches of arrest reports, the sheer volume of the responsive records to review and
11 redact is unduly burdensome. LVMPD estimated over 7,000 arrests for 4, out of 26, categories
12 requested by LVRJ. Because there is no program or mechanism LVMPD can utilize to
13 determine whether those arrest records include arrest reports, LVMPD would be forced to review
14 each file individually to determine whether any records responsive to LVRJ’s requests exist.

15 In addition to the arrest reports, the investigative files pose the same issue. There are
16 approximately 860 investigative case files at issue in this case. While the investigative case files
17 include investigative information, which is excluded pursuant to NRS 239.010(1), the files also
18 contain records of criminal history. With 860 files, that average approximately 200 pages,
19 LVMPD has to review, redact and copy over 172,000 pages.

20 The resources and time it will take to locate, compile, review, and redact the requested
21 records is insurmountable. Undoubtedly, the volume of the requested records is burdensome.
22 Although LVMPD cannot determine how many arrest reports in total correspond to LVRJ’s
23 requests, there were over 7,000 arrests for only 4 categories requested. These 7,000 arrests do
24 not include the estimated 7,200 solicitation arrests performed by Vice over the three year period.
25 Likewise, 172,000 pages related to case files to review and redact is also significant. It would

26 ⁵ There is no call code for nearly all of the categories LVRJ seeks.

27 ⁶ Ms. Bible indicated that Crimeview is used to search these records. See **Exhibit C**. Crimeview is a
28 program that allows you to access CAD and other programs.

1 take LVMPD years to comply with LVRJ's requests and certainly disrupt the agency's ability to
2 perform law enforcement functions. For these reasons, LVMPD requests that this Court find that
3 LVRJ's request for investigative case files and arrest reports is unduly burdensome and require
4 LVJR to amend its requests.

5 **3. The Court Should Order LVRJ to Amend Its Requests.**

6 Generally, there is no restriction on the dissemination of criminal history records that
7 reflect only a conviction or records pertaining to an incident for which a person is currently
8 within the system of criminal justice, including probation or parole. NRS 179A.100(1).

9 Prior to the 79th Legislative Session, Chapter 179A permitted dissemination of such
10 records to "any reporter for the electronic or printed media in his professional capacity for
11 communication to the public." NRS 179A.100(7)(l) (statute prior to 2017 amendment).
12 However, the Legislature specifically recognized the difficulty agencies had in responding to
13 overbroad and vague public records requests for criminal history records. *See* Revisions to
14 provisions relating to the Central Repository for Nevada Records of Criminal History: Hearing
15 on A.B. 76 Before the Senate Committee on Judiciary, 2017 Leg., 79th Sess. (Nev. May 4,
16 2017). The following is the public records request that an agency received that prompted an
17 amendment to NRS 179A.100(7)(l):

18 A database, Excel document or delineated text file of all criminal history records
19 in Nevada including fields for the name, date of birth, all arrests, convictions,
20 dates of actions, jurisdictions of the actions, sentences. Please provide the
information for all individuals as far back as the data is kept electronically.

21 *Id.* Mindy McKay testified that an amendment was needed to ensure the information provided
22 for a reporter's communication to the public is specific to a person to avoid unauthorized
23 dissemination of individuals records not related to the reporter's story. *Id.* Ultimately, NRS
24 179A.100(7)(l) was amended to require a news reporter to specifically request records of a
25 named person or aggregate information for statistical purposes in a professional capacity for
26 communication to the public. The records provided to reporters must exclude any personal
27 identifying information. NRS 179A.100(4)(l). Personal identifying information means any
28 information designed, commonly used or capable of being used, alone or in conjunction with any

1 other information, to identify a person, including, without limitation: the name, driver's license
2 number, social security number, date of birth and photograph or computer-generated image of a
3 person. NRS 179A.075(10)(b).⁷

4 While the amendment did not become effective until January 1, 2018, public policy
5 interests in specifying particular records, rather than a broad category, outweighs the public's
6 interest in access. As explained above, the arrest reports at issue are nearly impossible to query
7 and would require LVMPD to search, review, and redact hundreds of thousands of records.
8 There are over 7,000 arrests involving only 4 of the 26 different crime categories requested for a
9 three-year time span. Last year alone, LVMPD received nearly 1.7 Million calls for service.
10 Essentially, LVRJ expects LVMPD to comb through each call and its respective records to
11 determine whether it is responsive to its request. LVRJ's current requests are equivalent to
12 requesting any and all public records within LVMPD's possession for an entire year. Not only
13 are the requests nearly impossible to fulfill and unduly burdensome to produce, but would
14 displace the role of LVMPD as a law enforcement agency. Certainly, that was never the
15 intention of the NPRA. Thus, LVMPD requests that this Court order LVRJ to amend its requests
16 for arrest reports and case files, excluding the investigative information, and specify, with
17 particularity, the records it seeks.

18 **F. OFFICER UNIT ASSIGNMENTS ARE CONFIDENTIAL.**

19 LVRJ sought the names, badge numbers and unit assignments of officers on the force
20 from 2014 through 2016. In response, LVMPD provided the names and badge numbers of the
21 requested officers. LVMPD informed LVRJ that unit assignments were confidential and would
22 not be provided. Although no statute directly addresses unit assignments, LVMPD's interest in
23 keeping officer unit assignments confidential substantially outweighs any interest in public
24 access. LVMPD's main concern in releasing unit assignments is interference with officer safety.

25
26
27 ⁷ Generally, an individual's name would not be redacted if the reporter asked for the record by name.
28 Thus, a name would only be redacted if the reporter requested aggregate information for statistical purposes.

1 By way of example, LVMPD obtained a temporary protective order against an individual
2 for harassing a Sergeant at Convention Center Area Command. *See LVMPD v. Tyrice Russell*,
3 Justice Court of Las Vegas Township, Case No. 17PO1522. During these proceedings, the
4 Sergeant was reassigned to a different area command.⁸ After being informed of the
5 reassignment, the defendant demanded to know which area command the Sergeant transferred.
6 Recognizing the safety issues at play, the Court rejected the defendant's request. In this instance,
7 the same logic applies. Unit assignments must remain confidential to protect the safety of
8 officers.

9 Above all, however, releasing unit assignments will reveal the identities of officers
10 working in covert positions. This is especially true of officers working within the Investigative
11 Services Division and Homeland Security Division. Based on LVRJ's requests, it appears the
12 majority of information sought pertains to the work of the Vice Unit within the Investigative
13 Services Division. The Vice Unit assignments are particularly confidential given the officers'
14 work. In some instances, detectives pose as prostitutes and set up undercover trick roll
15 investigations. Releasing this information would compromise investigative efforts. The Vice
16 Unit is but one example of various concerns LVMPD has in releasing unit assignments. In
17 accordance with *Donrey*, LVMPD's interest in non-disclosure of unit assignments substantially
18 outweighs any interest the public has in access.

19 **G. LVRJ'S REQUESTS WERE NOT DIRECTED AT PUBLIC "RECORDS."**

20 The NPRA governs access to public records. NRS 239.010(1). Generally, a record refers
21 to information that is inscribed on a tangible medium or that, having been stored in an electronic
22 or other medium, is retrievable in perceivable form. Black's Law Dictionary (10th ed., 2014).
23 Furthermore, it is well established that Nevada courts cannot require a governmental agency to
24 create new documents or customized reports by searching for and compiling information from
25 individuals' files or other records in response to a public records request. *PERS v. Reno*
26 *Newspapers, Inc.*, 129 Nev. 833, 840, 313 P.3d 221, 225 (2013).

27 ⁸ The Sergeant's reassignment was not a result of the TPO.
28

1 **1. LVRJ's SCOPE Request is Vague, Ambiguous, and is Not Directed at**
2 **a Public Record**

3 Despite not receiving any response from LVRJ on LVMPD's request for clarification as
4 to "record layout" and "data dictionary," Ms. McLetchie later clarified that LVRJ sought
5 information regarding all search and data fields within the SCOPE database. Fields within a
6 database are not a record and, therefore, LVRJ's requests are insufficient for NPRA purposes.
7 Likewise, drop down menus within a database containing specific search categories is not a
8 public record contemplated by the NPRA. This information pertains to the actual database, and
9 the database itself is not a record. Rather, the information contained within the database, such as
10 reports, is a record for purposes of the NPRA. As such, LVRJ's SCOPE request must be denied.

11 **2. LVRJ's Request for Numbers is Not Directed at a Public Record.**

12 LVRJ's requests also seek statistical information and not records. The Nevada Supreme
13 Court has already ruled that a government agency is under no obligation to compile records from
14 various files or records to respond to a public records request. *See PERS*, 129 Nev. at 840, 313
15 P.3d at 225. The statistical information requested is not a record and would require LVMPD to
16 compile information from various files and records. LVRJ's request for statistical information
17 must be denied as it is not governed by the NPRA.

18 **H. LVRJ'S MAY 31, 2017 REQUEST FALLS OUTSIDE OF LVMPD'S**
19 **JURISDICTION.**

20 LVRJ's request for all police reports filed by citizens, in which the home address is listed
21 as 1 West Owens must be denied because the address identified is subject to North Las Vegas'
22 jurisdiction. On July 24, 2017, Larry Hadfield from the PIO office directed LVRJ to produce
23 either a citizen's name or event number. LVMPD never received any supplemental information
24 for this request. Because the address is outside the jurisdiction of LVMPD, LVMPD cannot
25 produce records related to the same.

1 **I. LVMPD HAS NOT DENIED LVRJ'S REQUESTS BUT SEEKS PAYMENT**
2 **FOR THE COSTS THAT WILL BE INCURRED, PURSUANT TO THE**
3 **NPRA AND CHAPTER 179A.**

4 The NPRA clearly permits LVMPD to charge for producing public records. *See* NRS
5 239.052; NRS 239.054; NRS 239.0551; NRS 179A.140(1). However, if the Court does find that
6 the language within the cost provisions is ambiguous, the Court should review the legislative
7 history of the provisions, which plainly supports LVMPD's interpretation.

8 **1. LVMPD May Charge for Actual Costs Incurred.**

9 A governmental entity may charge a fee for providing a copy of a public record. NRS
10 239.052(1). The fee charged must not exceed the actual cost to the governmental entity to
11 provide the copy of the public record. *Id.* "Actual Cost" is defined as "the direct cost related to
12 the reproduction of a public record. The term does not include a cost that a governmental entity
13 incurs regardless of whether or not a person requests a copy of a particular public record." NRS
14 239.005(1). A governmental entity must also maintain a list of the fees that it charges at each
15 office in which the governmental entity provides copies of public records. NRS 239.052(3).

16 LVMPD acknowledges that "actual cost," as referenced in NRS 239.052, does not
17 include personnel time or leases on copy machines. Rather, "actual cost" means the cost of
18 paper, toner, discs, and the like. These costs are outlined in LVMPD's Fee Schedule, which
19 comports with NRS 239.052(2). *See Exhibit E.* The purpose of a fee schedule is to give notice
20 to the public of the costs associated with specific records. LVMPD's Fee Schedule identifies
21 costs related to the production of public records. Indeed, LVRJ recognizes that LVMPD charges
22 \$0.31 per page for a copy. LVRJ's contention that LVMPD must provide support for its \$0.31
23 copy charge is not supported by any authority. The NPRA requires a governmental entity to
24 maintain a fee schedule for this purpose. LVMPD is not required to demonstrate its "actual cost"
25 for each public record request. The actual cost LVMPD incurs for copying records is identified
26 on the fee schedule.

27 LVRJ also argues that if it requests records in electronic format, no copy charges are
28 permitted. Generally speaking, that may be true. However, LVRJ fails to account for instances
29 where redactions are necessary. On certain occasions, the original copy of the record will need

1 to be copied, redacted, and then scanned into the system. LVMPD is not charging \$0.31 for the
2 redaction, but for the actual cost incurred in copying and scanning the document as necessary to
3 respond to the request. This same logic also applies to inspecting "any and all records"
4 regarding individuals. LVMPD cannot provide access to records that contain confidential
5 information via inspection without redacting the confidential information. As a result, any
6 records to be inspected that contain confidential information must first be copied and redacted.
7 Therefore, the NPRA permits LVMPD to charge for copy costs associated with producing
8 records in accordance with its Fee Schedule.

9 **1. Copies of Criminal History Records Are Not Governed by the NPRA.**

10 As argued above, dissemination of records of criminal history are governed by Chapter
11 179A. A criminal justice agency may charge a *reasonable fee* the dissemination of records of
12 criminal history. NRS 179A.140(1). Unlike the NPRA, this "fee" is not limited to the "actual
13 cost" incurred, and instead, it must be reasonable. In crafting this statute, the Legislature
14 certainly recognized the efforts a criminal justice agency must take in searching, reviewing, and
15 redacting criminal history records prior to dissemination. Thus, to the extent LVRJ's requests
16 involve criminal history records, such as arrest reports, the fee charged for the production of
17 those records must be *reasonable* and is not limited to "actual cost" as provided by the NPRA.

18 The fees enumerated in LVMPD's Fee Schedule are reasonable. Arrest Reports, for
19 example, are \$9.00 each up to 20 pages. This fee is reasonable given the need to search for the
20 record, review and redact personal information, and copy the record. Producing criminal history
21 records is not a matter of going to a filing cabinet and making a copy. First, LVMPD must
22 delegate the request to the bureau that is able to perform the search for the request. This depends
23 on what information is provided with the request. Generally, searches are performed by name or
24 event number. However, in certain instances, LVMPD can search by crimes, address, or other
25 criteria. These searches are often more complicated and take more time to process. Once the
26 search is performed and the record is identified, it must be reviewed and redacted prior to
27 disclosure. The charges itemized within LVMPD's Fee Schedule related to criminal history
28

1 records take this process into account. As such, LVMPD's Fee Schedule provides for reasonable
2 fees for the production of criminal history records.

3 **2. The NPRA permits LVMPD to Charge for Extraordinary Use of**
4 **Personnel.**

5 Alternatively, if this Court: (1) does not require LVRJ to amend its requests with
6 specificity; (2) rejects LVMPD's contention that NRS 179A.070(2)(a) is exempt from the
7 NPRA; or (3) declines to apply Chapter 179A to records of criminal history, there is no doubt
8 that reviewing, redacting, and copying the records responsive to the current requests will require
9 extraordinary use of personnel.

10 The Legislature specifically enacted a statute to apply in instances where public record
11 requests would engulf government staff. On one hand, when extraordinary use of personnel is
12 required, the statute limits copying costs not to exceed \$0.50 *per page*. NRS 239.055(1)
13 (emphasis added). On the other hand, a governmental entity can charge a reasonable fee, based
14 on the cost that the governmental entity actually incurs, for such extraordinary use of personnel,
15 i.e. staff time. Staff time is calculated by the hourly wage of the employee performing the task.
16 *See Op. Nev. Att'y Gen. No. 2002-32.* Thus, LVMPD is permitted to charge for staff time when
17 responding to requests that require the extraordinary use of personnel.

18 For the arrest reports alone, there are thousands, if not more, records at issue. In just 4
19 categories of the 26 requested, LVMPD determined that there were 7,061 arrests.
20 Notwithstanding the arrests from the remaining categories, LVMPD would be forced to review
21 each file individually to determine what records are responsive to the request. Likewise, to
22 produce the investigative files requested, Mr. Crosby informed Ms. McLetchie that it would take
23 years as the files range in pages. The example provided by Mr. Crosby on July 11, 2017 was
24 nearly 200 pages. Averaging that figure over 860 cases, LVMPD must review and redact an
25 estimated 172,000 pages. Certainly, reviewing, redacting, and copying these records will require
26 LVMPD to utilize extraordinary use of personnel.

1 3. **LVMPD May Charge for Preparation Costs When Using a**
2 **Geographical Information System.**

3 The NPRA allows an additional fee to be charged for information from a geographic
4 information system ("GIS"). NRS 239.054(1). A governmental entity may charge for
5 reasonable costs related to the gathering and entry of data into the system, consultation with
6 personnel of the governmental entity, and quality control. *Id.*

7 The costs associated with the information provided by CAD would be subject to this
8 provision. CAD is used to identify information related to calls for service, such as event
9 numbers and names, associated with a particular search. CAD is merely used to identify
10 information and cannot be used to access the records. The information obtained is then used to
11 extract records by event numbers and/or names. With respect to LVRJ's request for all arrest
12 reports involving attempted Grand Larcenies and Grand Larcenies at 213 casinos, each casino
13 address is a different query. The analyst must then review all calls for service at that address
14 within the specified time period to determine which events are responsive to the request. Once
15 the events are identified, the event numbers are forwarded to the Records Bureau to review the
16 file, extract, and redact the requested records. The fees charged for this work is generally
17 derived from the hourly rate of the employee performing the search. Pursuant to the NPRA,
18 LVMPD is permitted to charge for the research involved in gathering and entering data into the
19 CAD system, as well as redactions as it serves as a form of quality control.

20 4. **The Legislative History Clearly Supports LVMPD's Interpretation of**
21 **the Cost Provisions.**

22 The Court has a duty to construe statutes as a whole, so that all provisions are considered
23 together, and to the extent practicable, reconciled and harmonized. *Mardian v. Greenberg*
24 *Family Trust*, 131 Nev. Adv. Op. 72, 359 P.3d 109, 359 P.3d 109, 111 (2015). Generally,
25 statutes should not be interpreted to render language meaningless or superfluous. *Id.* When
26 construing an ambiguous statute, legislative intent is controlling, and the court looks to
27 legislative history for guidance. *Griffith*, 132 Nev. Adv. Op. 38, 373 P.3d at 88. Limited resort
28 to reports of legislative committee hearings is appropriate to clarify or interpret legislation that is

1 doubtful import or effect. *Baliois*, 102 Nev. at 570, 729 P.2d at 1339-40. Here, when reading
2 the two fee provisions of the NPRA in tandem, the statutory language is ambiguous as to
3 whether a governmental entity may charge a fee for staff time, in excess of \$0.50, when
4 extraordinary use of personnel is utilized. Furthermore, the term extraordinary use of personnel
5 is itself ambiguous and not defined in the statute. Finally, NRS 239.055 contains conflicting
6 provisions because in one instance it limits fees to \$0.50 per page, but then permits the
7 governmental agency to charge a reasonable fee for the cost it actually incurs. Thus, it is
8 appropriate for this Court to look to the legislative history of NRS 239.052 and NRS 239.055 to
9 clarify the ambiguities.

10 **a. Assembly Bill 214 (1997)**

11 In 1997, the NPRA underwent its firm major overhaul. On one hand, Assembly Bill 289
12 was drafted to address the definition of a public record, what constitutes “confidential” for
13 purposes of the Act, and disclosure concerns with public records. *See* Summary of AB 289
14 attached hereto as **Exhibit F**. On the other hand, Assembly Bill 214 was specifically crafted to
15 address the fee provisions, which are now codified at NRS 239.052 and NRS 239.055. *See*
16 Legislative History Compilation of AB 214 attached hereto at **Exhibit G**.

17 AB 214 was first introduced to the Assembly Committee on Government Affairs by
18 Chief Deputy, Secretary of State, Mr. Dale Erquiga. Former Secretary of State, Dean Heller,
19 opened the initial proceeding and testified that it should be the public policy of this state that
20 costs should never be used as a means of deterring public access to information about the
21 conduct and activities of government. *Id.* at p. 10. Mr. Erquiga continued by walking the
22 Committee through the AB 214. *Id.* In defining actual costs, Mr. Erquiga explained that it
23 meant if an employer had a lease and a maintenance agreement on a copier, the employee who
24 ran the copier could not charge those costs through on the record as the employer would always
25 pay the lease and maintenance agreement to make his own operating copies. *Id.* at 11. Thus, it
26 was always intended that “actual costs,” as defined in NRS 239.005, meant paper, toner, discs,
27 and so forth. *Id.*

1 Mr. Erquiga further clarified the extraordinary personnel exception purposed within AB
2 214. The following is the example Mr. Erquiga gave at the hearing:

3 [I]f a person came into the Secretary of State's office and wanted a list of all
4 corporations which had filed pursuant to Nevada Revised Statutes (NRS), Chapter
5 82, a program would have to be written to pull the information out of the
6 database—which was extraordinary use of that office's technology.

7 *Id.* On May 28, 1997, Mr. Erquiga reiterated to the Senate Committee on Government Affairs
8 that the language "actual cost" in NRS 239.052(1) does not include cost an entity already incurs
9 such as personnel or lease on the machine. *Id.* at 64. On the other hand, section 3 of AB 214
10 (codified at NRS 239.055) established an exception when extraordinary use of personnel was
11 required. *Id.* at 65. The purpose behind this section was to recover government costs. At the
12 same hearing, Mr. Alan Glover, Clerk/Recorder for Carson City, expressed concern for a high
13 demand of public records, especially in relation to groups harassing staff in the recorder's offices
14 by asking for exorbitant amounts of records thereby tying up the government. *Id.* at 67. In
15 response, Mr. Kent Lauer, Lobbyist for Nevada Press Association, assured the Committee that
16 the extraordinary use of personnel section would address Mr. Glover's concern of low fees in his
17 scenario. *Id.* at 71.

18 **b. Nevada Attorney General Opinion 2002-32.**

19 On August 27, 2002, the Nevada Attorney General issued an opinion regarding Washoe
20 County's questions about the fees to be charged in copying public records, specifically with
21 extraordinary staff time. *See* Op. Nev. Att'y Gen. No. 2002-32 attached hereto as **Exhibit H**.
22 Relying on the legislative history identified above (AB 214), the Attorney General determined
23 the authority granted to a governmental agency to recover actual costs for the "extraordinary
24 use" of personnel in retrieving and copying public records may have, at least in part, been
25 intended to make the agency whole in responding to nuisance inquiries or any inquiry that takes
26 up an unusual amount of staff time. *Id.* at p.245. In defining extraordinary use, the Attorney
27 General found that public records requests should generally take no more than 30 minutes to
28 respond and anything over the 30 minute mark was extraordinary. *Id.* Finally, the opinion
explains that the extraordinary use of personnel should be based on the actual hourly wage of the

1 lowest compensated individual reasonably available and qualified to respond to the public
2 records request. *Id.* at 246. It was the Attorney General's belief that this standard comports with
3 the definition of "actual costs" in Chapter 239 of NRS as being "the direct cost related to the
4 reproduction of a public record." NRS 239.005(1).

5 **c. Senate Bill 123 (2007).**

6 In 2007, Senate Bill 123 proposed to add several amendments to the NPRA, including the
7 intent to foster democratic principles and the timeframe in responding to requests. *See* Senate
8 Bill 123 Summary attached hereto as **Exhibit I**. While the fee provisions were not specifically
9 discussed, Mr. Dan Musgrove shared his concern of low fees and payment for personnel time in
10 responding to requests. Below is the dialogue between Mr. Musgrove and Senator Care at the
11 hearing on February 26, 2007 before the Senate Committee on Government Affairs:

12 DAN MUSGROVE (University Medical Center of Southern Nevada): A letter
13 was sent to us from the Las Vegas Review-Journal (Exhibit K) asking for
14 documents. University Medical Center has been under the lights lately due to
15 issues taking place in southern Nevada, and the press has been active in asking for
16 documents. While we tried to respond to the voluminous request in Exhibit K, this
17 information is not easily produced in the manner they asked. Even though the
18 request was in writing and specific, *it takes staff time and resources, a week to*
19 *ten days, to determine how to bring the information together and produce it in a*
20 *manner the newspaper would like to see.* We are willing to do so, but *it displaces*
21 *job functions at the hospital* that need to take place. We responded to the Las
22 Vegas Review-Journal with a letter seeking payment for staff time to produce this
23 information. Senator Care felt taxpayers pay our salaries and we should set aside
24 normal duties to produce the documents. That is not in the best interest of our
25 hospital to set aside important duties such as financial collections and invoices to
26 work on public requests. How quickly we turn the request around and at what cost
27 to the hospital staff resources becomes a logistical matter. We would like to work
28 with the subcommittee on addressing those matters.

21 SENATOR CARE: If an office gets a request for documents and there is time for
22 staff to retrieve and copy the documents, it would not be the most important
23 function the office serves, but those people would work for taxpayers at that time
24 by satisfying a taxpayer's request for public records. Overhead costs would have
25 to be eaten as a matter of public policy. *Whatever happened with the request for*
26 *a check for staff time?*

25 MR. MUSGROVE: *I have not seen an answer to that. We were looking at staff*
26 *time of at least two weeks to garner this information. That is a lot of time to take*
27 *away from normal duties.* One good thing about S.B. 123 is it covers
28 nongovernmental entities. The Las Vegas Sun's request was about our Medical
Executive Committee's (MEC) votes on contracts we were using. The MEC is not
part of UMC, and we cannot force them to provide information. The Las Vegas
Sun claims UMC refused to provide information. There was not a refusal by
UMC, which is the governmental entity; it was a refusal by the MEC, which is a

1 panel that does not operate under the Open Meetings Act. With some provisions
2 in this bill, including the ability to redact information, the MEC would have been
willing to provide some of those minutes.

3 See Committee Minutes from Hearing attached hereto as **Exhibit J**. As the dialogue
4 demonstrates, the concept of paying staff time in extraordinary circumstances was not
5 foreclosed.

6 **d. Assembly Bill 31 (2013).**

7 In 2013, Assembly Bill 31 was introduced to amend the NPRA to include a record
8 official for government agencies, require regulations regarding forms to be used with public
9 records requests, and identify the existing statutory exceptions to the NPRA. See **Exhibit D**.
10 Like SB 123, AB 31 did not, in particular, pertain to the fee provisions of the NPRA.
11 Nonetheless, some discussions regarding “actual costs” were had at the May 27, 2013 Senate
12 Committee on Government Affairs hearing:

13 Senator Goicoechea: I am concerned because it says actual cost can only be the
14 direct cost of the reproduction and not include the research involved in finding a
15 document. I realize this only pertains to State government and not local
government; however, I am concerned about where this will go. There is inherent
cost with searching records.

16 Mr. Munro: That is not part of the bill. We have left the actual cost to your staff to
17 determine; *however, many agencies add personnel costs*.

18 See **Exhibit D** at p. 297. (emphasis added).

19 **e. Senate Bill 74 (2013).**

20 In addition to AB 31, Senate Bill 74 was also introduced during the 77th Legislature
21 regarding amendments to certain provisions of the NPRA. This bill specifically amended the
22 language in NRS 239.055 to include the limitation of \$0.50 per page when copying documents.⁹
23 See Committee Minutes for February 20, 2013 attached hereto as **Exhibit K**. The main concern
24 regarding this amendment was the inconsistency across the agencies for the fees charged for
25 copying records. *Id.* at p. 15. Many supporters testified that they were often charged anywhere
26 from \$1 to \$2 per page for copying records. *Id.* at p. 15-37, generally. In support of the

27 _____
28 ⁹ Initially, the bill proposed a \$0.10 per page limitation on copy charges.

1 amendment, Barry Smith, Executive Director, Nevada Press Association, testified that many
2 agencies charge \$1 a page to supply a stream of revenue for the agencies. *Id.* at p.19. While Mr.
3 Smith agreed that “[i]t was not the intent of the public records law to charge a person that is the
4 responsibility of the agency in the first place,” he, nonetheless, acknowledged that there is a
5 provision that allows agencies to be compensated for extraordinary use of personnel. *Id.* On
6 April 10, 2013, another hearing was held before the Senate Committee on Government Affairs.
7 See Committee Minutes dated April 10, 2013 attached hereto as **Exhibit L**. At this hearing, the
8 Committee passed SB 74 with an amendment to reflect an adjustment for the copy rate of \$0.50
9 per page, rather than the initial \$0.10 per page. *Id.*

10 Once SB 74 passed the Senate Committee, it moved to the Assembly Committee on
11 Government Affairs to be heard on May 3, 2013. See Committee Minutes dated May 3, 2013
12 attached hereto as **Exhibit M**. Interestingly, the entire hearing on May 3rd stands for the
13 proposition that the additional language of \$0.50 per page, now codified in NRS 239.055, was
14 strictly limited to copying costs and did not apply to staff time. Below are the relevant excerpts,
15 including from Senator Tick Segerblom who proposed SB 74:

16 Senator Segerblom: . . . [T]hey can charge a reasonable fee of 50 cents. Under
17 extraordinary circumstances, the can charge additional fees. . . .

18 *Id.* at p.19.

19 Assemblyman Stewart: I appreciate you bringing this bill in order to save the
20 public money and give them more access. If someone from out of state or out of
country requested information, would this preclude the agencies from charging
the requester postage.

21 Senator Segerblom: This is actually a question I never thought of. We do not
22 have anything in the bill regarding postage, so I do not think it would. ***This is
basically only the copying charge, so I would assume it would not.***

23 *Id.* at p. 21. (emphasis added).

24 Taylor McCadney: Assemblyman Daly, the section that you are talking about is
25 section 4, subsection 1, where it states, “Except as otherwise provided in this
subsection, a governmental entity may charge a fee for providing a copy of a
26 public record. Such a fee must not exceed the actual cost to the governmental
entity to provide the copy of the public record unless a specific statute pr
27 regulation sets a fee” In section 4.5, it also goes into detail about how they
can charge extra for extraordinary use of technology or manpower. That is where
28 the leeway comes from for them to charge more than the actual cost of a copy.

1 Assemblyman Daly: We knew it was a lot of paper and they charges us a fair
2 price based on their costs. They did include staff time and various things. . . .

3 *Id.* at p.23. In addition to discussing the 50 cent fee limitation regarding the amount an agency
4 may charge to make copies, fees regarding copies of DVDs and videos were also discussed. *Id.*
5 at p.24. Nothing in SB 74 or in the current statute, however, reference costs related to DVDs and
6 videos and the legislature declined to include that include in SB 74. *See* Committee Minutes on
7 May 15, 2013 attached hereto as **Exhibit N**.

8 The legislative history clearly demonstrates LVMPD can charge for staff time, in excess
9 of \$0.50 per page, when extraordinary efforts are used. On its face, NRS 239.055 is ambiguous
10 and contradictory because, on one hand, it permits governmental agencies to charge for
11 extraordinary use of personnel so long as that cost is reasonable and based on the cost the
12 governmental actually incurs. The statutory language, however, also contains a limitation
13 requiring the governmental agency to not a charge a fee in excess of \$0.50 per page. A cursory
14 review of the legislative history regarding these fee provisions and the NRPA generally reveals
15 that it was the intent of the drafters to limit that amount a governmental entity may charge for
16 making copies of documents.

17 At the various committee hearings, many supporters of the NPRA felt their efforts in
18 obtaining public records were often impeded due to the cost governmental agencies charged in
19 making copies of the documents. The 1997 amendments to the NPRA, specifically AB 214,
20 codified NRS 239.052 and NRS 239.055 limiting the governmental agency to only charge actual
21 costs incurred as a result of its response. Importantly, the Legislature recognized that, in certain
22 instances, responding to public records request may interfere with the governmental agency's job
23 function. As such, the Legislature codified an exception when extraordinary use of personnel
24 and/or technological resources was necessary. Over the years, while not directly at issue, the
25 Legislature and supporters recognized that staff time was certainly included when the
26 extraordinary use of personnel was required.

1 In 2013, Senator Tick Segerblom proposed SB 74, which added several amendments
2 including the “50 cent fee” language now codified in NRS 239.055. The provision at issue
3 specifically provides:

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

10 NRS 239.055(1).

11 During an Assembly Committee hearing, Senator Segerblom and his intern, Taylor
12 McCadney, were asked several questions regarding whether additional charges, such as postage
13 and staff time, were prohibited as a result of the \$0.50 per page limitation. Throughout the
14 hearing, both Senator Segerblom and Ms. McCadney clarified that the \$0.50 fee limitation
15 strictly applied to copying charges and the purpose of NRS 239.055 was to allow leeway if
16 additional cost was incurred as a result of extraordinary use of personnel. The rationale of the
17 \$0.50 fee copying charge was due to inconsistencies across governmental agencies that charged
18 anywhere from \$1-2 per page for copies, including the courts. In essence, the language that “the
19 fee charged by the governmental entity must be reasonable and must be based on the cost that the
20 governmental entity actually incurs” would be rendered superfluous if a governmental agency
21 was only limited to charging a \$0.50 fee for the extraordinary use of personnel. Moreover, the
22 “per page” language added after \$0.50 indicates that the fee is limited to copying. The second
23 provision of the statute makes it clear that a governmental agency can charge a reasonable fee for
24 costs it actually incurs for utilizing personnel.

25 The legislative history, from 1997 through 2013, clearly evidences that LVMPD is
26 permitted to charge for staff time in responding to the records requests, so long as the cost is
27 reasonable and actually incurred by LVMPD. In accordance with NRS 239.052(3), LVMPD
28 maintains a Fee Schedule itemizing the charges for specific records, including when

1 extraordinary use of personnel is required. LVMPD's Fee Schedule complies with NRS 239.055
2 as it only charges \$0.31 for copies. Responding to LVRJ's requests will be time consuming and
3 costly to LVMPD. While LVMPD is responsible for responding to public records requests as a
4 governmental agency, it was certainly not the intent of the NPRA to require LVMPD to displace
5 its entire governmental function in order to respond to records requests. In conformity with the
6 legislative history, LVMPD requests this Court to find that LVMPD may charge for staff time
7 pursuant to NRS 239.055(1) in responding to LVRJ's requests.

8 **5. Payment Prior to Production is Necessary to Alleviate Any Burden on**
9 **LVMPD.**

10 Although the NPRA is silent on when a requester must pay, it has been the practice of
11 LVMPD to collect payment prior to production. The purpose of this is to alleviate any burden
12 LVMPD may face in producing high-volume records, like the ones at issue in this case.
13 Especially in cases where a high-volume of records are requested, LVMPD has concern that the
14 requester will have second thoughts about the requested records and refuse to pay for records.
15 At that point, LVMPD cannot recover the time, money, and resources spent on copying the
16 records.

17 LVMPD's concern is evidenced by Ms. McLetchie's comments as to costs and LVRJ's
18 amended July request. After being informed of the costs associated with producing certain
19 records, LVRJ amended its copy requests to inspection. See **Exhibit 46**. Similarly, Ms.
20 McLetchie indicated that she would have her client retract its request for copies and make a
21 request for inspection. At any point, the requester can decide it no longer wants the records. By
22 providing the cost upfront, this prevents LVRJ, and other requesters, from backing out of their
23 requests with no consequences. LVMPD's policy is consistent with the NPRA. When
24 extraordinary use of personnel is required to respond to requests, the governmental agency must
25 inform the requester the cost associated with production to prevent sticker-shock. NRS
26 239.055(1). This provision would be rendered meaningless if the requester could later retract its
27 request after the governmental entity expended funds and resources to produce the records. In
28 other words, the purpose of notifying the requester of the cost prior to production is so that the

1 requester can confirm, i.e., submit payment, that it does indeed want the records. Thus, this
2 Court should require LVRJ to pay for the requested records prior to production.

3 **J. A PRIVILEGE LOG IS NOT REQUIRED BY THE NPRA AND NOT**
4 **NECESSARY IN THIS CASE.**

5 A *Vaughn* index is a submission commonly utilized in cases involving FOIA, the federal
6 analog of the NPRA. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 881, 266 P.3d 623, 628.
7 This submission typically contains “detailed public affidavits identifying the documents
8 withheld, the FOIA exemptions claimed, and a particularized explanation of why each document
9 falls within the claimed exemption.” *Id.* (citing *Lion Raisins v. U.S. Dept. of Agriculture*, 354
10 F.3d 1072, 1082 (9th Cir. 2004). Broadly stated, a *Vaughn index* is designed to preserve a fair
11 adversarial proceeding when a lawsuit is brought after the denial of a FOIA request. *Id.* (citing
12 *Wiener v. F.B.I.*, 943 F.2d 972, 977 (9th Cir.1991) (“The purpose of the index is to ‘afford the
13 FOIA requester a meaningful opportunity to contest, and the district court an adequate
14 foundation to review, the soundness of the withholding.’ ” (citation omitted))).

15 The Nevada Supreme Court, however, explicitly held that a log is *not* required each time
16 records are withheld. *Id.* Rather, a *Vaughn* index is a method for resolving the tension between
17 the government’s interest in keeping certain records confidential and the requesting party’s need
18 for enough information to meaningfully contest a claim of confidentiality. *Id.* at 881-82, 266
19 P.3d at 629. In circumstances where the requesting party has sufficient information to present a
20 full legal document, as LVRJ has done here, there is no need for a *Vaughn* index. *Id.* The court
21 further determined that if a log were required—in the form of a *Vaughn* index—each time a
22 lawsuit is brought after the denial of an NRPA request, the court would be rewriting the NRPA
23 as there is no such requirement imposed within the Act. *Id.*

24 The court in *Gibbons* determined that a log was appropriate under the circumstances of
25 that case. *Id.* at 882, 266, P.3d at 629. At issue in that case were various emails, which the
26 contents were unknown, and the governmental entity made blanket privilege assertions. *Id.* In
27 comparison, this case does not involve records that are unknown to LVRJ. LVRJ made requests
28 for investigative case files and arrest reports. The records at issue are known and LVRJ has

1 meaningfully contested confidentiality and has sufficient information to present a full legal
2 argument. Therefore, a privilege log in this case is not necessary.

3 **IV. CONCLUSION**

4 Based on the foregoing, LVMPD requests that this Court rule that:

5 (1) LVMPD did not waive its privilege arguments and that the NPRA does not provide
6 for waiver of the same;

7 (2) LVMPD has acted in the utmost good faith in responding to and attempting to resolve
8 the underlying issues of LVRJ's public record requests;

9 (3) As a result of the inclusion of NRS 179A.070 within the statutory exceptions
10 provided in NRS 239.010(1), that investigative information is exempt from the NPRA;

11 (4) Dissemination of records of criminal history are governed by Chapter 179A and not
12 the NPRA, and regardless of whether Chapter 179A or the NPRA governs, the requests are
13 overly broad and unduly burdensome to produce, requiring LVRJ to amend its requests;

14 (5) In balancing LVMPD's interest in keeping officer unit assignments confidential
15 against the public's interest in access, the officer safety concerns raised substantially outweigh
16 the public's interest in disclosure;

17 (6) LVRJ's requests for SCOPE database fields and statistical information are not
18 requests for records, and therefore, are not subject to the NPRA;

19 (7) LVRJ's May 31, 2017 request falls outside LVMPD's jurisdiction;

20 (8) LVMPD may charge for actual costs incurred in responding to LVRJ's requests as
21 itemized in its Fee Schedule;

22 (9) Chapter 179A governs costs associated with the production of criminal history
23 records, not the NPRA;

24 (10) In instances where LVMPD must employ the extraordinary use of its personnel to
25 respond to requests, LVMPD copying charges cannot exceed \$0.50 per page and LVMPD is
26 permitted to charge for staff time associated with such productions;

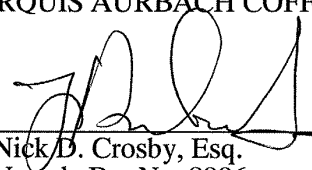
1 (11) In instances where LVMPD must utilize CAD to respond to LVRJ's requests, it is
2 entitled to charge for preparation costs including staff time to organize information, perform
3 searches, and redact personal information related to production;

4 (12) LVRJ must pay for the requested records prior production to alleviate any burden on
5 LVMPD; and

6 (13) A privilege log is unnecessary because LVRJ has meaningfully contested
7 confidentiality and has sufficient information to present a full legal argument.

8 Dated this Ne day of July, 2018.

9
10 MARQUIS AURBACH COFFING

11
12 By: 
13 Nick D. Crosby, Esq.
14 Nevada Bar No. 8996
15 Jackie V. Nichols, Esq.
16 Nevada Bar No. 14246
17 10001 Park Run Drive
18 Las Vegas, Nevada 89145
19 Attorneys for Respondent, Las Vegas
20 Metropolitan Police Department
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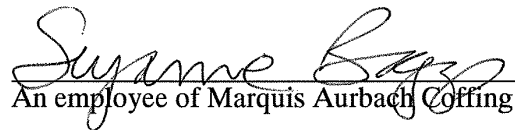
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S OPENING BRIEF REGARDING NRS § 239.001/PETITION FOR WRIT OF MANDAMUS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 26th day of July, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹⁰

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

¹⁰ 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 NRCF 5(b)(2)(D).



Marquis Aurbach Coffing

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jnichols@maclaw.com
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

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

**TABLE OF CONTENTS OF EXHIBITS ATTACHED TO RESPONDENT LAS VEGAS
METROPOLITAN POLICE DEPARTMENT'S RESPONSE TO LAS VEGAS REVIEW-
JOURNAL'S OPENING BRIEF REGARDING NRS § 239.001/PETITION FOR WRIT
OF MANDAMUS**

Exhibit No.	Description
A	Letter dated May 8, 2017 from LVMPD to LVRJ
B	Letter dated April 27, 2017 from LVMPD to LVRJ
C	Letter dated May 4, 2017 from LVMPD to LVRJ
D	Legislative History Compilation for AB 31 (2013)
E	LVMPD's Fee Schedule
F	Summary of AB 289 (1997)
G	Legislative History Compilation of AB 214 (1997)
H	Op. Nev. Att'y Gen. No. 2002-32
I	Senate Bill 123 Summary (2007)
J	Committee Minutes from February 26, 2007 hearing regarding SB 123

MARQUIS AURBACH COFFING

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Exhibit No.	Description
K	Committee Minutes from February 20, 2013 hearing regarding SB 74
L	Committee Minutes from April 10, 2013 hearing regarding SB 74
M	Committee Minutes from May 3, 2013 hearing regarding SB 74
N	Committee Minutes from May 15, 2013 hearing regarding SB 74

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **TABLE OF CONTENTS OF EXHIBITS TO
RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S
RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S OPENING BRIEF REGARDING
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Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
MCLECHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Email: maggie@nvlitigation.com
*Counsel for Petitioner,
Las Vegas Review-Journal*

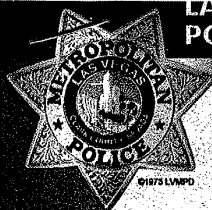
I further certify that I served a copy of this document by mailing a true and correct copy
thereof, postage prepaid, addressed to:

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 A



LAS VEGAS METROPOLITAN
POLICE DEPARTMENT

JOSEPH LOMBARDO, Sheriff

Partners with the Community

May 8, 2017

Via: bjoseph@review-journal.com
Brian Joseph, Staff Reporter
Las Vegas Review-Journal
111 West Bonanza Road
Las Vegas, Nevada 89125

Re: Public Records Request dated February 23, 2017

Dear Mr. Joseph:

This response is a follow up to your questions concerning the time and cost to fulfill your public records request for "all investigative case files for all LVMPD sex trafficking investigations that were closed in calendar years 2014, 2015, and 2016" and "all LVMPD arrest reports for solicitation or trespass that were produced in calendar years 2014, 2015 and 2016."

It has been determined there are a combined total of 757 sex trafficking cases. An individual review of the cases will be required to determine how many are closed cases. Once the closed cases are identified then careful review of the case files would be required because there are confidentiality issues with regard to the victims.

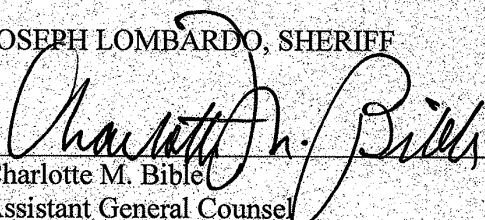
Before June 30, 2016, the Vice Bureau did not specifically track prostitution arrests. Vice made 1,471 arrests of prostitutes between July 1, 2016 and December 31, 2016. A conservative estimate from our Vice Bureau of the number of solicitation arrests for each year requested (2014, 2015, and 2016) is approximately 2,400.

Because of the volume of records that would be responsive to your request for all arrest reports for solicitation only, extraordinary use of personnel is inevitable to fulfill your request. Please consider modifying and narrowing your request to enable LVMPD to readily identify records responsive to your request at the least cost to you and LVMPD.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

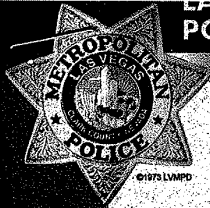
By:


Charlotte M. Bible
Assistant General Counsel

CMB:sa



Exhibit B



LAS VEGAS METROPOLITAN
POLICE DEPARTMENT

JOSEPH LOMBARDO, Sheriff

Partners with the Community

April 27, 2017

Via: bjoseph@review-journal.com
Brian Joseph, Staff Reporter
Las Vegas Review-Journal
111 West Bonanza Road
Las Vegas, Nevada 89125

Re: Public Records Request dated February 27, 2017

Dear Mr. Joseph:

You made a records request dated February 27, 2017 to the Las Vegas Metropolitan Police Department for the following:

"request access to and digital copies (PDFs if available) of the record layout and data dictionary of the LVMPD's SCOPE (Shared Computer Operations for Protection and Enforcement) database."

Please describe with more particularity what you mean by "record layout" and "data dictionary." I believe those are terms of art in the tech industry. In order to inspect or copy a public record, the specific record must be identified by the requestor. It is unclear as to what you are requesting by this verbiage.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

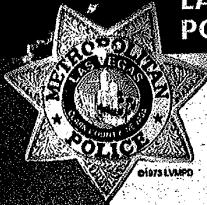
By:


Charlotte M. Bible
Assistant General Counsel

CMB:sa



Exhibit C



LAS VEGAS METROPOLITAN
POLICE DEPARTMENT

JOSEPH LOMBARDO, Sheriff

Partners with the Community

May 4, 2017

Via: bjoseph@reviewjournal.com

Brian Joseph, Staff Reporter
Las Vegas Review Journal
111 West Bonanza Road
Las Vegas, Nevada 89125

Re: Email dated April 21, 2017

Dear Mr. Joseph:

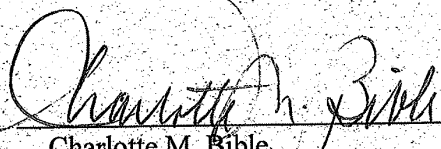
After you were advised your public records request would require the use of a geographic information system and an estimate of the cost was provided, you had some questions regarding the cost you emailed on April 21, 2017. We provided you with the estimated cost to obtain records for one (1) year. We recognize you have asked for records for three (3) years; however, the actual costs will be determined after the research for one (1) year has been conducted. If, after the estimated costs are paid and we fulfill your request for one (1) year, you still want the records for the other years, we will comply with your request upon payment of the corresponding cost.

The system to be searched is CrimeView. We do not have a specific call code for trick rolls, so the data has to be captured utilizing call codes commonly associated with trick rolls which are grand larcenies and robberies. We must create an address query for each of the 213 locations specified. Each address is a separate query. The estimated time it will take to identify the events responsive to your request is a conservative estimate. This process will only identify the events responsive to your request; it will not produce arrest reports. After the events are identified by the GIS, if you want all the arrest reports for the identified events, the events would be forwarded to our Records Bureau to produce the arrest reports not otherwise confidential by law. The cost for the arrest reports requested will depend on the number of events you request.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By:


Charlotte M. Bible
Assistant General Counsel

CMB:cam

