IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Appellant, vs. LAS VEGAS REVIEW-JOURNAL, Respondent.	Case No.: 78967 Appeal from the Eighth Judicial District Court, The Honorable Joe Hardy Presiding.

APPELLANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S, OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. The Las Vegas Metropolitan Police Department ("LVMPD") is a governmental entity and has no corporate affiliation.

2. LVMPD is represented in the District Court and this Court by the law firm of Marquis Aurbach Coffing.

Dated this 28th day of October, 2019.

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I. JURISDICTIONAL STATEMENT

LVMPD appeals from the District Court's order granting, in part, the Las Vegas Review-Journal's ("LVRJ") Petition for Writ of Mandamus regarding LVRJ's request for LVMPD officer unit assignments. 17 Appellant's Appendix ("AA") 3898–3909. The District Court's order directing the disclosure of patrol officer unit assignments (the "Disclosure Order") is a final appealable order in accordance with NRAP 3A(b)(1) as the District Court certified the Disclosure Order as a final judgment pursuant to NRCP 54(b). 17 AA 3937–3940; *see also Ashokan v. State, Dep't of Ins.*, 109 Nev. 662, 665–666, 856 P.2d 244, 246 (1993). LVMPD's Notice of Appeal was timely filed on June 5, 2019 from the District Court's order granting NRCP 54(b) certification, which was noticed on May 30, 2019. 17 AA 3937–3940; 3941–3948. Therefore, this Court has appellate jurisdiction over this appeal.

II. ROUTING STATEMENT

This appeal asks this Court to resolve a single issue of first impression that is also of statewide public importance—the confidentiality of LVMPD officer unit assignments after the identities of officers have already been provided. Based upon NRAP 17(a)(10) and (11), the Supreme Court should retain this appeal since it involves an issue of first impression that is also of statewide public importance.

III. ISSUES ON APPEAL

The sole issue on appeal is whether the District Court erred in requiring LVMPD to disclose the unit assignments of patrol officers for calendar years 2014, 2015, and 2016.

IV. STATEMENT OF THE CASE

The District Court improperly ordered LVMPD to produce patrol officer unit assignments for 2014, 2015, and 2016. While the unit assignments themselves do not necessarily involve confidential information, LVMPD provided LVRJ with names and personnel numbers of each and every officer employed with LVMPD between 2014–2016. The names of these officers, coupled with the disclosure of patrol officer unit assignments, creates a potential jeopardy to the officers' livelihood and involves officer privacy interests that are more than de minimus.

In this appeal, LVMPD asks the Court to determine that the requested patrol officer unit assignments are not subject to disclosure under the NPRA because: (1) the *Donrey*[1] balancing test recognizes that a government entity's interest in non-disclosure of information substantially outweighs the public's interest in access if there is a potential jeopardy to law enforcement personnel; and (2) the

[1] *Donrey of Nevada v. Bradshaw, Inc.*, 106 Nev. 630, 798 P.2d 144 (1990).

CCSD[2] balancing test establishes that information may not be subject to disclosure to the extent that the information sought involves nontrivial privacy interests.

It is undisputed that the Court employs a balancing test to determine whether the information sought is subject to disclosure under the Nevada Public Records Act ("NPRA") in the absence of a statute, or other law, declaring the specific information confidential or privileged. *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313, 319 (2018); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011). To that end, this Court has established that a government entity may protect information that may otherwise be subject to disclosure under the NPRA if: (1) the government entity demonstrates that its interests in non-disclosure substantially outweigh the public's interest in access; or (2) the government entity proves that the information sought involves non-trivial personal privacy interests. *Id.*

Under the first balancing test, the District Court erred when it failed to consider the potential harm to LVMPD personnel if patrol officer unit assignments are disclosed. Specifically, disclosure of overt positions will, by deductive reasoning, lead to the disclosure of covert and undercover positions. Likewise, disclosure of the particular patrol officer unit assignments will reveal the identities

[2] *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313, 319 (2018).

of past and future undercover or covert officers. The disclosure of this information could allow individuals, who previously interacted with the unknown undercover officer, to seek retaliation or retribution. Conversely, disclosure would also put a current patrol officer at risk if he or she seeks to be assigned to an undercover or covert position in the future.

These concerns, in turn, also address the issues LVMPD raised with officer privacy interests in accordance with the *CCSD* balancing test. As a number of courts have found, disclosure of particular law enforcement information, such as names and unit assignments, is likely to lead to harassment and endangerment of personnel. As such, the safety concerns raised by LVMPD warrant a determination by this Court that patrol officer unit assignments are not subject to disclosure because: (1) LVMPD's interest in non-disclosure substantially outweighs the public's interest in access; and/or (2) LVMPD established that disclosure involves LVMPD officers' non-trivial privacy interests.

V. STANDARD OF REVIEW

This Court reviews a district court's decision to grant or deny a petition for a writ of mandamus under an abuse of discretion standard. *See City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003). Questions of statutory construction, however, including the meaning and scope of a statute, are questions of law, which this Court reviews de novo. *Id.* This Court also reviews

the district court's interpretation of case law de novo. *See LVMPD v. Blackjack Bonding*, 343 P.3d 608, 612 (Nev. 2015). Here, this Court must review the Disclosure Order under the de novo standard as it pertains to the interpretation of the NPRA and balancing tests established in *Donrey* and *CCSD*.

VI. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. LVRJ'S REQUEST AND LVMPD'S RESPONSE.

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

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

1 AA 34–36. Within five days, LVMPD informed LVRJ that it received the request, and it would take at least 30 days to respond. *Id.* at 37–39.

On April 14, 2017, LVMPD indicated that it was unable to provide LVRJ with a list of officers for a whole calendar year as a result of daily employee separations. 1 AA 58–59. To provide the requested information, LVMPD asked LVRJ to choose a particular date and then reports would be run for 2014, 2015, and 2016. *Id.* Additionally, LVMPD explained that it issues personnel numbers, not badge numbers, and those numbers along with first initials and last names of

employed officers would be provided. *Id.* Importantly, LVMPD objected to the production of unit assignments for its officers due to safety concerns. *Id.*

On April 27, 2017, LVMPD provided the names and personnel numbers of officers on the force from 2014–2016. 1 AA 60–224. Shortly thereafter, on May 9, 2018, Ms. Maggie McLetchie reached out to LVMPD on behalf of LVRJ and indicated that LVMPD's response was insufficient. 2 AA 249. After Ms. McLetchie became involved, Mr. Nicholas Crosby, counsel for LVMPD, also explained that unit assignments would not be produced because of officer safety and disclosure would reveal identities of officers working in covert positions. 2 AA 422–425.

B. THE DISTRICT COURT'S PROCEEDINGS

LVRJ filed a Petition for Writ of Mandamus on May 31, 2018 ("Petition"). 1 AA 1–29. At the lower court, LVMPD argued that its interest in keeping officer unit assignments confidential substantially outweighed any interest in public access. 4 AA 816–860. LVMPD's main concern in releasing unit assignments was interference with officer safety. *Id.* In its briefing to the District Court, LVMPD provided an example where LVMPD obtained a protective order against an individual for harassing a Sergeant—and his family—at Convention Center Area Command. *Id.* Additionally, LVMPD explained that disclosure of the unit

assignments would reveal identities of officers working in covert positions.[3] *Id.* This is especially true of officers working within the Investigative Services Division and Homeland Security Division. *Id.*

1. <u>The August 8, 2018 Hearing.</u>

A hearing on the Petition was held on August 8, 2018. 7 AA 1521–1558; 14 AA 3244–3250. The District Court did not make a final ruling and, instead, required the Parties to meet and confer in good faith to discuss the requested records. 14 AA 3244–3250. A status check was also scheduled for August 22, 2018 to follow up on the Parties' efforts in resolving their disputes. *Id.* In the event the Parties could not come to an agreement, the District Court permitted the Parties to submit supplemental briefing with the particular relief being requested. *Id.* After meet and confer efforts, the Parties submitted additional briefing to the court on the outstanding issue of unit assignments. 7 AA 1559–1596; 8 AA 1597–1620. During the meet and confer, LVRJ directed its request to patrol officers. 8 AA 1597–1620. LVMPD then explained that disclosing officers assigned in overt positions would reveal the individual officers assigned in covert operations by deductive reasoning. 7 AA 1559–1596. LVMPD further reiterated its concern

[3] Initially, LVRJ requested the release of all unit assignments and not just patrol officers. *See* 1 AA 34–36.

that unit assignments reveal when and where a specific officer reports to work and, generally, what they will be doing at work, creating officer safety issues. *Id.*

2. The August 22, 2018 Hearing.

On August 22, 2018, the District Court held a status check and entertained oral arguments on the Parties' supplemental briefs. 14 AA 3251-3257. With respect to the issue of unit assignments, the lower court concluded that it remained unclear how patrol officer assignments from several years ago would potentially endanger those particular officers or other LVMPD employees. *Id.* As such, the District Court ordered the parties to engage in further good faith meet and confer efforts to resolve the issue. *Id.* If the Parties were unable to reach an agreement, the District Court required LVMPD to provide supplemental briefing regarding its objection to providing the requested information related to patrol officers. *Id.*

On August 29, 2018, LVMPD submitted an additional supplemental brief on the unit assignment issue. 14 AA 3258-3288. In support of its position, LVMPD referenced several cases that had previously concluded similar information was not subject to disclosure because of the privacy interests involved. *Id.* Additionally, LVMPD addressed the lower court's inquiry and clarified that the disclosure of patrol officer assignments can reveal the identities of past or future undercover and covert officers. *Id.* For example, an officer who previously worked undercover or in a covert operation may now be assigned as a patrol officer. *Id.* On the other

hand, a current undercover officer could have been assigned to an area command within the time frame being requested. *Id.*

3. The March 27, 2019 Hearing

On September 5, 2018, LVMPD filed an Emergency Petition for Writ of Prohibition or, Alternatively, for Mandamus in the instant case. *See* Supreme Court Case No. 76848. In response, this Court issued a temporary stay of the District Court's orders. *Id.* After this Court denied LVMPD's Writ Petition and the stay was lifted, the District Court scheduled a status check for March 4, 2019. 17 AA 3954. At the status check, a hearing was scheduled for March 27, 2019 to address the unit assignment issue. *Id.* During the hearing, the District Court questioned whether the *Donrey* balancing test remained good law. 17 AA 3881. Nevertheless, the lower court determined that LVMPD, contrary to established precedent, failed to demonstrate that the unit assignments were confidential or privileged *and* that the interest in nondisclosure outweighs the strong presumption in favor of public access. 17 AA 3904–3905, ¶¶ 17 and 25. The District Court further determined that under the *CCSD* balancing test, LVMPD failed to sufficiently establish that disclosure of unit assignments implicated personal privacy interests of LVMPD employees. 17 AA 3906, ¶ 29. Accordingly, the District Court ordered the disclosure of patrol officer unit assignments for calendar years 2014, 2015, and 2016. *Id.* at ¶ 30.

4. The District Court Certified Its Order and Issued a Stay.

On April 15, 2019, LVMPD moved to have the Disclosure Order, as it related to the unit assignments, certified as a final order pursuant to NRCP 54(b) and requested that a stay be issued. 17 AA 3910–3919. The District Court granted LVMPD's requested relief and entered an order certifying the Disclosure Order (as to unit assignments) as a final judgment and issued a stay regarding the production of the same. 17 AA 3937–3940. LVMPD then timely filed its Notice of Appeal on June 5, 2019. 17 AA 3941–3948.

VII. BACKGROUND OF THE NPRA

The NPRA provides that all public books and public records of governmental entities must remain open to the public, unless "otherwise declared by law to be confidential." NRS 239.010(1). The Legislature has declared that the purpose of the NPRA is to further the democratic ideal of an accountable government by ensuring that public records are broadly accessible. NRS 239.001(1). Thus, the provisions of the NPRA are designed to promote government transparency and accountability. Any limitations or restrictions on the public's right of access must be narrowly construed. NRS 239.001(3).

If a governmental entity withholds records, it bears the burden of proving, by a preponderance of the evidence, that the records are confidential. NRS 239.0113; *see Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877–878,

266 P.3d 623, 626 (2011). The balancing-of-competing-interests test is employed "when the requested record is not explicitly made confidential by a statute," and the governmental entity nonetheless resists disclosure of the information. *Id.*, 127 Nev. at 878–879, 266 P.3d at 627. This test weighs "the fundamental right of a citizen to have access to the public records" against "the incidental right of the agency to be free from unreasonable interference." *DR Partners v. Bd. of Cnty. Comm'rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). Additionally, "an individual's privacy is also an important interest, especially because private and personal information may be recorded in government files." *Reno Newspapers v. Sheriff*, 126 Nev. 211, 218, 234 P.3d 922, 927 (2010). In that respect, the Court facilitates balancing of nontrivial privacy interests against public disclosure. *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313, 319 (2018).

VIII. LEGAL ARGUMENT

A. THE DISTRICT COURT ERRED IN APPLYING THE *DONREY* BALANCING TEST TO THE DISCLOSURE OF UNIT ASSIGNMENTS.

The NPRA specifically acknowledges that confidentiality may be granted through a balancing of interests. *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313, 319 (2018); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011). The Supreme Court

routinely balances the competing interests when a statute fails to unambiguously declare certain records confidential or privileged. *Id.*, *see also Donrey of Nevada*, 106 Nev. 630, 635–36, 798 P.2d 144, 147–48 (1990). In applying the balancing test in *Donrey*, the Court reviewed several public policy considerations outlined in case law and the Attorney General's opinion that may justify nondisclosure in particular instances, including during a pending or anticipated criminal proceeding; if confidential sources or investigative techniques are involved; if there is a possibility of denying someone a fair trial; and if there is a potential jeopardy to law enforcement personnel. *Id.* The cases relied upon by the Court in applying the balancing test recognized additional policy considerations including whether disclosure would be detrimental to the best interests of the state (*Carlson v. Pima County*, 687 P.2d 1242, 1245 (Ariz. 1984)) and whether an investigation of alleged or actual criminal activity is active or concluded (*Irvin v. Macon Telegraph Pub. Co.*, 316 S.E.2d 449, 452 (Ga. 1984) (relying on *Houston v. Rutledge*, 229 S.E.2d 624, 626-27 (Ga. 1976)).[4] *Id.*

More importantly, the *Donrey* court acknowledged that the policy considerations enumerated by the Court were "virtually identical" to Exemption 7

[4] The Georgia Legislature later codified an exemption to public records concerning records of law enforcement. *See* OCGA § 50-18-72(a)(4).

of the Freedom of Information Act ("FOIA"). *Id.* at n.4.; *see also* 5 U.S.C. § 552(b)(7) (1998). Thus, this Court should look to FOIA cases that involve similar requests in reaching its determination. For example, the Drug Enforcement Administration ("DEA") asserted Exemption 7 to protect the identities of special agents, law enforcement officers, and government employees because these individuals may be subject to physical attacks or other threats to their lives if their identities are revealed. *See Adionser v. Dep't of Justice*, 811 F.Supp.2d 284, 301 (D.D.C. 2011). The district court determined that the DEA properly withheld the records to protect the physical safety of the above-mentioned individuals. *Id.* Likewise, the Tenth Circuit ruled that the Bureau of Prisons' Supermax roster was exempt from disclosure under FOIA. *See Jordan v. U.S. Dep't of Justice*, 668 F.3d 1188, 1198 (10th Cir. 2011). The *Jordan* court relied on Exemption 7 of FOIA and concluded that the release of staff names could reasonably be expected to endanger the life or physical safety of any individual by exposing them to threats, manipulation, and harm. *Id.* A New York court made a similar ruling concerning station assignments of police officers. *See Matter of Ruberti, Girvin & Ferlazzo v New York State Div. of State Police*, 218 A.D.2d 494, 499 (NY 1996) (finding that the disclosure of the troop, zone and station assignments of each of its sworn members could endanger the life and safety of those officers).

Given the lack of a statute rendering unit assignments confidential or privileged, this Court must weigh the competing interests to determine whether disclosure of officer unit assignments is appropriate. *See Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313, 319 (2018); Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). Specifically, this Court must determine whether LVMPD's interest in non-disclosure of unit assignments substantially outweighs any interest the public has to access. *Id.*

As explained by Sheriff Joseph Lombardo, production of officer unit assignments is detrimental to the safety of officers. 7 AA 1596–1597. In particular, unit assignments reveal when and where a specific officer reports to work and, generally, what they will be doing at work. *Id.* Officer safety is a serious issue. *Id.* For example, the Legislature has specifically recognized that officers can become targets. *Id.* To that end, officers have special legislative protection in that their photographs and home addresses are generally deemed confidential. *Id.*; *see also* NRS 289.025. The same reasoning underlying this confidentiality provision supports the confidentiality of unit assignments. Moreover, revealing the names of officers assigned in overt operations could reveal the names of officers assigned in covert operations by process of

elimination. *Id.* Limiting the disclosure to unit assignments of patrol officers does not mitigate the risk to officer safety. 11 AA 2576–2577. Similarly, this limitation does not diminish LVMPD's concern about undercover and covert operations. *Id.* In fact, the disclosure of patrol officer assignments can reveal the identities of past or future undercover and covert officers. *Id.* For example, an officer who previously worked undercover or in a covert operation may now be assigned as a patrol officer. *Id.* Disclosing the officer's current unit assignment could allow individuals, who previously interacted with the unknown undercover officer, to seek retaliation or retribution. *Id.* In other words, revealing which area command the officer is now located at could endanger the life and safety of the officer. *Id.* Furthermore, redaction of the names of patrol officers that served in an undercover or covert capacity would easily reveal the officers previously assigned in covert operations by process of elimination. *Id.* The converse could also put officers at risk. *Id.* For instance, a current undercover officer could have been assigned to an area command within the past three years. *Id.* Revealing unit assignments of past patrol officers would jeopardize an officer's current undercover or overt operation. *Id.*

The policy considerations enumerated by the Nevada Supreme Court in *Donrey* mirrors Exemption 7 of FOIA. Several courts have determined that the identification and assignments of law enforcement personnel pose a significant risk

of endangerment to the life and safety of the individuals involved. *See Adionser v. Dep't of Justice*, 811 F.Supp.2d 284, 301 (D.D.C. 2011); *see Jordan v. U.S. Dep't of Justice*, 668 F.3d 1188, 1198 (10th Cir. 2011); *see Matter of Ruberti, Girvin & Ferlazzo v New York State Div. of State Police*, 218 A.D.2d 494, 499 (NY 1996). In applying the balancing test, the Court must weigh whether the safety and livelihood of officers substantially outweighs the public's interest in officer unit assignments. Not only are the patrol officers' safety and livelihood at risk, but disclosure of patrol unit assignments will also place prior undercover officers at risk of harm, as well as jeopardize current covert operations. The public's interest in officer unit assignments is substantially outweighed by the public policy and overall concern for officers' lives and safety.

B. THE DISTRICT COURT ERRED IN APPLYING THE *CCSD* BALANCING TEST TO THE DISCLOSURE OF UNIT ASSIGNMENTS

The District Court also erred in determining that the disclosure of patrol officer unit assignments does not involve a nontrivial privacy interest. A year ago, the Nevada Supreme Court adopted a two-part balancing test, also known as the *Cameranesi* test,[5] to determine whether a government entity may withhold information subject to a public records request. *See CCSD*, 429 P.3d at 319–20.

[5] *See Cameranesi v. U.S. Dep't of Defense*, 856 F.3d 626 (9th Cir. 2017).

Under this balancing test, the government must first demonstrate that "disclosure implicate[s] a personal privacy interest that is nontrivial or more than de minimus." *Id*. at 320. If the government meets its burden, the requester must show that the public interest sought to be advanced is a significant one and that the information sought is likely to advance that interest. *Id*.

Under *CCSD*, LVMPD need only demonstrate that a nontrivial privacy interest exists. 429 P.3d at 320 (Nev. 2018). Courts have ruled that "disclosure implicates personal privacy if it affects either the individual's control of information concerning his or her person or constitutes a public intrusion long deemed impermissible under the common law and in our cultural traditions." *See Cameranesi*, 856 F.3d at 638. "Disclosures that would subject individuals to possible embarrassment, harassment, or the risk of mistreatment constitute nontrivial intrusions." *Id.* (citations omitted).

A public official, through his career as a public servant, is not thereby stripped of every vestige of personal privacy, even with respect to the discharge of his or her official duties. Courts routinely hold that public identification of any law enforcement officials could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives. *See Rugiero v. Dep't. of Justice*, 257 F.3d 534, 552 (6th Cir. 2001) (upholding nondisclosure of identifying information about DEA agents and personnel); *Robert v. Nat'l*

Archives, 1 F. App'x 85, 86 (2d Cir. 2001) (protecting government employee's name); *Neely v. FBI*, 208 F.3d 461, 464 (4th Cir. 2000) (withholding FBI Special Agents' names); *Fiduccia v. U.S. Dep't of Justice*, 185 F.3d 1035, 1043-45 (9th Cir. 1999) (withholding DEA and INS agents' names); *Halpern v. FBI*, 181 F.3d 279, 296 (2nd Cir. 1999) (protecting identities of nonfederal law enforcement officers); *Manna v. Dep't. of Justice*, 51 F.3d 1158, 1166 (3d Cir. 1995) (finding law enforcement officers have substantial privacy interest in nondisclosure of names, particularly when requester held high position in La Cosa Nostra); *Jones v. FBI*, 41 F.3d 238, 246 (6th Cir. 1994) (protecting names of FBI Special Agents and federal, state, and local law enforcement personnel); *Maynard v. CIA*, 986 F.2d 547, 566 (1st Cir. 1993) (protecting names and initials of low-level FBI Special Agents and support personnel); *Hale v. Dep't of Justice*, 973 F.2d 894, 902 (10th Cir. 1992) (finding FBI employees have substantial privacy interest in concealing their identities), vacated & remanded on other grounds, 509 U.S. 918 (1993); *Davis v. U.S. Dep't. of Justice*, 968 F.2d 1276, 1281 (9th Cir. 1992) (holding that "undercover agents" have protectable privacy interests).

As the overwhelming authority demonstrates, patrol officers have a nontrivial privacy interests in their unit assignments. This is especially true given the fact that LVMPD has provided LVRJ with every LVMPD officer's name within a three-year period. Providing the correlating unit assignments creates a

greater risk that certain officers, including those within undercover and covert positions, be subjected to harm, annoyance or harassment. It is also important that this Court recognize that by providing information about past undercover or covert officers, it could lead to harm to the officer's family members or to informants utilized by the officers. Likewise, disclosing unit assignments of officers generally could make it difficult for those officers to work in undercover and covert capacities in the future. All of these risks demonstrate that disclosure of the unit assignments implicates a non-trivial privacy interest. Accordingly, the District Court's order concluding that LVMPD failed to establish a nontrivial privacy interest in patrol officer unit assignments is erroneous. Therefore, the Court should reverse the District Court's Disclosure Order (as to unit assignments) and remand with instructions for the District Court to consider whether LVRJ has met its burden in demonstrating that that the public interest sought to be advanced is a significant one and that the information sought is likely to advance that interest.

IX. CONCLUSION

In summary, this Court should vacate the District Court's Disclosure Order requiring LVMPD to produce patrol officer unit assignments for years 2014, 2015, and 2016 because: (1) LVMPD's interest in protecting its officers substantially outweighs the public's interest in access to patrol officer unit assignments; and

(2) LVMPD established that disclosure of patrol officer unit assignments involves a nontrivial privacy interest, protecting the unit assignments from disclosure.

Dated this 28th day of October, 2019.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 4,882 words; or

☐ does not exceed _____ pages.

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

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of October, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S, OPENING BRIEF AND APPENDIX, VOLUMES 1–17** were filed electronically with the Nevada Supreme Court on the 28th day of October, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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