

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAS VEGAS REVIEW-
JOURNAL,
Appellant,

vs.

CITY OF HENDERSON,
Respondent.

CASE NO.: 81758

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JOINT APPENDIX – VOLUME III
[JA0421 – JA0656]

Appeal from Eighth Judicial District Court, Clark County
The Honorable Trevor L. Atkin, District Judge
District Court Case No. A-16-747289-W

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing JOINT APPENDIX - VOLUME III was filed electronically with the Nevada Supreme Court on the 14th day of January, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

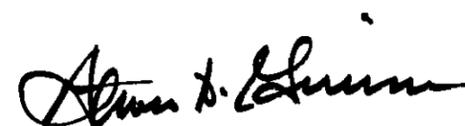
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CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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LAS VEGAS REVIEW-JOURNAL,

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Plaintiff,

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CASE NO. A-16-747289-W

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vs.

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DEPT. XVIII

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CITY OF HENDERSON,

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Defendant.

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BEFORE THE HONORABLE J. CHARLES THOMPSON, DISTRICT COURT JUDGE

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THURSDAY, MARCH 30, 2017

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TRANSCRIPT OF PROCEEDINGS RE:

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PETITION FOR WRIT OF MANDAMUS

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APPEARANCES:

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For the Plaintiff:

ALINA SHELL, ESQ.,
MARGARET A. McLETCHIE, ESQ.

20

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For the Defendant:

DENNIS L. KENNEDY, ESQ.,
JOSH M. REID, ESQ.,
BRIAN R. REEVE, ESQ.

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RECORDED BY: JENNIFER P. GEROLD, COURT RECORDER

1 **LAS VEGAS, NEVADA; THURSDAY, MARCH 30, 2017**

2 [Proceeding commenced at 8:57 a.m.]

3
4 THE COURT: Page five, the Las Vegas Review-Journal versus
5 Henderson. Okay. Counsel, for the record.

6 MS. SHELL: Good morning, Your Honor. Alina Shell and
7 Margaret McLetchie on behalf of the Review-Journal.

8 MS. McLETTCHIE: Good morning, Your Honor.

9 MR. KENNEDY: And for the Defendant, City of Henderson, Dennis
10 Kennedy along with City Attorney Josh Reid and Assistant City
11 Attorney Brian Reeve.

12 MR. REEVE: Good morning, Your Honor.

13 THE COURT: Okay. This is the Review-Journal's petition.

14 MS. SHELL: Yes, Your Honor. Thank you. In its opposition to
15 our memorandum, Your Honor, the City of Henderson has thrown up a
16 lot of red herrings that it hopes Your Honor might catch onto, but
17 really what is important in this case and what is central to this
18 Court's consideration is the Nevada Public Records Act and what --
19 and the intent of the Nevada Public Records Act. And that is to
20 ensure that the public has easy access to government records.

21 What we have here is an issue where the City of Henderson
22 has enacted an ordinance and is trying to enforce an ordinance
23 against the Review-Journal that is at conflict with the NPRA.
24 Specifically, the NPRA provides that, as I said, the public should
25 have easy access to records. And that the -- that to the extent

1 that there's -- are any charges that attach to a request for
2 records, those charges only attach to providing copies or to
3 extraordinary use in providing those copies.

4 What we have here is not a charge that the City wants to
5 offer up for providing copies. What they are trying to charge the
6 Review-Journal for is a privilege review. And that, Your Honor, is
7 at odds with the -- with the NPRA. It's not the -- and the reason
8 that it's at odds with the NPRA, Your Honor, is because it's not
9 the public's job to pay for a municipality like the City of
10 Henderson to conduct a privilege review.

11 Now, one of the issues that the -- that the City of
12 Henderson has presented is that this is a moot issue. Now,
13 granted, we have -- as we've acknowledged in our papers and as
14 discussed at length in the response by the City of Henderson, we
15 put forth this public records request. When we received the notice
16 from the City of Henderson that it wanted to charge these -- the
17 Review-Journal almost \$6,000, not even to provide copies of the
18 documents, but just to tell us whether they would even provide the
19 documents for the copies.

20 Ms. McLetchie, my law partner who is sitting with me at
21 counsel table, called the City of Henderson and attempted to work
22 this out. We attempted to come to an arrangement. We attempted to
23 ask them to reconsider the ordinance in the policy that they have
24 in place that is -- that they're relying on to charge this frankly
25 serious fee just to get copies of records. Just to -- not even to

1 get the copies, just to tell us if they'll give us the copies.

2 When Ms. McLetchie spoke to the City of Henderson, they
3 made their position very clear, and indeed as indicated in Exhibit
4 D to the City's response, they said, we believe that this policy is
5 proper, but it said the City is interested in having the Courts
6 provide clarity to the meaning and application of NRS 239.005 as
7 clear and concise guidance on these provisions would greatly
8 benefit both local governments.

9 So although we tried to work this out, once it became
10 clear that they're -- that the City of Henderson was not going to
11 rescind its policy and was not going to rescind its request for
12 this fee to conduct a privilege review, this litigation was
13 started.

14 After we started the litigation, Henderson and
15 Ms. McLetchie -- Ms. McLetchie had several phone calls -- I wasn't
16 on the calls, but I got to hear quite a few of them where she was
17 speaking sometimes to two or three attorneys at once trying to
18 resolve this. Eventually in December, they permitted our clients,
19 the reporter, to review the documents. They've never provided
20 copies. I mean, this is part of the --

21 THE COURT: Did you ask for copies?

22 MS. SHELL: We have asked for copies and we've asked --

23 THE COURT: Even copies of the ones that are not -- that they
24 claim privilege or have redacted some of them.

25 MS. SHELL: Correct.

1 THE COURT: And I think it's your Exhibit 7 to your petition;
2 is that right?

3 MS. SHELL: That includes some documents that they provided,
4 Your Honor.

5 THE COURT: I think your Exhibit 7 is the ones that we are
6 primarily in dispute; is that right?

7 MS. SHELL: I'm sorry, Your Honor. What was that?

8 THE COURT: Your Exhibit 7 to --

9 MS. SHELL: Yes --

10 THE COURT: -- those are the ones that you -- that are
11 primarily in dispute at this point; is that right?

12 MS. SHELL: That is part of the issue. There are still copies
13 that we've -- our reporter has reviewed some copies.

14 Now, they provided these -- Exhibit 7 were provided so
15 that we can review and assess the redactions that Henderson had
16 done.

17 THE COURT: All right. But --

18 MS. SHELL: So there are still copies of documents.

19 THE COURT: But when your reporter went to the City and
20 reviewed them I guess online; is that right? Some computer or
21 something?

22 MS. SHELL: They had made a computer available specifically
23 for just the review.

24 THE COURT: And did your reporter ask for copies of any of the
25 documents your reporter saw?

1 MS. SHELL: She did not because we still had this issue -- or
2 Ms. McLetchie may have an answer to that.

3 THE COURT: I think that they'll give those to you or I
4 thought that they would have.

5 MR. KENNEDY: Just for the record, that's correct. No copies
6 were requested or made.

7 THE COURT: Okay.

8 MS. McLETCHE: Your Honor, if I may so just to clarify what
9 we originally requested you have two rights under the Nevada Public
10 Records Act. You can request copies or you can request an in-
11 person inspection. We requested copies. What Mr. Reid offered and
12 what I accepted as an interim solution while this Court was
13 resolving issues, was to allow an in-person inspection.

14 Now, whether or not they would have made one or two
15 copies available at that inspection is frankly not -- is frankly
16 not the point, Your Honor. The point is that we wanted copies and
17 they said in order --

18 THE COURT: Do you still want the copies?

19 MS. McLETCHE: We would still have -- we would still like,
20 without the exorbitant charge, a USB drive with the documents
21 requested, yes, Your Honor.

22 THE COURT: If you wanted copies and they gave -- there's
23 69,000 pages according to what I read.

24 MR. KENNEDY: Right.

25 THE COURT: If you want 69,000 pages, I guess they can run

1 that off.

2 MS. McLETCHE: Well, Your Honor, the usual practice --

3 THE COURT: Do you want that?

4 MS. McLETCHE: Your Honor, at this point -- at this point we
5 don't need 69,000 pages printed out, but what -- what my reporter
6 wanted originally rather than have to go and spend almost a week, I
7 think, at Henderson's office and to review under difficult
8 circumstances, what we had asked for was the right to inspect --

9 THE COURT: But you still want the copies?

10 MS. McLETCHE: -- copies. We -- we that issue isn't moot,
11 Your Honor, because we requested copies. The usual --

12 THE COURT: So you still want the copies?

13 MS. McLETCHE: Your Honor, what -- what usually the practice
14 is, so I'm clear, is what the usual practice is is that they give
15 us a USB drive rather than allow -- rather than require us to come
16 in person and then everybody can avoid the expense of copies.

17 THE COURT: I'm a very old Judge. A USB drive?

18 MS. McLETCHE: I'm sorry, Your Honor.

19 MS. SHELL: It's like a little stick that you put in the
20 computer that's like --

21 THE COURT: Okay. I know what an email is, but I'm --

22 MS. McLETCHE: It's a -- it's a --

23 MS. SHELL: It's a portable storage device.

24 MS. McLETCHE: -- essentially instead of the old floppy
25 drives that we've had --

1 THE COURT: Okay.

2 MS. SHELL: -- or CDs --

3 THE COURT: It's the stick you stick in the computer?

4 MS. McLETTCHIE: Correct, Your Honor.

5 THE COURT: Okay.

6 MS. McLETTCHIE: And it's an easy way for us to solve some of
7 the logistical issues of providing copies, but from our position --

8 THE COURT: Are you -- are you willing to give them a USB
9 drive with all the documents?

10 MR. KENNEDY: Sure.

11 THE COURT: Okay. Well does that resolve --

12 MS. SHELL: It does not, Your Honor, and here's why it
13 doesn't.

14 THE COURT: Okay.

15 MS. SHELL: Because we still have this ordinance in place in
16 Henderson that is directly at odds with the NPRA. And, you know,
17 it's -- it's a bit of an old chestnut, but there is this rule of
18 construction called Dillon's Rule which says that when a
19 legislature evidences an intent to regulate a particular area of
20 law that you can't have a municipality, have a law that's at
21 conflict with the legislature's intent.

22 THE COURT: If they're willing to give you what you requested
23 on a drive rather than printing the paper, maybe we don't need to
24 get to the constitutionality of their rules. I mean, if they're
25 willing to give it to you that would resolve the case wouldn't it?

1 MS. SHELL: It would only revolve it with regards to this
2 particular issue --

3 THE COURT: Well, that's what we're worried about.

4 MS. SHELL: -- but this is -- this is something that is
5 capable of repetition and that is another issue that we have in
6 this matter. Is that this is --

7 THE COURT: Well, up until this case what I read was that you
8 guys had been cooperating and getting things back and forth -- or
9 at least getting things to the RJ when they requested it.

10 MS. SHELL: I don't think that there is -- this is not -- this
11 is not an issue, Your Honor, respectfully, where simply because you
12 have a pattern and practice of everything being okay most of the
13 time and then you have like this one incident that --

14 THE COURT: I'm just worried about this case. If they're
15 willing to give you the documents, I think that that ought to solve
16 it.

17 MS. SHELL: I understand your -- what you're saying, Your
18 Honor, but again our concern is that this will be an impediment in
19 future cases not just for the RJ.

20 THE COURT: Well, let's worry about the future cases when we
21 get there. That's for maybe a younger Judge.

22 MS. SHELL: Well, Your Honor, we are -- we are concerned that
23 this is something that is capable of repetition. And there's no
24 indication that they're going to rescind a policy which is at odds
25 with the NPRA.

1 THE COURT: I was -- I was led to believe that our hearing
2 today was to argue over the redacted documents that you have in --
3 that you attached to your petition.

4 MS. SHELL: Yes, we also have issues with the redactions, Your
5 Honor. And I won't -- I think I went through in detail in my reply
6 some of my issues with the redactions and the withholdings.

7 But, the thing to remember in NPRA cases dealing with the
8 Public Records Act is that the burden -- there's a presumption. We
9 start with a presumption under the law that records are public and
10 that they should be easily accessible. And that's a presumption
11 that can only be overcome by the government entity who wants to
12 withhold the documents. And they have to prove that by the
13 preponderance of the evidence.

14 And what we have here is an issue where in certain
15 instances -- and I would direct Your Honor's attention to the most
16 recent log, the third privilege log that was produced by the by the
17 City and that would be at --

18 THE COURT: That's your Exhibit 6.

19 MS. SHELL: It's actually, I was looking at the Exhibit H to
20 the -- I think it is our Exhibit 6, but it's also Exhibit H to the
21 City's response. And what we have here --

22 MR. KENNEDY: That is the most recent --

23 THE COURT: It's the same one. I've got it here.

24 MS. SHELL: Correct. It is the third privilege log. And we
25 have dozens of documents here where the -- there's a few different

1 categories, one of them is attorney-client privilege.

2 THE COURT: Right.

3 MS. SHELL: There are dozens of documents here where the City
4 has asserted they can't release the -- they won't release them
5 because of attorney-client privilege. However --

6 THE COURT: There's also the liberty of processed privilege a
7 confidential personal information which I guess would contain
8 social security numbers and things like that.

9 MS. SHELL: And, Your Honor, we don't contest that last
10 category. When it comes to personal identifying information, we
11 agree that those redactions are appropriate. Our concern comes
12 more with the assertions of attorney-client privilege, deliberative
13 process privilege, and, I believe, that -- yeah, those were the two
14 main categories of documents that were withheld.

15 Now when it comes to attorney-client privilege as I said
16 in our papers, attorney-client privilege needs to be construed
17 narrowly because it can be an impediment to open access to
18 documents and that's what the Supreme Court said in the *Whitehead*
19 case.

20 And the other thing that has been said by the Supreme
21 Court is you can't just -- this is a law in some ways like
22 discovery issue. You can't just put forth a boilerplate assertion
23 of privileged documents without providing more detail so that the
24 person requesting the document can assess whether that is an
25 appropriate withholding or redaction.

1 And what we have here with their third privilege log,
2 when you have these assertions of attorney-client privilege, it's
3 very generalized language that makes it impossible for the
4 Review-Journal to discern what exactly the nature of the
5 attorney-client privilege is.

6 You have dozens of them where it's just electronic
7 correspondence containing communication between attorney and staff
8 made for the purposes of facilitating legal -- the rendition of
9 professional legal services to the Troster contract terms.

10 I mean, it's so vague that it's essentially meaningless
11 to me. Like, every time I wrote that I didn't understand what that
12 meant. And that's part of the problem we don't know what those
13 documents are. If -- if --

14 THE COURT: What is the Troster contract?

15 MS. SHELL: Your Honor, Troster Communications was a
16 communications firm that had contracted for a period of time with
17 the City of Henderson to provide different services like public
18 relation services.

19 THE COURT: Did they have a contract?

20 MS. SHELL: As far as I know, they had a contract.

21 THE COURT: Well, the contract itself should be available to
22 you.

23 MR. KENNEDY: Correct. It's public record.

24 MS. SHELL: And that, Your Honor, there was actually one other
25 --

1 THE COURT: I guess, if there was negotiations involving that
2 contract and -- and staff was discussing what to offer or what to
3 agree to or how much to pay or something like that that probably
4 would be -- between the attorneys and the staff that would probably
5 be something that would be privileged, but there's an awful lot of
6 those same things, I agree with you.

7 MS. SHELL: Yes, Your Honor. I mean, to the extent that there
8 may be those documents. Those may be properly withheld, but it's
9 impossible to discern from their log what those documents are and
10 what they actually talk about. The actually -- and, Your Honor, I
11 actually --

12 THE COURT: How do I -- how do I resolve this?

13 MS. SHELL: I think the way to revolve it, Your Honor, is to
14 take the documents in camera and review them to see if they had
15 been properly withheld.

16 THE COURT: Well, they offered to give them to me in camera.
17 I was really excited about reading a couple hundred documents.

18 MR. KENNEDY: I'm sure -- I'm sure that you were.

19 MS. SHELL: Well, yeah, and Ms. McLetchie also pointed out
20 another thing would be, and it's actually what I put in the reply,
21 is that we need a better log so that we can assess the privilege
22 because they're asserting the privilege. It's their burden to
23 prove it. We can't tell if they're meeting their burden.

24 THE COURT: And that's true. I agree. They have to make a
25 demonstration and --

1 MS. SHELL: They also asserted deliberative privilege process,
2 Your Honor, as to a lot of the same documents, so. I just -- I had
3 only mentioned two categories.

4 THE COURT: I guess that deliberative privilege exception is
5 where you've got staff members discussing how they're going to
6 present something or give it to the commissioners to decide; is
7 that right?

8 MS. SHELL: Right. And that's not what the deliberative
9 process privilege is meant to encompass, Your Honor. And as I
10 pointed out, indeed, in one of the cases that is actually sighted
11 in Henderson's moving papers, the deliberative process privilege is
12 meant to apply to communications and records that deal with
13 significant policy judgments.

14 And there's no evidence when you look where they've
15 asserted, the -- you'll forgive me, Your Honor, as I flip back and
16 forth between these things -- the deliberative process privilege
17 one of the documents that they cite is electronic correspondence
18 containing mental impressions and strategy of city management
19 regarding preparation of public statement and comments on draft
20 statement. A public statement isn't a significant policy judgment
21 issue.

22 THE COURT: I guess it depends about what the statement is.

23 MS. SHELL: Well, and it's impossible -- frankly, Your Honor,
24 it's impossible to discern from the log what that policy statement
25 is.

1 THE COURT: I must confess I had not heard about the
2 deliberative privilege previously, so I wasn't very familiar with
3 it.

4 MS. SHELL: Your Honor, just -- and as another alternative to
5 in camera review, that -- your Court -- the Court could find that
6 they haven't met their burden and just direct the City of Henderson
7 to produce the records.

8 THE COURT: Okay.

9 MS. SHELL: All right. Your Honor, thank you.

10 THE COURT: Thank you.

11 MR. KENNEDY: Your Honor, with respect to the first issue and
12 that is the inspection and production of the documents. We
13 produced almost 70,000 pages. Nobody asked for a single copy of
14 anything and as we told the Court this morning, we're willing to
15 provide those.

16 THE COURT: Okay. Well, I guess they want them.

17 MR. KENNEDY: Well, okay. They didn't have to sue us to get
18 them.

19 THE COURT: We'll -- I'll accept that as a stipulation that
20 you will provide it within five days.

21 MR. KENNEDY: Yes. We will.

22 THE COURT: All right. Thank you. That will resolve that
23 issue.

24 MR. KENNEDY: Secondly, the Court is correct. With respect to
25 the argument about can you or can't you charge a fee, what can the

1 fee be, and all of that, we're just -- we're going to produce
2 these. That's really not an issue before the Court.

3 THE COURT: Well, at one time it was. You did request money
4 for privilege review. I don't know that the statute says you're
5 entitled to money for privilege review. Now, if it's an
6 extraordinary request, maybe that's part of it, but I -- that's
7 arguable either way.

8 MR. KENNEDY: It is arguable either way. Just -- the Court
9 doesn't have to decide it. The last issue is on the -- the
10 privilege law.

11 THE COURT: The privilege.

12 MR. KENNEDY: Okay. And the Nevada Supreme Court has dealt
13 with this. In the context of the Public Records Act in *Reno*
14 *Newspaper versus Gibbons* one of the questions before the Supreme
15 Court was, what do you have to put in this privilege log? Because
16 the statute says if -- you'll say we can't produce it, we give you
17 the reasons why, and cite the statute. That's -- that's what the
18 Public Records Act says. And the Nevada Supreme Court said, well,
19 exactly what do you have to tell the other party?

20 And the question involved the legendary Vaughn Index.
21 It's a federal case and it says under the Federal Act here's what
22 you have to do. The Supreme Court said, well, you don't have to do
23 a Vaughn Index 'cause every case is different. The Supreme Court
24 said, in order to -- and I'm reading out of the *Gibbons* case, in
25 order to preserve a fair adversarial environment, the log should

1 contain, at a minimum, a general factual description of each record
2 withheld and a specific explanation for nondisclosure. So describe
3 the document and tell us why you're not disclosing it.

4 So in our Exhibit H, what we did was we described the
5 document, by document number and a description of it, and then --
6 and, you know, who wrote it, who sent it, that, and then cited
7 whatever the -- whatever the reason for withholding was; either
8 attorney-client communication or the deliberative privilege. And
9 so that's what we did and that -- that satisfies the test in
10 *Gibbons*.

11 Now, in the next paragraph the Supreme Court in *Gibbons*
12 -- and this is at -- it's 127 Nevada Advance Opinion 79, I just
13 have the cite to the Pacific page it's at 884. The Supreme Court
14 said, and if that's not sufficient -- what is it, describe it, and
15 tell us why you're withholding it, Supreme Court said, if that's
16 not enough in order for a decision to be made, the Supreme Court
17 says, to the delight of trial Judges everywhere, in other words an
18 in camera review may be used to supplement a log, but it may not be
19 used as a substitute where a log is necessary. Which means provide
20 the log. If that's not good enough, then in camera review.

21 That's why we said in your response, we'll provide them
22 to the Court in camera. And that's what *Gibbons* says. If you look
23 at the log and you say, fine, I know what the document is, I know
24 what the privilege is, but I've got to look at it, then in camera
25 review --

1 THE COURT: My concern is that you have repeated kind of a
2 boilerplate explanation. It's fairly detailed, but it's still a
3 boilerplate explanation for an awful lot of documents.

4 MR. KENNEDY: Yeah. It is. And you know -- you know, Your
5 Honor, what the response to that is? It is in footnote three in
6 that *Gibbons* opinion, footnote three the Supreme Court addresses
7 that issue. And it says, you know what, you can't ask for too much
8 because if you give a little bit more, you're going to waive the
9 privilege.

10 And in footnote three, the Court says we understand that
11 problem. And so here's why we're deciding the case the way we do.
12 And in -- in footnote three they cite a couple cases which -- which
13 hold that which say you don't -- you don't have to go so far as to
14 endanger the privilege. So that's what we did. Said here's the
15 document attorney-client or deliberative and as the Supreme Court
16 said in *Gibbons*, we'll give them to the Court in camera if that's
17 necessary.

18 And so what we did was really strictly complied with the
19 Public Records Act as the Supreme Court interpreted it in *Gibbons*.
20 As I said, much to the delight of trial Judges everywhere, but that
21 is -- that is what the Supreme Court said so that's why we did what
22 we did.

23 And those are -- those are all the points I want to make.
24 Okay. Thank you.

25 MS. SHELL: Thank you, Your Honor, I just have a couple of

1 brief points. The first thing that I would to say is Mr. Kennedy
2 said we didn't have to sue to get these records. Clearly we did
3 because this is the first time we've been given an -- they've told
4 us they're going to give us a USB drive so obviously we did have to
5 bring this case to the Court.

6 THE COURT: That's done.

7 MS. SHELL: Yeah. And, Your Honor, in terms of the privilege
8 log, there's actually on the next page of the *Gibbons* opinion so
9 that would be the Pacific Reporter on page 885, what *Gibbons* says,
10 and I think it echoes what Your Honor's concerns were, we cannot
11 conclude that merely pinning a string of citations to a boilerplate
12 declaration of confidentiality satisfies the State's prelitigation
13 obligation under NRS 239.0107 to cite specific authority that makes
14 the public book or record a part or a part thereof confidential.

15 And in fact, I actually believe, Your Honor, although
16 it's been an hour or two since I read the *Gibbons* opinion, that in
17 *Gibbons* the Supreme Court actually told the State to go and revise
18 its privilege log to provide more information. And we're in the
19 same situation here where we don't have sufficient --

20 THE COURT: Well, 'cause I didn't go back and read the *Gibbons*
21 case. I know that you both referenced it, but I didn't go back and
22 read it. What was the explanation offered in the *Gibbons* case that
23 was insufficient?

24 MS. SHELL: I believe those -- some of those fell under -- and
25 forgive me, Your Honor, this was in the *Gibbons* case, the Reno

1 Newspapers had asked for emails between then Governor Jim Gibbons
2 and a series of individuals. And there were I believe -- I
3 believe, gosh, Maggie, do you remember?

4 THE COURT: I mean --

5 MS. SHELL: I don't recall the nature --

6 THE COURT: Was it as detailed as these explanations here?

7 MR. KENNEDY: No.

8 THE COURT: -- that electronic correspondence containing
9 communication between attorney and staff made for the purpose of
10 facilitating the rendition of professional services re Trosper
11 contract terms.

12 MR. KENNEDY: Right.

13 MS. SHELL: Your Honor, I --

14 THE COURT: It's fairly detailed. I mean, if it's true it
15 would be a --

16 MS. McLETTCHIE: Your Honor, if I recall and, I don't --
17 unfortunately, we don't have the case in front of us, but if I
18 recall, the issue that they came up with is the same issue that we
19 had here in that regardless of whether it took the form of a log or
20 a declaration, the issue was that it was just boilerplate and there
21 is the balancing act that Mr. Kennedy mentioned, but you still have
22 to provide -- and this is what the *Gibbons* Court said, you still
23 have to provide enough information so that the other side can
24 ascertain whether or not the privilege is properly being brought.

25 THE COURT: If -- if you're --

1 MS. McLETTCHIE: And both we and Your Honor had some confusion
2 --

3 THE COURT: If these statements are accurate, I would think
4 that the privilege is -- I mean, the privilege is validly claimed.
5 Now, if you claim that the privilege isn't accurate, then I have to
6 look at it to see if it's accurate.

7 MS. McLETTCHIE: We have to -- I'm sorry, go ahead, Ms. Shell.

8 MS. SHELL: It's impossible because it is when you look at
9 when they say facilitating the rendition of professional legal
10 services, that is -- we just can't tell. I mean frankly it's just
11 -- it's difficult to discern because that is taken directly from
12 the statute. That's not actually a descriptor. So that's why we
13 can't tell if the privilege is being properly asserted and that's
14 why --

15 THE COURT: Well, the only way to know is to look at the
16 document.

17 MS. SHELL: That's correct, Your Honor.

18 THE COURT: You want me to do that?

19 MS. SHELL: I believe we would, Your Honor.

20 MS. McLETTCHIE: We would also ask that the log also be updated
21 so that they better describe the documents so we can match up just
22 provide enough information to us to see --

23 THE COURT: The documents are copied in this Exhibit 7 aren't
24 they?

25 MS. McLETTCHIE: Some of them are, Your Honor. They both

1 withheld documents and they redacted documents. So there's some
2 that were provided and there are some that were withheld in their
3 entirety, but we need more of an explanation --

4 THE COURT: Well, I looked up, for example, the very first one
5 which was log number three, it's so small I can't read it.

6 MS. McLETTCHIE: Your Honor, we need more information --

7 THE COURT: Maybe it's my poor eyes, but I --

8 MS. SHELL: Yeah.

9 MS. McLETTCHIE: -- about either the nature of what was
10 redacted or the nature of the document that was withheld so that we
11 can tell at least whether or not the privilege applies.

12 THE COURT: Okay.

13 MS. SHELL: And unless Your Honor has any further questions?

14 THE COURT: Anything further?

15 MR. KENNEDY: I can answer your question about *Gibbons*.

16 THE COURT: Okay. What did they -- what were they?

17 MR. KENNEDY: In *Gibbons*, they didn't give a log. They just
18 gave a statement. This is at --

19 THE COURT: What was the statement?

20 MR. KENNEDY: -- 876 in the Pacific third cite. The State
21 informed the RGJ, the Reno Gazette Journal, that all of the
22 requested emails were confidential because they were either
23 privileged or not considered public records. The Review-Journal
24 repeated its request for a log containing a description of each
25 individual email so it could assess whether to challenge the

1 State's classification. No log in that case, so.

2 THE COURT: So they didn't have the statement that you have
3 given here?

4 MR. KENNEDY: That is correct.

5 THE COURT: Okay.

6 MR. KENNEDY: That is correct. And that was, of course, that
7 was the problem. You just --

8 THE COURT: Well, unless there's some indication that they --
9 that the City has misrepresented what these are, I think this is an
10 adequate description of the privilege.

11 MS. McLETCHIE: Your Honor, if I may, I think the whether it
12 was -- whether it's on a log and separated out by document or
13 whether it's in a declaration as it was in the *Gibbons* case, we
14 have the same problem because we don't have enough information to
15 ascertain whether or not the privilege is properly brought.

16 We're not supposed to be in a situation where we're
17 supposed to assume that they're properly bringing the privilege and
18 that we somehow have to figure out which we can't do without more
19 information.

20 THE COURT: If this is all the *Gibbons* case requires, I think
21 they've satisfied it.

22 MS. McLETCHIE: They don't just require a log, they require
23 enough information so that we can ascertain whether or not the
24 privilege is properly being brought and that's --

25 THE COURT: I think this is enough information.

1 MS. McLETTCHIE: Your Honor, I respectfully disagree. And if I
2 may raise just one last issue with regard to the declaratory relief
3 and the injunctive relief. I do just want to make one last pitch.
4 I've heard Your Honor's position, but my -- my view is that they
5 shouldn't -- the public's entitled to clarity.

6 There's an ordinance and there's a policy in Henderson
7 right now that is at odds with the NPRA for two reasons. Both
8 because they're applying it to allow for fees for things like
9 privilege review and because the figure, the per page number is
10 higher --

11 THE COURT: They're not arguing for any more money. They're
12 not going to -- they're not going to ask you for any money.

13 MS. McLETTCHIE: Then I would ask that they -- that they
14 voluntarily rescind that policy.

15 THE COURT: Well, that's -- we'll worry about it at the next
16 case. But, they're going to give you a stick -- what do you call
17 it?

18 MS. SHELL: A USB drive, Your Honor.

19 THE COURT: USB drive with the 69,000 pages on it and I'm
20 going to deny the rest of the petition.

21 MR. KENNEDY: Very good.

22 THE COURT: I need an order to that effect.

23 MR. KENNEDY: I will prepare the order and run it by counsel.

24 THE COURT: Send it by counsel.

25 MS. McLETTCHIE: Thank you, Your Honor.

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MR. KENNEDY: Surely.

THE COURT: Have a good day.

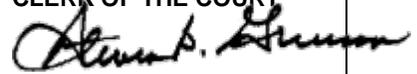
[Proceedings concluded at 9:29 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Jennifer P. Gerold
Court Recorder/Transcriber



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12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 LAS VEGAS REVIEW-JOURNAL,
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16 Petitioner,
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18 vs.
19 CITY OF HENDERSON,
20 Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that an Order denying Petitioner's request for a writ of mandamus,
23 injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition
24 was entered on May 12, 2017.

25 ///
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A true and correct copy is attached.

DATED this 15th day of May, 2017.

BAILEY ❖ KENNEDY

By: /s/ Dennis L. Kennedy
DENNIS L. KENNEDY

and

JOSH M. REID, City Attorney
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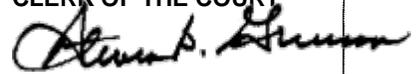
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 15th day of May, 2017, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

MARGARET A. MCLETCHIE	Email: Alina@nvlitigation.com
ALINA M. SHELL	Maggie@nvlitigation.com
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701 East Bridger Avenue, Suite 520	<i>Attorneys for Petitioner</i>
Las Vegas, Nevada 89101	LAS VEGAS REVIEW-JOURNAL

/s/ Josephine Baltazar
Employee of BAILEY ❖ KENNEDY



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15 CITY OF HENDERSON

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 LAS VEGAS REVIEW-JOURNAL,
15
16 Petitioner,
17
18 vs.
19
20 CITY OF HENDERSON,
21
22 Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

21 The Amended Public Records Act Application/Petition for Writ of Mandamus/Application
22 for Declaratory Relief (the "Petition") of Petitioner Las Vegas Review Journal (the "LVRJ") came
23 on for hearing at 9:00 a.m. on March 30, 2017 on expedited basis pursuant to NRS 239.011; the
24 LVRJ was represented by Alina Shell and Margaret A. McLetchie; Respondent City of Henderson
25 (the "City") was represented by Dennis L. Kennedy of Bailey ❖ Kennedy, City Attorney Josh M.
26 Reid and Assistant City Attorney Brian R. Reeve; the Court having read the pleadings and
27 memoranda filed by the parties, having considered the evidence presented and having heard the
28 argument of counsel, hereby ORDERS AS FOLLOWS:

BAILEY ❖ KENNEDY
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1 1. The Petition presents three principal issues: (i) preparation and access to public
2 records; (ii) assessing costs and charging fees for copying and preparing public records; and (iii)
3 withholding and redacting certain records.

4 2. Preparation and Access to Records. In response to the LVRJ’s public record request,
5 the City performed a search that returned 9,621 electronic files consisting of 69,979 pages of
6 documents. Except for the items identified on the City’s withholding log (discussed in paragraph 4,
7 below), all such files and documents (the “Prepared Documents”) were prepared by the City, and
8 LVRJ had access to and inspected the Prepared Documents prior to the hearing. Following its
9 inspection, LVRJ made no request for copies of the Prepared Documents; however, following
10 LVRJ’s counsel’s representations at the hearing that it also wanted electronic copies of the Prepared
11 Documents, the City agreed to provide electronic copies of the Prepared Documents. The City has
12 complied with its obligations under the Nevada Public Records Act (the “NPR A”).

13 3. Costs and Fees. The City has provided the Prepared Documents without charging
14 costs or fees to the LVRJ. Therefore, LVRJ’s claims regarding the propriety of charging such costs
15 and fees are moot, and the Court does not decide them.

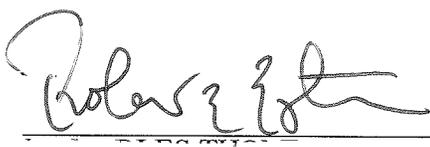
16 4. Withheld Documents. The sole issue decided by the Court concerns certain
17 documents the City withheld and/or redacted (the “Withheld Documents”) on the grounds of
18 attorney-client or deliberative process privilege. The operative privilege log (the “Privilege Log”)
19 was attached as Exhibit “H” to the City’s Response to the Petition. The Court finds the Privilege
20 Log to be timely, sufficient and in compliance with the requirements of the NPR A, and therefore
21 DENIES the LVRJ’s Amended Petition concerning the Withheld Documents.

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5. CONCLUSION. Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition is hereby DENIED.

DATED this ____ day of April, 2017.



Submitted by:
BAILEY ♦ KENNEDY

Approved as to Form and Content:
MCLETCHIE SHELL LLC

By: 

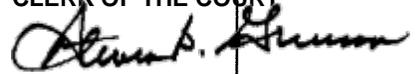
By: _____
ALINA SHELL
MARGARET A. MCLETCHIE

and
JOSH M. REID, City Attorney
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Attorneys for Petitioner
LAS VEGAS REVIEW JOURNAL

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9 *Counsel for Petitioner*

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

9 LAS VEGAS REVIEW-JOURNAL

10 Petitioner,

11 vs.

12 CITY OF HENDERSON,

13 Respondent.

Case No.: A-16-747289-W

Dept. No.: XVIII

PETITIONER LAS VEGAS
REVIEW-JOURNAL'S MOTION
FOR ATTORNEY'S FEES AND
COSTS

14
15 COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"),
16 by and through its undersigned counsel, hereby moves this Court to award the Review-
17 Journal its reasonable costs and attorneys' fees as the prevailing party in the above-
18 captioned action. The Review-Journal is entitled to its fees and costs pursuant to Nev. Rev.
19 Stat. §§ 18.010(2)(b) and 239.011(2).

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1 This Motion is made pursuant to Nev. Rev. Stat. Chapter 239 and Nev. R. Civ. P.
2 54(d)(2)(B), and is based on the following Memorandum of Points and Authorities, any
3 attached exhibits, the attached Declaration of Attorney Margaret A. McLetchie, the papers
4 and pleadings already on file herein, and any oral argument the Court may permit at the
5 hearing of this Motion.

6 DATED this 1st day of June, 2017.

7
8 /s/ Margaret A. McLetchie

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that the foregoing Motion will be brought for hearing on the 06 day of July, 2017 at the hour of 9:00 A.m., or as soon thereafter as the matter can be heard.

DATED this 1st day of June, 2017.

/s/ Margaret A. McLetchie
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ALINA M. SHELL, Nevada Bar No. 11711
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Email: maggie@nvlitigation.com
Counsel for Petitioner

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Because the Review-Journal is the prevailing party in this action, it is entitled to
3 recover fees and costs pursuant to Nev. Rev. Stat. § 18.010(2)(b). The total requested fees
4 are \$30,931.50, and the final requested costs are \$902.84. The billable time and costs for the
5 Review-Journal’s attorneys’ fees are more particularly set forth in the attached declaration
6 of Ms. McLetchie and supporting exhibit(s).

7 **I. PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS**

8 **A. Facts Regarding the Review-Journal’s Public Records Request.**

9 On or around October 4, 2016, Review-Journal reporter Natalie Bruzda sent the
10 City of Henderson (“Henderson”) a request pursuant to the Nevada Public Records Act, Nev.
11 Rev. Stat. § 239.001 *et seq.* (“NPRO”) seeking certain documents dated from January 1, 2016
12 pertaining to Trospier Communications and its principal, Elizabeth Trospier (the “Request”).
13 Trospier Communications is a communications firm that had a contract with the City of
14 Henderson and has assisted with the campaigns of elected officials in Henderson. The request
15 was directed to Henderson’s Chief Information Officer and the Director of
16 Intergovernmental Relations. (*See* Exh. 1 to Amended Petition.)

17 On October 11, 2016, Henderson provided a partial response (“Response”), a true
18 and correct copy of which is attached to the Amended Petition as Exhibit 2. This Response
19 failed to provide timely notice regarding any specific confidentiality or privilege claim that
20 would limit Henderson in producing (or otherwise making available) all responsive
21 documents. Instead, in its Response, Henderson indicated that it was “in process of searching
22 for and gathering responsive e-mails and other documents” but that “[d]ue to the high number
23 of potentially responsive documents that meet your search criteria (we have approximately
24 5,566 emails alone)¹ and the time required to review them for privilege and confidentiality,

25
26 _____
27 ¹ During the course of litigation and discussions with Henderson regarding the records
28 request after the Petition in this matter was filed, Henderson determined it had 69,979 pages
of documents that were responsive to the Review-Journal’s request. (*See* Henderson
Response to Amended Petition at p. 2:3.)

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1 we estimate that your request will be completed in three weeks from the date we commence
2 our review.” (Exh. 2 to Amended Petition.) In addition to stating that it would need additional
3 time, Henderson demanded payment of almost \$6,000.00 to continue its review. (*See id.*)

4 Henderson also demanded the Review-Journal pay its assistant city attorneys to
5 review documents to determine whether they could even be released. The Response made
6 clear that Henderson would not continue searching for responsive documents and reviewing
7 them for privilege without payment, and demanded a “deposit” of \$2,893.94, explaining that
8 this was its policy:

9 Under the City’s Public Records Policy, a fifty percent deposit of fees is
10 required before we can start our review. Therefore, please submit a check
11 payable to the City of Henderson in the amount of \$2,893.94. **Once the
12 City receives the deposit, we will begin processing your request.**

12 (*Id.*)

13 Henderson informed the Review-Journal that it would not release any records until
14 the total final fee was paid. The Response also stated:

15 When your request is completed, we will notify you and, once the remained
16 [sic] of the fee is received, the records and any privilege log will be released
17 to you.

18 (*Id.*) Henderson’s pertinent policy—Henderson Municipal Code § 2.47.085—appears as
19 Exhibit 4 to the Amended Petition.

20 **B. Facts Regarding the Litigation Over the Review-Journal’s Public Records
21 Request**

22 When an informal effort to resolve this dispute failed, the Review-Journal filed a
23 Petition for Writ of Mandamus with this Court on November 29, 2016. After the Review-
24 Journal filed its initial Petition, counsel for the Review-Journal and attorneys with the
25 Henderson City Attorney’s Office conferred extensively regarding the NPRA request.

26 (McLetchie Dec. ¶ 2.)²

27 ² As described in the Review-Journal’s Reply to Henderson’s Response to its Amended
28 Petition and supporting Memorandum, counsel for the Review-Journal exchanged numerous
emails with Henderson City Attorneys, and also conferred extensively with City Attorneys
regarding the records request. (See Declaration of Margaret A. McLetchie in Support of
Reply to Response to Amended Petition at ¶¶ 8-22.)

1 On December 20, 2016, Henderson provided the Review-Journal with an initial list
2 of documents it was redacting or withholding. (*See* Exh. 4 to Amended Petition.) After
3 negotiations with counsel for the Review-Journal, Henderson also agreed to make the
4 requested documents available to the Review-Journal reporter for inspection. (*See* February
5 8, 2017 McLetchie Declaration in Support of Amended Petition at ¶ 9.) It did so free of
6 charge. (*Id.*) That inspection took place on over the course of several days. (*See id.* at ¶ 20.)

7 After requests from the undersigned, Henderson provided an additional privilege
8 log on January 9, 2017. (*See* Exh. 5 to Amended Petition.) In that log, Henderson provided
9 a description of the documents being withheld or redacted, and the putative authority for
10 withholding or redaction. (*Id.*) The log also indicated who sent and received the emails
11 responsive to the NPRA request, but in instances where the sender or recipient was a city
12 attorney or legal staff, the log did not identify the attorney or staff person. (*Id.*) That same
13 day, counsel for the Review-Journal, after reviewing the privilege log, asked Henderson to
14 revise its log to include the names of the attorneys and legal staff, and to also include the
15 identities of all recipients of the communications. (*See* February 8, 2017 McLetchie
16 Declaration in Support of Amended Petition at ¶¶ 12, 13.)

17 On January 10, 2017, Henderson provided the Review-Journal with a revised
18 privilege log (“Revised Log;” Exh. 6 to Amended Petition), as well as a number of redacted
19 documents corresponding to the log (Exh. 7 to Amended Petition.) In the Revised Log,
20 Henderson included a description of the senders and recipients of withheld or redacted
21 documents.

22 The Review-Journal filed an Amended Petition and a supporting Memorandum on
23 February 8, 2017. In the Amended Petition and Memorandum, the Review-Journal asserted
24 that Henderson’s attempt to charge it for a privilege review of the requested documents
25 violated the NPRA because the Act does not permit a governmental entity to charge a
26 requestor for a privilege review. (*See* Memorandum at pp. 5:23-6:22.) The Review-Journal
27 additionally asserted that Henderson Municipal Code § 2.47.085 and Henderson’s Public
28 Records Policy conflicted with the NPRA’s limitations in Nev. Rev. Stat. § 239.055(1) on

1 the fees a governmental entity can charge for extraordinary use of personnel. (*Id.* at pp. 6:23-
2 7:22.)

3 In its Amended Petition, Review-Journal requested (1) that the Court issue a writ
4 of mandamus requiring Henderson to immediately make available all records the Review-
5 Journal had previously requested but had been withheld and/or redacted; (2) injunctive relief
6 prohibiting Henderson from applying the provisions of Henderson Municipal Code §
7 2.47.085 and the Henderson Public Records Policy to demand fees in excess of those
8 permitted by the NPRA; (3) declaratory relief stating that Henderson Municipal Code §
9 2.47.085 and the City of Henderson’s Public Records Policy invalid to the extent they
10 provide for fees in excess of those permitted by the NPRA; and (4) declaratory relief limiting
11 Henderson to charging fees for extraordinary use of personnel to fifty cents per page and
12 limiting Henderson from demanding fees for attorney review. (Amended Petition at pp. 12:7-
13 13:3.) Henderson filed a response to the Amended Petition and Memorandum on March 8,
14 2017. The Review-Journal filed a reply on March 23, 2017.

15 Subsequently, on March 30, 2017, this Court conducted a hearing on the Review-
16 Journal’s Amended Petition. At that hearing, at the request from counsel for the Review-
17 Journal and the Court, counsel for Henderson finally agreed to provide the Review-Journal
18 a USB drive with copies of the requested documents. (Exh. 1 (Transcript of March 30, 2017
19 hearing) at p. 8:8-10.) At the conclusion of the hearing, this Court directed Henderson to
20 provide the Review-Journal with a “USB drive with the 69,000 pages [of requested
21 documents] on it.” (*Id.* at p. 24:15-20.)

22 On May 15, 2017, the Court entered an order denying the Review-Journal’s request
23 for a writ of mandamus, injunctive relief, and declaratory relief. In that order, however, the
24 Court noted that at the hearing, Henderson finally agreed to provide electronic copies of
25 69,979 pages of documents that were responsive to the Review-Journal’s public records
26 request. (Order at p. 2, ¶ 2.)

27 ///
28 ///

1 **II. LEGAL ARGUMENT**

2 **A. Legal Standard for Reasonable Attorneys' Fees.**

3 Recovery of attorney fees as a cost of litigation is permissible by agreement, statute,
4 or rule. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35
5 P.3d 964, 969 (2001). In this case, recovery of attorneys' fees is authorized by statute.
6 Nevada's Public Records Act [NPRa] provides that "...[i]f the requester prevails, the
7 requester is entitled to recover his or her costs and reasonable attorney's fees in the
8 proceeding from the governmental entity whose officer has custody of the book or record."
9 Nev. Rev. Stat. § 239.011 (2). As the Nevada Supreme Court has explained, "...by its plain
10 meaning, this statute grants a requester who prevails in NPRa litigation the right to recover
11 attorney fees and costs, without regard to whether the requester is to bear the costs of
12 production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615
13 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015). The
14 Court went on to explain that a party need only prevail on "any significant issue":

15 A party prevails "if it succeeds on *any significant issue* in litigation which
16 achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n*
17 *v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added)
18 (internal quotations omitted). To be a prevailing party, a party need not
19 succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103
20 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that "a plaintiff [can be]
21 deemed 'prevailing' even though he succeeded on only some of his claims
22 for relief").

20 *Id.* at 615; *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 628–
21 29, 6 P.3d 465, 473 (2000) (reversing an order denying access and remanding to district court
22 to award fees).³

23 ///

24 ///

25
26 _____
27 ³ Other Nevada Supreme Court cases likewise make clear that a party who substantially
28 prevailed is entitled to recoup all attorney's fees and costs, even if they did not ultimately
succeed on all claims. *See, e.g., University of Nevada v. Tarkanian*, 110 Nev. 581, 595-598,
879 P.2d 1180, 1189-90 (1994).

1 **B. The Review-Journal is the Prevailing Party.**

2 As noted above, the Nevada Supreme Court has held that a party is the prevailing
3 party if it “succeeds on any significant issue in litigation which achieves some of the benefit
4 it sought in bringing suit.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198,
5 1200 (2005) (quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343
6 P.3d 608, 615. As discussed in the factual and procedural history above, although the
7 Review-Journal did not obtain all the information or it sought in this litigation, Henderson
8 did not produce a substantial amount of the records the Review-Journal had sought until the
9 Court directed it to do so. The Review-Journal is therefore the prevailing party in this case,
10 which has yielded the production of 69,979 pages of additional documents. Furthermore, the
11 issues raised by the Review-Journal that were not successful were not frivolous, and the work
12 was all interrelated. *See, e.g., Braunstein v. Arizona Dep’t of Transp.*, 683 F.3d 1177, 1187
13 (9th Cir. 2012).

14 As the United States Supreme Court explained in *Hensley v. Eckerhart*, 461 U.S.
15 424, 440 (1983), “[w]here a lawsuit consists of related claims, a plaintiff who has won
16 substantial relief should not have his attorney’s fee reduced simply because the district court
17 did not adopt each contention raised.” *Accord Cinevision Corp. v. City of Burbank*, 745 F.2d
18 560, 581 (9th Cir. 1984). In the context of a Lanham Act case, United States District Court
19 Judge Phillip M. Pro explained:

20 In evaluating the results obtained, the Court should be mindful that while in
21 some cases the claims upon which the plaintiff prevailed may be discrete
22 from those on which the plaintiff did not prevail, “[i]n other cases the
23 plaintiff’s claims for relief will involve a common core of facts or will be
24 based on related legal theories.” *Hensley*, 461 U.S. at 435, 103 S.Ct. 1933.
25 In cases where the claims for relief are related, “[m]uch of counsel’s time
26 will be devoted generally to the litigation as a whole, making it difficult to
27 divide the hours expended on a claim-by-claim basis.” *Id.*

28 *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 915 F. Supp. 2d 1179, 1188 (D. Nev.
2013), *aff’d*, 778 F.3d 1059 (9th Cir. 2015).

 In the Ninth Circuit, courts apply a two-part analysis to determine whether fees can
be recovered for issues on which a party was unsuccessful. *Thorne v. City of El Segundo*,

1 802 F.2d 1131, 1141 (9th Cir.1986). “First, the court asks whether the claims upon which
2 the [party] failed to prevail were related to the [party’s] successful claims. If unrelated, the
3 final fee award may not include time expended on the unsuccessful claims.” *Id.* (citing
4 *Hensley*, 461 U.S. at 434–35). If the claims are related, then the court considers the
5 “significance of the overall relief obtained by the [party] in relation to the hours reasonably
6 expended on the litigation.” *Id.* If the party “obtained ‘excellent results,’ full compensation
7 may be appropriate, but if only ‘partial or limited success’ was obtained, full compensation
8 may be excessive.” *Id.*

9 In this instance, all the Review-Journal’s claims centered on a common core of facts
10 and law: attempting to obtain access to public records regarding Henderson’s dealings with
11 Trospen Communications and its principal, Elizabeth Trospen. After Henderson steadfastly
12 refused to provide the documents without charging exorbitant fees for privilege review by its
13 attorneys, the Review-Journal was forced to file a petition with this Court seeking a writ
14 directing Henderson to comply with its obligations under the NPRA. It was only after the
15 Review-Journal submitted its Petition, filed an Amended Petition, completed briefing in
16 support of its Petition, and prepared for and attended a hearing before this Court that
17 Henderson finally agreed to produce documents it had requested. Although the Court denied
18 the Review-Journal the relief it requested in its Amended Petition, the fact remains that the
19 Review-Journal was forced to petition the Court for extraordinary relief to finally get
20 Henderson to comply with its obligations under the NPRA to produce the requested public
21 records. Thus, the Review-Journal is the prevailing party in this matter.

22 **C. The Review-Journal’s Attorney Fees Are Reasonable and Fully Documented**

23 **1. The Review-Journal’s Attorneys’ Fees Are Reasonable.**

24 Any fee-setting inquiry begins with the calculation of the “lodestar:” the number of
25 hours reasonably expended multiplied by a reasonable hourly rate. *See, e.g., Blum v. Stenson*,
26 465 U.S. 886, 896-97 (1984); *accord Herbst v. Humana Health Ins. of Nevada*, 105 Nev.
27 586, 590, 781 P.2d 762, 764 (1989). Relevant factors include the preclusion of other
28 employment by the attorney due to acceptance of the case; time limitations imposed by the

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client or the circumstances; the amount involved and results obtained; the undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th Cir.1975). In most cases, the lodestar figure is a presumptively reasonable fee award. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).

2. The Review-Journal is Entitled to a Full Award of Attorneys’ Fees for All the Work Performed by Its Attorneys.

The Review-Journal anticipates Henderson may assert that any fees awarded in this case should be reduced to reflect that the Review-Journal did not prevail in obtaining the precise order it sought regarding the release of public records related to witness payments. However, where, as here, the claims asserted by the Review-Journal in its petition for a writ of mandamus—and the work done to obtain full disclosure of the records regarding witness payments—are so interrelated that this Court should not separate those claims for the purposes of awarding attorneys’ fees. The Review-Journal obtained access to the withheld records—both via inspection and a USB drive—after filing suit.

As the Ninth Circuit has explained in the context of § 1983 cases, “where a plaintiff in a § 1983 action alleges multiple interrelated claims based on the same underlying facts, and some of those claims are frivolous and some are not, a court may award defendants attorney’s fees with respect to the frivolous claims only when those claims are not ‘intertwined.’” *Harris v. Maricopa Cnty. Superior Court*, 631 F.3d 963, 971 (9th Cir.2011); accord *Fox v. Vice*, 563 U.S. 826, 839-40 (2011) (discussing the “interrelated[ness]” of plaintiffs’ frivolous and non-frivolous claims); see also *McCown v. City of Fontana*, 711 F. Supp. 2d 1067, 1070 (C.D. Cal. 2010), aff’d, 464 F. App’x 577 (9th Cir. 2011) (holding that although the plaintiff’s claims involved “different legal theories against different defendants,” the court “should not attempt to divide the request for attorney’s fees on a claim by claim basis” because each of claims “arose from a common core of facts”); cf. *Cain v. J.P. Prods.*, 11 F. App’x 714, 716 (9th Cir. 2001) (holding that, in the context of a Lanham Act case, “no apportionment was needed because the claims are so inextricably intertwined

1 that even an estimated adjustment would be meaningless”) (citing *Gracie v. Gracie*, 217 F.3d
2 1060, 1068, (9th Cir.2000); other citation omitted).

3 The Review-Journal is the prevailing party in this litigation, which has yielded the
4 production of 69,979 pages of additional documents. Furthermore, the issues raised by the
5 Review-Journal that were not successful were not frivolous, and the work was all interrelated.
6 See, e.g., *Braunstein v. Arizona Dep’t of Transp.*, 683 F.3d 1177, 1187 (9th Cir. 2012).
7 Accordingly, the Review-Journal is entitled to an award of attorneys’ fees for all the work
8 performed in this case.

9 **3. The Brunzell Factors**

10 In addition to calculating the lodestar, a court must also consider the requested
11 amount in light of the factors enumerated by the Nevada Supreme Court in *Brunzell v.*
12 *Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Pursuant to *Brunzell*, a court must
13 consider four elements in determining the reasonable value of attorneys’ services:

- 14 (1) the qualities of the advocate: his ability, his training, education,
15 experience, professional standing and skill; (2) the character of the work to
16 be done: its difficulty, its intricacy, its importance, time and skill required,
17 the responsibility imposed and the prominence and character of the parties
18 where they affect the importance of the litigation; (3) the work actually
performed by the lawyer: the skill, time and attention given to the work; (4)
the result: whether the attorney was successful and what benefits were
derived.

19 *Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (citation omitted); accord *Shuette v. Beazer Homes*
20 *Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

21 **a. The Review-Journal Seeks Fees for a Reasonable Number of
Hours, and Exercised Appropriate Billing Judgment.**

22 Pursuant to Nev. R. Civ. P. 54(d)(2)(B), statements “swearing that the fees were
23 actually and necessarily incurred and were reasonable” are set forth in the attached
24 declaration of Margaret A. McLetchie (“McLetchie Decl.”) and supported by the billings for
25 the Review-Journal’s attorney fees and costs attached hereto as Exhibits 4, 5, and 6.

26 The litigation in this matter was complex and time-consuming. As noted above,
27 counsel for the Review-Journal met and conferred extensively with Henderson City
28 Attorneys regarding the records request—both before and after filing the Petition in this

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matter. In addition, the Review-Journal was obligated to brief the matter extensively, including amending the Petition after receiving additional records and information from Henderson, and then filing extensive pleadings in support of the Amended Petition.

The Review-Journal’s counsel exercised appropriate billing judgment and structured work on this case to maximize efficiencies, and the hours listed in the fee request are neither duplicative, unnecessary nor excessive. (Declaration of Margaret A. McLetchie at ¶ 12.) *See also Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) (“Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.”).

To keep billing as low as possible, Ms. Shell conducted work where appropriate. Further, counsel utilized a student law clerk and a paraprofessional to perform tasks such as research and organization to assure that attorneys with higher billing rates were not billing for tasks that lower billers could perform. (McLetchie Decl. at ¶ 14.) Potentially duplicative or unnecessary time has not been included. (*Id.* at ¶ 15.) In all these ways, counsel for the Review-Journal has charged a reasonable and reduced rate for the attorneys’ time. (*Id.* at ¶¶ 3, 6.) Counsel also exercised appropriate billing judgment by *not* including in this application certain time, even time which would likely be compensable. (*Id.* at ¶ 16.) The description of costs and fees in this case also excludes all time spent working on this Motion, or as will be necessary to Reply to any Opposition to this Motion. (*Id.* at ¶ 17.)

b. An Analysis of the *Brunzell* Factors Supports the Award of the Fees the Review-Journal Seeks.

As discussed above, the Nevada Supreme Court’s opinion in *Brunzell* sets forth a number of factors that should be used to determine whether a requested amount of attorney fees is reasonable. *See Brunzell*, 85 Nev. 345, 349, 455 P.2d 31, 33. Each of these factors supports the amount sought.

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///

1 practice in June 2015, Ms. Shell has represented plaintiffs in state and federal court in civil
2 matters, including several civil rights cases. Ms. Shell has also represented the Review-
3 Journal in both state and federal court in public records matters. Ms. Shell's time on this case
4 was billed at the rate of \$300.00 per hour, for a total of \$11,280.00.

5 Gabriel Czop, working a total of 15.70 credited hours on this case, is a law clerk at
6 McLetchie Shell, and is enrolled and in good academic standing at the William S. Boyd Law
7 School at the University of Nevada Las Vegas. Mr. Czop's time on this case was billed at
8 the rate of \$125.00 per hour, for a total billed of \$1,962.50.

9 Pharan Burchfield, working a total of 5.80 credited hours on this case, is a
10 paraprofessional at McLetchie Shell. Ms. Burchfield has an associate's degree in paralegal
11 studies, and has been a paralegal for three years. Ms. Burchfield's time on this case was billed
12 at the rate of \$100.00 per hour, for a total billed of \$580.00.

13 In sum, the attorneys and employees at McLetchie Shell billed 97.30 hours on this
14 case, for a total of \$30,931.50, at what would be a blended average of approximately \$318.00
15 per hour—well under market for the experience brought to bear on this action. Reasonable
16 costs for documents, filing fees, and the like were calculated for a total billed of \$902.84.
17 With costs, the total billed for McLetchie Shell is \$31,834.34. Further qualification and
18 qualities, along with an itemization of these bills are included in the attached declaration of
19 Margaret A. McLetchie and Exhibits 4, 5, and 6.

20 ii) **The Work Performed, Including Skill, Time, and**
21 **Attention.**

22 The work actually performed by the lawyer is relevant to the reasonableness of
23 attorneys' fees, including the skill, time, and attention given to the work. *Brunzell*, 85 Nev.
24 at 349, 455 P.2d at 33. As demonstrated by the billing statement attached in Exh. 5 and the
25 attached declaration of Ms. McLetchie, a substantial portion of the work in this case was
26 done by a student law clerk and paraprofessional staff with low billing rates. Even though
27 some of the work was done by law clerk and paraprofessional staff, Ms. McLetchie was still
28 required to analyze the research and apply it strategically to the various arguments posed by
Henderson. As discussed above, counsel for the Review-Journal fully briefed this matter,

1 including filing a petition and amending that petition. Counsel was also required to file a
2 memorandum in support of the petition and a reply brief.

3 **iii) The Result.**

4 Lastly, “the result: whether the attorney was successful and what benefits were
5 derived” is relevant to this inquiry. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. As noted above,
6 the Review-Journal is the prevailing party in this matter. Because each of these factors
7 weighs in the Review-Journal’s favor, this Court should exercise its discretion and award the
8 Review-Journal reasonable attorneys’ fees and costs in the sum of \$31,834.34.

9 **c. The Review-Journal’s Attorney Fees Are Reasonable When**
10 **Compared to the City of Henderson’s Attorney Fees in This**
11 **Matter.**

12 Finally, the Review-Journal’s attorney fees are reasonable when compared to the
13 work performed by the Henderson City Attorneys and the attorneys of Bailey Kennedy, the
14 outside firm Henderson retained to represent it in this matter. Prior to Henderson’s retention
15 of Bailey Kennedy, as discussed above, counsel for the Review-Journal participated in
16 several telephone conference with Henderson city attorneys in an effort to resolve this matter.
17 (McLetchie Decl. at ¶ 2.) On many of those calls, at least two city attorneys participated. (*Id.*)
18 By contrast, only Ms. McLetchie participated on calls with the Henderson city attorneys.

19 The billing rates of counsel for the Review-Journal are also reasonable when
20 compared to the billing rate of attorneys with Bailey Kennedy. On March 20, 2017, the
21 Review-Journal submitted a public records request to Henderson seeking “all public records
22 related to the retention and payment of the law firm of Bailey Kennedy pertaining to legal
23 services” it provided in this matter. (Exh. 2 (PRA letter).) Henderson provided documents
24 responsive to that request on April 4, 2017. (Exh. 3 (PRA response).) Those records reflect
25 payments made to Bailey Kennedy for legal services provided between November 30, 2016,
26 and February 28, 2017. (*See generally id.*) Bailey Kennedy’s top billers—Sarah E. Harmon
27 and Dennis L. Kennedy—billed at a rate of \$495.00 per hour, while its lowest biller—Kelly
28 B. Stout—billed at a rate of \$300.00.

///

1 By comparison, as set forth above, Ms. McLetchie billed at a rate of \$450.00 per
2 hour, while Ms. Shell billed at a rate of \$300.00 per hour. Further, unlike Bailey Kennedy,
3 counsel for the Review-Journal utilized lower billers—such as law clerks and
4 paraprofessionals—whenever possible to reduce the costs of litigation in this matter. This
5 further evidences that the Review-Journal’s attorney fees in this matter are reasonable.

6 **III. CONCLUSION**

7 Based on the foregoing, he Review-Journal respectfully requests that this Court,
8 award the Review-Journal all of its attorneys’ fees and costs, pursuant to Nev. Rev. Stat. §
9 239.011(2), in the total amount of \$31,834.34.

10 DATED this 1st day of June, 2017.

11
12 /s/ Margaret A. McLetchie

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ALINA M. SHELL, Nevada Bar No. 11711

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Counsel for Petitioner

1 **DECL**

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9 *Counsel for Petitioner*

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

12 LAS VEGAS REVIEW-JOURNAL,

13 Petitioner,

14 vs.

15 CITY OF HENDERSON,

16 Respondent.

Case No.: A-16-747289-W

Dept. No.: XVIII

ATTORNEY MARGARET A.
MCLEATCHIE'S DECLARATION IN
SUPPORT OF PETITIONER LAS
VEGAS REVIEW-JOURNAL'S
MOTION FOR ATTORNEY FEES
AND COSTS

17 MARGARET A. MCLEATCHIE, attorney for Petitioner Las Vegas Review-Journal,
18 hereby declares that the following is true and correct under the penalties of perjury:

19 1. I have personal knowledge of the facts set forth below, and if called as a witness,
20 could testify to them. I am an attorney duly licensed to practice law in Nevada. I represent
21 the Petitioner Las Vegas Review-Journal ("Review-Journal") in this proceeding.

22 2. My representation has involved, *inter alia*: developing and implementing a strategy
23 to bring this action, filing a petition, an amended petition, and a supporting memorandum
24 and reply. I also represented the Review-Journal at a hearing on this matter, and participated
25 in multiple phone calls with several Henderson city attorneys to address the legal dispute at
26 issue in this matter; at least two city attorneys participated in each call.

27 ***Rates: Hours Worked Per Biller***

28 3. I billed at a reduced rate of \$450.00 per hour in this matter for 2016 and 2017. This
rate, as well as the rate for my partner, Alina M. Shell (\$300.00), our law clerk (\$125.00),
and our paralegal (\$100.00) are reduced from the standard rates we charge clients and are

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1 appropriate for the Las Vegas legal market and in this case due to its nature and my related
2 expertise.

3 4. I was admitted to the California bar in 2002. I have diverse and extensive legal
4 experience, including in criminal matters and in complex litigation. I am a partner at
5 McLetchie Shell with over fourteen years of experience, admitted to the bar in both
6 California and Nevada. I previously served as a Staff Attorney, Legal Director, and Interim
7 Southern Program Director for the American Civil Liberties Union of Nevada. I also worked
8 on public records act matters. From 2007 through 2009, I also helped litigate issues
9 pertaining to the Clark County School District's refusal to provide certain public records in
10 Karen Gray v. Clark County School District et al., Eighth Judicial Dist. Ct. Case No.
11 07A543861. In that case, completed over six (6) years ago, the ACLU of Nevada was
12 awarded \$46,118.00.

13 5. Now, in private practice, as an outside attorney who handles the Review-Journal's
14 public records, FOIA, and court access matters, I have extensive experience pertinent to this
15 action. Indeed, I frequently represent the Review-Journal and other clients in pursuing public
16 records matters, including overcoming objections to requests without having to litigate.

17 6. My time on this case was billed at the discount rate of \$450.00 per hour for 2016
18 and 2017. I also reduced my hourly rate for several of my time entries, resulting in a total of
19 \$16,434.00.

20 7. My partner, Alina M. Shell, was admitted to the Nevada bar in 2009, and has almost
21 eight years of legal experience. Prior to moving into private practice in 2015, Ms. Shell as
22 an attorney with the Federal Public Defenders (FPD) for the District of Nevada. While
23 employed by the FPD, Ms. Shell represented numerous defendants in a variety of criminal
24 cases which ran the gamut from revocations of supervised release to complex mortgage fraud
25 cases. She also wrote and argued several complex criminal appeals in before the United
26 States Court of Appeals for the Ninth Circuit. Since moving into private practice in June
27 2015, Ms. Shell has represented plaintiffs in state and federal court in civil matters, including
28 several civil rights cases. Ms. Shell has also represented the Review-Journal in both state and

1 federal court in public records matters.

2 8. Ms. Shell's time on this case was billed at the discounted rate of \$300.00 per hour,
3 for a total of \$11,280.00.

4 9. Gabriel Czop is a law clerk at McLetchie Shell, and is enrolled and in good
5 academic standing at the William S. Boyd Law School at the University of Nevada Las
6 Vegas. Mr. Czop's time on this case was billed at the rate of \$125.00 per hour, for a total
7 billed of \$1,962.50.

8 10. Pharan Burchfield is a paraprofessional at McLetchie Shell. Ms. Burchfield has an
9 associate's degree in paralegal studies, and has been a paralegal for three years. Ms.
10 Burchfield's time on this case was billed at the rate of \$100.00 per hour, for a total billed of
11 \$580.00

12 ***True and Accurate Billing Statements; Billing Practices***

13 11. The details regarding the fees incurred by my firm are accurately detailed on the
14 billing statements attached Exhibit 4 (sorted by date) and Exhibit 5 (sorted by biller) were
15 reasonably and necessarily incurred to pursue this action. While the descriptions on the
16 billing statement attached as Exhibits 4 and 5 have been edited to avoid unnecessary
17 disclosure of information regarding attorney-client communications and work product, the
18 fees and time detailed are accurate reflections of work performed.

19 12. I exercised appropriate billing judgment and structured work on this case to
20 maximize efficiencies, and the hours listed in the fee request are neither duplicative,
21 unnecessary nor excessive.

22 13. Exhibit 6 details costs incurred in this matter.

23 14. As is McLetchie Shell LLC's practice, where appropriate, lower billers performed
24 work at lower billable rates, under my direction. Organizing work in this fashion has allowed
25 me to keep billing as low as possible.

26 15. Further, potentially duplicative or unnecessary time, including duplicative time for
27 my attendance at the hearing before this Court on March 30, 2017 has been deducted.

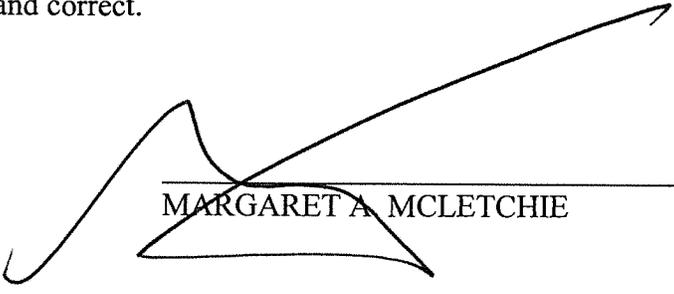
28 16. I also exercised appropriate billing judgment by *not* including in this application

1 certain time, even time which would likely be compensable.

2 17. Finally, the description of fees and costs in this case also excludes all time spent
3 working on this Motion, or as will be necessary to Reply to any Opposition to this Motion

4 I certify and declare under the penalty of perjury under the laws of the State of
5 Nevada that the foregoing is true and correct.

6
7
8 Executed on: June 1, 2017

9 
10 _____
11 MARGARET A. MCLETCHIE
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EXHIBIT 1


CLERK OF THE COURT

1 RTRAN

2

3

4

DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

7

LAS VEGAS REVIEW-JOURNAL,)

8

Plaintiff,)

CASE NO. A-16-747289-W

9

vs.)

DEPT. XVIII

10

CITY OF HENDERSON,)

11

Defendant.)

13

BEFORE THE HONORABLE J. CHARLES THOMPSON, DISTRICT COURT JUDGE

14

THURSDAY, MARCH 30, 2017

15

TRANSCRIPT OF PROCEEDINGS RE:

16

PETITION FOR WRIT OF MANDAMUS

17

18

APPEARANCES:

19

For the Plaintiff:

ALINA SHELL, ESQ.,
MARGARET A. McLETCHE, ESQ.

20

21

For the Defendant:

DENNIS L. KENNEDY, ESQ.,
JOSH M. REID, ESQ.,
BRIAN R. REEVE, ESQ.

22

23

24

25

RECORDED BY: JENNIFER P. GEROLD, COURT RECORDER

1 LAS VEGAS, NEVADA; THURSDAY, MARCH 30, 2017

2 [Proceeding commenced at 8:57 a.m.]

3
4 THE COURT: Page five, the Las Vegas Review-Journal versus
5 Henderson. Okay. Counsel, for the record.

6 MS. SHELL: Good morning, Your Honor. Alina Shell and
7 Margaret McLetchie on behalf of the Review-Journal.

8 MS. McLETCHE: Good morning, Your Honor.

9 MR. KENNEDY: And for the Defendant, City of Henderson, Dennis
10 Kennedy along with City Attorney Josh Reid and Assistant City
11 Attorney Brian Reeve.

12 MR. REEVE: Good morning, Your Honor.

13 THE COURT: Okay. This is the Review-Journal's petition.

14 MS. SHELL: Yes, Your Honor. Thank you. In its opposition to
15 our memorandum, Your Honor, the City of Henderson has thrown up a
16 lot of red herrings that it hopes Your Honor might catch onto, but
17 really what is important in this case and what is central to this
18 Court's consideration is the Nevada Public Records Act and what --
19 and the intent of the Nevada Public Records Act. And that is to
20 ensure that the public has easy access to government records.

21 What we have here is an issue where the City of Henderson
22 has enacted an ordinance and is trying to enforce an ordinance
23 against the Review-Journal that is at conflict with the NPRA.
24 Specifically, the NPRA provides that, as I said, the public should
25 have easy access to records. And that the -- that to the extent

1 that there's -- are any charges that attach to a request for
2 records, those charges only attach to providing copies or to
3 extraordinary use in providing those copies.

4 What we have here is not a charge that the City wants to
5 offer up for providing copies. What they are trying to charge the
6 Review-Journal for is a privilege review. And that, Your Honor, is
7 at odds with the -- with the NPRA. It's not the -- and the reason
8 that it's at odds with the NPRA, Your Honor, is because it's not
9 the public's job to pay for a municipality like the City of
10 Henderson to conduct a privilege review.

11 Now, one of the issues that the -- that the City of
12 Henderson has presented is that this is a moot issue. Now,
13 granted, we have -- as we've acknowledged in our papers and as
14 discussed at length in the response by the City of Henderson, we
15 put forth this public records request. When we received the notice
16 from the City of Henderson that it wanted to charge these -- the
17 Review-Journal almost \$6,000, not even to provide copies of the
18 documents, but just to tell us whether they would even provide the
19 documents for the copies.

20 Ms. McLetchie, my law partner who is sitting with me at
21 counsel table, called the City of Henderson and attempted to work
22 this out. We attempted to come to an arrangement. We attempted to
23 ask them to reconsider the ordinance in the policy that they have
24 in place that is -- that they're relying on to charge this frankly
25 serious fee just to get copies of records. Just to -- not even to

1 get the copies, just to tell us if they'll give us the copies.

2 When Ms. McLetchie spoke to the City of Henderson, they
3 made their position very clear, and indeed as indicated in Exhibit
4 D to the City's response, they said, we believe that this policy is
5 proper, but it said the City is interested in having the Courts
6 provide clarity to the meaning and application of NRS 239.005 as
7 clear and concise guidance on these provisions would greatly
8 benefit both local governments.

9 So although we tried to work this out, once it became
10 clear that they're -- that the City of Henderson was not going to
11 rescind its policy and was not going to rescind its request for
12 this fee to conduct a privilege review, this litigation was
13 started.

14 After we started the litigation, Henderson and
15 Ms. McLetchie -- Ms. McLetchie had several phone calls -- I wasn't
16 on the calls, but I got to hear quite a few of them where she was
17 speaking sometimes to two or three attorneys at once trying to
18 resolve this. Eventually in December, they permitted our clients,
19 the reporter, to review the documents. They've never provided
20 copies. I mean, this is part of the --

21 THE COURT: Did you ask for copies?

22 MS. SHELL: We have asked for copies and we've asked --

23 THE COURT: Even copies of the ones that are not -- that they
24 claim privilege or have redacted some of them.

25 MS. SHELL: Correct.

1 THE COURT: And I think it's your Exhibit 7 to your petition;
2 is that right?

3 MS. SHELL: That includes some documents that they provided,
4 Your Honor.

5 THE COURT: I think your Exhibit 7 is the ones that we are
6 primarily in dispute; is that right?

7 MS. SHELL: I'm sorry, Your Honor. What was that?

8 THE COURT: Your Exhibit 7 to --

9 MS. SHELL: Yes --

10 THE COURT: -- those are the ones that you -- that are
11 primarily in dispute at this point; is that right?

12 MS. SHELL: That is part of the issue. There are still copies
13 that we've -- our reporter has reviewed some copies.

14 Now, they provided these -- Exhibit 7 were provided so
15 that we can review and assess the redactions that Henderson had
16 done.

17 THE COURT: All right. But --

18 MS. SHELL: So there are still copies of documents.

19 THE COURT: But when your reporter went to the City and
20 reviewed them I guess online; is that right? Some computer or
21 something?

22 MS. SHELL: They had made a computer available specifically
23 for just the review.

24 THE COURT: And did your reporter ask for copies of any of the
25 documents your reporter saw?

1 MS. SHELL: She did not because we still had this issue -- or
2 Ms. McLetchie may have an answer to that.

3 THE COURT: I think that they'll give those to you or I
4 thought that they would have.

5 MR. KENNEDY: Just for the record, that's correct. No copies
6 were requested or made.

7 THE COURT: Okay.

8 MS. McLETCHE: Your Honor, if I may so just to clarify what
9 we originally requested you have two rights under the Nevada Public
10 Records Act. You can request copies or you can request an in-
11 person inspection. We requested copies. What Mr. Reid offered and
12 what I accepted as an interim solution while this Court was
13 resolving issues, was to allow an in-person inspection.

14 Now, whether or not they would have made one or two
15 copies available at that inspection is frankly not -- is frankly
16 not the point, Your Honor. The point is that we wanted copies and
17 they said in order --

18 THE COURT: Do you still want the copies?

19 MS. McLETCHE: We would still have -- we would still like,
20 without the exorbitant charge, a USB drive with the documents
21 requested, yes, Your Honor.

22 THE COURT: If you wanted copies and they gave -- there's
23 69,000 pages according to what I read.

24 MR. KENNEDY: Right.

25 THE COURT: If you want 69,000 pages, I guess they can run

1 that off.

2 MS. McLETCHE: Well, Your Honor, the usual practice --

3 THE COURT: Do you want that?

4 MS. McLETCHE: Your Honor, at this point -- at this point we
5 don't need 69,000 pages printed out, but what -- what my reporter
6 wanted originally rather than have to go and spend almost a week, I
7 think, at Henderson's office and to review under difficult
8 circumstances, what we had asked for was the right to inspect --

9 THE COURT: But you still want the copies?

10 MS. McLETCHE: -- copies. We -- we that issue isn't moot,
11 Your Honor, because we requested copies. The usual --

12 THE COURT: So you still want the copies?

13 MS. McLETCHE: Your Honor, what -- what usually the practice
14 is, so I'm clear, is what the usual practice is is that they give
15 us a USB drive rather than allow -- rather than require us to come
16 in person and then everybody can avoid the expense of copies.

17 THE COURT: I'm a very old Judge. A USB drive?

18 MS. McLETCHE: I'm sorry, Your Honor.

19 MS. SHELL: It's like a little stick that you put in the
20 computer that's like --

21 THE COURT: Okay. I know what an email is, but I'm --

22 MS. McLETCHE: It's a -- it's a --

23 MS. SHELL: It's a portable storage device.

24 MS. McLETCHE: -- essentially instead of the old floppy
25 drives that we've had --

1 THE COURT: Okay.

2 MS. SHELL: -- or CDs --

3 THE COURT: It's the stick you stick in the computer?

4 MS. McLETCHE: Correct, Your Honor.

5 THE COURT: Okay.

6 MS. McLETCHE: And it's an easy way for us to solve some of
7 the logistical issues of providing copies, but from our position --

8 THE COURT: Are you -- are you willing to give them a USB
9 drive with all the documents?

10 MR. KENNEDY: Sure.

11 THE COURT: Okay. Well does that resolve --

12 MS. SHELL: It does not, Your Honor, and here's why it
13 doesn't.

14 THE COURT: Okay.

15 MS. SHELL: Because we still have this ordinance in place in
16 Henderson that is directly at odds with the NPRA. And, you know,
17 it's -- it's a bit of an old chestnut, but there is this rule of
18 construction called Dillon's Rule which says that when a
19 legislature evidences an intent to regulate a particular area of
20 law that you can't have a municipality, have a law that's at
21 conflict with the legislature's intent.

22 THE COURT: If they're willing to give you what you requested
23 on a drive rather than printing the paper, maybe we don't need to
24 get to the constitutionality of their rules. I mean, if they're
25 willing to give it to you that would resolve the case wouldn't it?

1 MS. SHELL: It would only revolve it with regards to this
2 particular issue --

3 THE COURT: Well, that's what we're worried about.

4 MS. SHELL: -- but this is -- this is something that is
5 capable of repetition and that is another issue that we have in
6 this matter. Is that this is --

7 THE COURT: Well, up until this case what I read was that you
8 guys had been cooperating and getting things back and forth -- or
9 at least getting things to the RJ when they requested it.

10 MS. SHELL: I don't think that there is -- this is not -- this
11 is not an issue, Your Honor, respectfully, where simply because you
12 have a pattern and practice of everything being okay most of the
13 time and then you have like this one incident that --

14 THE COURT: I'm just worried about this case. If they're
15 willing to give you the documents, I think that that ought to solve
16 it.

17 MS. SHELL: I understand your -- what you're saying, Your
18 Honor, but again our concern is that this will be an impediment in
19 future cases not just for the RJ.

20 THE COURT: Well, let's worry about the future cases when we
21 get there. That's for maybe a younger Judge.

22 MS. SHELL: Well, Your Honor, we are -- we are concerned that
23 this is something that is capable of repetition. And there's no
24 indication that they're going to rescind a policy which is at odds
25 with the NPRA.

1 THE COURT: I was -- I was led to believe that our hearing
2 today was to argue over the redacted documents that you have in --
3 that you attached to your petition.

4 MS. SHELL: Yes, we also have issues with the redactions, Your
5 Honor. And I won't -- I think I went through in detail in my reply
6 some of my issues with the redactions and the withholdings.

7 But, the thing to remember in NPRA cases dealing with the
8 Public Records Act is that the burden -- there's a presumption. We
9 start with a presumption under the law that records are public and
10 that they should be easily accessible. And that's a presumption
11 that can only be overcome by the government entity who wants to
12 withhold the documents. And they have to prove that by the
13 preponderance of the evidence.

14 And what we have here is an issue where in certain
15 instances -- and I would direct Your Honor's attention to the most
16 recent log, the third privilege log that was produced by the by the
17 City and that would be at --

18 THE COURT: That's your Exhibit 6.

19 MS. SHELL: It's actually, I was looking at the Exhibit H to
20 the -- I think it is our Exhibit 6, but it's also Exhibit H to the
21 City's response. And what we have here --

22 MR. KENNEDY: That is the most recent --

23 THE COURT: It's the same one. I've got it here.

24 MS. SHELL: Correct. It is the third privilege log. And we
25 have dozens of documents here where the -- there's a few different

1 categories, one of them is attorney-client privilege.

2 THE COURT: Right.

3 MS. SHELL: There are dozens of documents here where the City
4 has asserted they can't release the -- they won't release them
5 because of attorney-client privilege. However --

6 THE COURT: There's also the liberty of processed privilege a
7 confidential personal information which I guess would contain
8 social security numbers and things like that.

9 MS. SHELL: And, Your Honor, we don't contest that last
10 category. When it comes to personal identifying information, we
11 agree that those redactions are appropriate. Our concern comes
12 more with the assertions of attorney-client privilege, deliberative
13 process privilege, and, I believe, that -- yeah, those were the two
14 main categories of documents that were withheld.

15 Now when it comes to attorney-client privilege as I said
16 in our papers, attorney-client privilege needs to be construed
17 narrowly because it can be an impediment to open access to
18 documents and that's what the Supreme Court said in the *Whitehead*
19 case.

20 And the other thing that has been said by the Supreme
21 Court is you can't just -- this is a law in some ways like
22 discovery issue. You can't just put forth a boilerplate assertion
23 of privileged documents without providing more detail so that the
24 person requesting the document can assess whether that is an
25 appropriate withholding or redaction.

1 And what we have here with their third privilege log,
2 when you have these assertions of attorney-client privilege, it's
3 very generalized language that makes it impossible for the
4 Review-Journal to discern what exactly the nature of the
5 attorney-client privilege is.

6 You have dozens of them where it's just electronic
7 correspondence containing communication between attorney and staff
8 made for the purposes of facilitating legal -- the rendition of
9 professional legal services to the Trospen contract terms.

10 I mean, it's so vague that it's essentially meaningless
11 to me. Like, every time I wrote that I didn't understand what that
12 meant. And that's part of the problem we don't know what those
13 documents are. If -- if --

14 THE COURT: What is the Trospen contract?

15 MS. SHELL: Your Honor, Trospen Communications was a
16 communications firm that had contracted for a period of time with
17 the City of Henderson to provide different services like public
18 relation services.

19 THE COURT: Did they have a contract?

20 MS. SHELL: As far as I know, they had a contract.

21 THE COURT: Well, the contract itself should be available to
22 you.

23 MR. KENNEDY: Correct. It's public record.

24 MS. SHELL: And that, Your Honor, there was actually one other

25 --

1 THE COURT: I guess, if there was negotiations involving that
2 contract and -- and staff was discussing what to offer or what to
3 agree to or how much to pay or something like that that probably
4 would be -- between the attorneys and the staff that would probably
5 be something that would be privileged, but there's an awful lot of
6 those same things, I agree with you.

7 MS. SHELL: Yes, Your Honor. I mean, to the extent that there
8 may be those documents. Those may be properly withheld, but it's
9 impossible to discern from their log what those documents are and
10 what they actually talk about. The actually -- and, Your Honor, I
11 actually --

12 THE COURT: How do I -- how do I resolve this?

13 MS. SHELL: I think the way to revolve it, Your Honor, is to
14 take the documents in camera and review them to see if they had
15 been properly withheld.

16 THE COURT: Well, they offered to give them to me in camera.
17 I was really excited about reading a couple hundred documents.

18 MR. KENNEDY: I'm sure -- I'm sure that you were.

19 MS. SHELL: Well, yeah, and Ms. McLetchie also pointed out
20 another thing would be, and it's actually what I put in the reply,
21 is that we need a better log so that we can assess the privilege
22 because they're asserting the privilege. It's their burden to
23 prove it. We can't tell if they're meeting their burden.

24 THE COURT: And that's true. I agree. They have to make a
25 demonstration and --

1 MS. SHELL: They also asserted deliberative privilege process,
2 Your Honor, as to a lot of the same documents, so. I just -- I had
3 only mentioned two categories.

4 THE COURT: I guess that deliberative privilege exception is
5 where you've got staff members discussing how they're going to
6 present something or give it to the commissioners to decide; is
7 that right?

8 MS. SHELL: Right. And that's not what the deliberative
9 process privilege is meant to encompass, Your Honor. And as I
10 pointed out, indeed, in one of the cases that is actually sighted
11 in Henderson's moving papers, the deliberative process privilege is
12 meant to apply to communications and records that deal with
13 significant policy judgments.

14 And there's no evidence when you look where they've
15 asserted, the -- you'll forgive me, Your Honor, as I flip back and
16 forth between these things -- the deliberative process privilege
17 one of the documents that they cite is electronic correspondence
18 containing mental impressions and strategy of city management
19 regarding preparation of public statement and comments on draft
20 statement. A public statement isn't a significant policy judgment
21 issue.

22 THE COURT: I guess it depends about what the statement is.

23 MS. SHELL: Well, and it's impossible -- frankly, Your Honor,
24 it's impossible to discern from the log what that policy statement
25 is.

1 THE COURT: I must confess I had not heard about the
2 deliberative privilege previously, so I wasn't very familiar with
3 it.

4 MS. SHELL: Your Honor, just -- and as another alternative to
5 in camera review, that -- your Court -- the Court could find that
6 they haven't met their burden and just direct the City of Henderson
7 to produce the records.

8 THE COURT: Okay.

9 MS. SHELL: All right. Your Honor, thank you.

10 THE COURT: Thank you.

11 MR. KENNEDY: Your Honor, with respect to the first issue and
12 that is the inspection and production of the documents. We
13 produced almost 70,000 pages. Nobody asked for a single copy of
14 anything and as we told the Court this morning, we're willing to
15 provide those.

16 THE COURT: Okay. Well, I guess they want them.

17 MR. KENNEDY: Well, okay. They didn't have to sue us to get
18 them.

19 THE COURT: We'll -- I'll accept that as a stipulation that
20 you will provide it within five days.

21 MR. KENNEDY: Yes. We will.

22 THE COURT: All right. Thank you. That will resolve that
23 issue.

24 MR. KENNEDY: Secondly, the Court is correct. With respect to
25 the argument about can you or can't you charge a fee, what can the

1 fee be, and all of that, we're just -- we're going to produce
2 these. That's really not an issue before the Court.

3 THE COURT: Well, at one time it was. You did request money
4 for privilege review. I don't know that the statute says you're
5 entitled to money for privilege review. Now, if it's an
6 extraordinary request, maybe that's part of it, but I -- that's
7 arguable either way.

8 MR. KENNEDY: It is arguable either way. Just -- the Court
9 doesn't have to decide it. The last issue is on the -- the
10 privilege law.

11 THE COURT: The privilege.

12 MR. KENNEDY: Okay. And the Nevada Supreme Court has dealt
13 with this. In the context of the Public Records Act in *Reno*
14 *Newspaper versus Gibbons* one of the questions before the Supreme
15 Court was, what do you have to put in this privilege log? Because
16 the statute says if -- you'll say we can't produce it, we give you
17 the reasons why, and cite the statute. That's -- that's what the
18 Public Records Act says. And the Nevada Supreme Court said, well,
19 exactly what do you have to tell the other party?

20 And the question involved the legendary Vaughn Index.
21 It's a federal case and it says under the Federal Act here's what
22 you have to do. The Supreme Court said, well, you don't have to do
23 a Vaughn Index 'cause every case is different. The Supreme Court
24 said, in order to -- and I'm reading out of the *Gibbons* case, in
25 order to preserve a fair adversarial environment, the log should

1 contain, at a minimum, a general factual description of each record
2 withheld and a specific explanation for nondisclosure. So describe
3 the document and tell us why you're not disclosing it.

4 So in our Exhibit H, what we did was we described the
5 document, by document number and a description of it, and then --
6 and, you know, who wrote it, who sent it, that, and then cited
7 whatever the -- whatever the reason for withholding was; either
8 attorney-client communication or the deliberative privilege. And
9 so that's what we did and that -- that satisfies the test in
10 *Gibbons*.

11 Now, in the next paragraph the Supreme Court in *Gibbons*
12 -- and this is at -- it's 127 Nevada Advance Opinion 79, I just
13 have the cite to the Pacific page it's at 884. The Supreme Court
14 said, and if that's not sufficient -- what is it, describe it, and
15 tell us why you're withholding it, Supreme Court said, if that's
16 not enough in order for a decision to be made, the Supreme Court
17 says, to the delight of trial Judges everywhere, in other words an
18 in camera review may be used to supplement a log, but it may not be
19 used as a substitute where a log is necessary. Which means provide
20 the log. If that's not good enough, then in camera review.

21 That's why we said in your response, we'll provide them
22 to the Court in camera. And that's what *Gibbons* says. If you look
23 at the log and you say, fine, I know what the document is, I know
24 what the privilege is, but I've got to look at it, then in camera
25 review --

1 THE COURT: My concern is that you have repeated kind of a
2 boilerplate explanation. It's fairly detailed, but it's still a
3 boilerplate explanation for an awful lot of documents.

4 MR. KENNEDY: Yeah. It is. And you know -- you know, Your
5 Honor, what the response to that is? It is in footnote three in
6 that *Gibbons* opinion, footnote three the Supreme Court addresses
7 that issue. And it says, you know what, you can't ask for too much
8 because if you give a little bit more, you're going to waive the
9 privilege.

10 And in footnote three, the Court says we understand that
11 problem. And so here's why we're deciding the case the way we do.
12 And in -- in footnote three they cite a couple cases which -- which
13 hold that which say you don't -- you don't have to go so far as to
14 endanger the privilege. So that's what we did. Said here's the
15 document attorney-client or deliberative and as the Supreme Court
16 said in *Gibbons*, we'll give them to the Court in camera if that's
17 necessary.

18 And so what we did was really strictly complied with the
19 Public Records Act as the Supreme Court interpreted it in *Gibbons*.
20 As I said, much to the delight of trial Judges everywhere, but that
21 is -- that is what the Supreme Court said so that's why we did what
22 we did.

23 And those are -- those are all the points I want to make.
24 Okay. Thank you.

25 MS. SHELL: Thank you, Your Honor, I just have a couple of

1 brief points. The first thing that I would to say is Mr. Kennedy
2 said we didn't have to sue to get these records. Clearly we did
3 because this is the first time we've been given an -- they've told
4 us they're going to give us a USB drive so obviously we did have to
5 bring this case to the Court.

6 THE COURT: That's done.

7 MS. SHELL: Yeah. And, Your Honor, in terms of the privilege
8 log, there's actually on the next page of the *Gibbons* opinion so
9 that would be the Pacific Reporter on page 885, what *Gibbons* says,
10 and I think it echoes what Your Honor's concerns were, we cannot
11 conclude that merely pinning a string of citations to a boilerplate
12 declaration of confidentiality satisfies the State's prelitigation
13 obligation under NRS 239.0107 to cite specific authority that makes
14 the public book or record a part or a part thereof confidential.

15 And in fact, I actually believe, Your Honor, although
16 it's been an hour or two since I read the *Gibbons* opinion, that in
17 *Gibbons* the Supreme Court actually told the State to go and revise
18 its privilege log to provide more information. And we're in the
19 same situation here where we don't have sufficient --

20 THE COURT: Well, 'cause I didn't go back and read the *Gibbons*
21 case. I know that you both referenced it, but I didn't go back and
22 read it. What was the explanation offered in the *Gibbons* case that
23 was insufficient?

24 MS. SHELL: I believe those -- some of those fell under -- and
25 forgive me, Your Honor, this was in the *Gibbons* case, the Reno

1 Newspapers had asked for emails between then Governor Jim Gibbons
2 and a series of individuals. And there were I believe -- I
3 believe, gosh, Maggie, do you remember?

4 THE COURT: I mean --

5 MS. SHELL: I don't recall the nature --

6 THE COURT: Was it as detailed as these explanations here?

7 MR. KENNEDY: No.

8 THE COURT: -- that electronic correspondence containing
9 communication between attorney and staff made for the purpose of
10 facilitating the rendition of professional services re Trooper
11 contract terms.

12 MR. KENNEDY: Right.

13 MS. SHELL: Your Honor, I --

14 THE COURT: It's fairly detailed. I mean, if it's true it
15 would be a --

16 MS. McLETCHE: Your Honor, if I recall and, I don't --
17 unfortunately, we don't have the case in front of us, but if I
18 recall, the issue that they came up with is the same issue that we
19 had here in that regardless of whether it took the form of a log or
20 a declaration, the issue was that it was just boilerplate and there
21 is the balancing act that Mr. Kennedy mentioned, but you still have
22 to provide -- and this is what the *Gibbons* Court said, you still
23 have to provide enough information so that the other side can
24 ascertain whether or not the privilege is properly being brought.

25 THE COURT: If -- if you're --

1 MS. McLETCHE: And both we and Your Honor had some confusion

2 --

3 THE COURT: If these statements are accurate, I would think
4 that the privilege is -- I mean, the privilege is validly claimed.
5 Now, if you claim that the privilege isn't accurate, then I have to
6 look at it to see if it's accurate.

7 MS. McLETCHE: We have to -- I'm sorry, go ahead, Ms. Shell.

8 MS. SHELL: It's impossible because it is when you look at
9 when they say facilitating the rendition of professional legal
10 services, that is -- we just can't tell. I mean frankly it's just
11 -- it's difficult to discern because that is taken directly from
12 the statute. That's not actually a descriptor. So that's why we
13 can't tell if the privilege is being properly asserted and that's
14 why --

15 THE COURT: Well, the only way to know is to look at the
16 document.

17 MS. SHELL: That's correct, Your Honor.

18 THE COURT: You want me to do that?

19 MS. SHELL: I believe we would, Your Honor.

20 MS. McLETCHE: We would also ask that the log also be updated
21 so that they better describe the documents so we can match up just
22 provide enough information to us to see --

23 THE COURT: The documents are copied in this Exhibit 7 aren't
24 they?

25 MS. McLETCHE: Some of them are, Your Honor. They both

1 withheld documents and they redacted documents. So there's some
2 that were provided and there are some that were withheld in their
3 entirety, but we need more of an explanation --

4 THE COURT: Well, I looked up, for example, the very first one
5 which was log number three, it's so small I can't read it.

6 MS. McLETCHE: Your Honor, we need more information --

7 THE COURT: Maybe it's my poor eyes, but I --

8 MS. SHELL: Yeah.

9 MS. McLETCHE: -- about either the nature of what was
10 redacted or the nature of the document that was withheld so that we
11 can tell at least whether or not the privilege applies.

12 THE COURT: Okay.

13 MS. SHELL: And unless Your Honor has any further questions?

14 THE COURT: Anything further?

15 MR. KENNEDY: I can answer your question about *Gibbons*.

16 THE COURT: Okay. What did they -- what were they?

17 MR. KENNEDY: In *Gibbons*, they didn't give a log. They just
18 gave a statement. This is at --

19 THE COURT: What was the statement?

20 MR. KENNEDY: -- 876 in the Pacific third cite. The State
21 informed the RGJ, the Reno Gazette Journal, that all of the
22 requested emails were confidential because they were either
23 privileged or not considered public records. The Review-Journal
24 repeated its request for a log containing a description of each
25 individual email so it could assess whether to challenge the

1 State's classification. No log in that case, so.

2 THE COURT: So they didn't have the statement that you have
3 given here?

4 MR. KENNEDY: That is correct.

5 THE COURT: Okay.

6 MR. KENNEDY: That is correct. And that was, of course, that
7 was the problem. You just --

8 THE COURT: Well, unless there's some indication that they --
9 that the City has misrepresented what these are, I think this is an
10 adequate description of the privilege.

11 MS. McLETCHE: Your Honor, if I may, I think the whether it
12 was -- whether it's on a log and separated out by document or
13 whether it's in a declaration as it was in the *Gibbons* case, we
14 have the same problem because we don't have enough information to
15 ascertain whether or not the privilege is properly brought.

16 We're not supposed to be in a situation where we're
17 supposed to assume that they're properly bringing the privilege and
18 that we somehow have to figure out which we can't do without more
19 information.

20 THE COURT: If this is all the *Gibbons* case requires, I think
21 they've satisfied it.

22 MS. McLETCHE: They don't just require a log, they require
23 enough information so that we can ascertain whether or not the
24 privilege is properly being brought and that's --

25 THE COURT: I think this is enough information.

1 MS. McLETCHE: Your Honor, I respectfully disagree. And if I
2 may raise just one last issue with regard to the declaratory relief
3 and the injunctive relief. I do just want to make one last pitch.
4 I've heard Your Honor's position, but my -- my view is that they
5 shouldn't -- the public's entitled to clarity.

6 There's an ordinance and there's a policy in Henderson
7 right now that is at odds with the NPRA for two reasons. Both
8 because they're applying it to allow for fees for things like
9 privilege review and because the figure, the per page number is
10 higher --

11 THE COURT: They're not arguing for any more money. They're
12 not going to -- they're not going to ask you for any money.

13 MS. McLETCHE: Then I would ask that they -- that they
14 voluntarily rescind that policy.

15 THE COURT: Well, that's -- we'll worry about it at the next
16 case. But, they're going to give you a stick -- what do you call
17 it?

18 MS. SHELL: A USB drive, Your Honor.

19 THE COURT: USB drive with the 69,000 pages on it and I'm
20 going to deny the rest of the petition.

21 MR. KENNEDY: Very good.

22 THE COURT: I need an order to that effect.

23 MR. KENNEDY: I will prepare the order and run it by counsel.

24 THE COURT: Send it by counsel.

25 MS. McLETCHE: Thank you, Your Honor.

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MR. KENNEDY: Surely.

THE COURT: Have a good day.

[Proceedings concluded at 9:29 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Jennifer P. Gerold
Court Recorder/Transcriber

EXHIBIT 2

VIA MAIL AND E-MAIL

March 20, 2017

Josh M. Reid, City Attorney
City of Henderson
240 Water Street, MSC 144
Henderson, Nevada 89015
E-Mail: Josh.Reid@cityofhenderson.com

Re: **PUBLIC RECORDS REQUEST**

Dear Mr. Reid

Pursuant to Nevada's Public Records Act (Nevada Revised Statutes § 239.010 *et. seq.*, the "NPRO"), I am requesting an opportunity to inspect or obtain copies of the City of Henderson public records described below.

The NPRO provides public access to public records and requires that its terms be construed liberally and mandates that any exception be construed narrowly. NRS § 239.001(2), (3). As the Nevada Supreme Court has made clear:

The NPRO 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 NPRO 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 NPRO are designed to promote government transparency and accountability.

Reno Newspapers, Inc. v. Gibbons, 127 Nev. Adv. Op. 79, 266 P.3d 623, 626 (2011).

Records Sought

I am requesting all public records related to the retention and payment of the law firm of Bailey Kennedy pertaining to legal services it has provided to the City Henderson for representation in legal matters concerning the Review-Journal's request for records pertaining to certain public records pertaining to the City's retention of Elizabeth Trosper and/or Trosper Communication (including representation in *Las Vegas Review-Journal v. City of Henderson*, Dist. Ct. Case No. A-16-747289-W). This would include, I expect, any and all agreements, contracts or memoranda of understanding for Bailey Kennedy providing those services, invoices, and all documents showing amounts paid to Bailey Kennedy for legal services provided in this matter as of the date of this letter. This request is not intended to invade the attorney client or work product privilege such as that which might be contained in the daily detail of Bailey Kennedy's work. However, all records containing nonexempt information should be provided. For example with regard to billing statements, the general title of the matter being handled, the dates the services were performed, and the hours, rate, and money charged for the services should be provided.

If costs for this litigation are being paid directly by the City of Henderson (*i.e.*, not advanced by Bailey Kennedy and billed to the City of Henderson), then please consider this letter a request for the documentation for those expenditures.

Duty to Redact

In order to both comply with the NPRA and protect exempt material, please redact or separate out any privileged material (or any other information you contend is confidential) rather than withholding records in their entirety, as required by Nev. Rev. Stat. § 239.010(3). Again, please cite the statutory provision you rely upon to redact or withhold part of a record, and keep in mind that you have the burden of showing that the record is confidential. NRS § 239.0113.

Costs

If you intend to charge any fees for obtaining copies of these records, please contact me immediately (no later than five (5) days from today) if the cost will exceed \$50.

Timing

NRS § 239.0107 requires that you respond to this public records request within five (5) business day. However, I am mindful that it might take more time to assemble the requested records. If timely compliance is not practical or would cause an inconvenience to you or your staff, please let me know and I would be more than happy to agree to a reasonable extension of the time.

However, if you deny access to any of the records requested, please explain your basis for doing so in writing within five (5) days, citing the specific statutory provision or other legal authority you rely upon to deny access. NRS § 239.107(1)(d).

Further, if some records are not immediately available but others are, please do not wait to fill the entire request, but send each part or contact me as it becomes available.

Thank you in advance for your cooperation with this request, and please feel free to contact me with any questions whatsoever.

Regards,



Alina M. Shell

AS/pb
cc: file

EXHIBIT 3



CITY OF HENDERSON
PAYMENT APPROVAL

Vendor Name: Bailey Kennedy LLP

Purchase Order Number: 0000657072

Invoice Number: 29300

	PO Line #	Amount	Account Coding
Amount Authorized:	<u>9.1</u>	<u>247.50</u>	<u>1001-0601-601009-00000</u>
	<u> </u>	<u> </u>	<u> </u>
	<u> </u>	<u> </u>	<u> </u>
	<u> </u>	<u> </u>	<u> </u>

TOTAL PAYMENT \$ 247.50

Date: March 7, 2017

Donna Crosson

Authorized Signature (required)

Additional Approval Signature (optional)

Notes (optional):

Las Vegas Review Journal 293000

PREPARED BY: Donna Crosson x1218

Bailey Kennedy, LLP

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

(702) 562-8820
Tax ID 20-3951680

Statement as of February 28, 2017
Statement No. 29300

Henderson City Attorney
Josh M. Reid
240 Water Street
Henderson, NV 89015

10713-016: Las Vegas Review-Journal

Professional Fees
2/17/2017 DLK



Hours	Rate	Amount
0.50	495.00	247.50

Sub-total Fees: 247.50

Rate Summary			
Dennis L. Kennedy	0.50 hours at \$	495.00 /hr	247.50
Total hours:		<u>0.50</u>	

Payments

3/1/2017	Payment	ACH 170228	268.50
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Sub-total Payments: 268.50

Total Current Billing:	<u>247.50</u>
Previous Balance Due:	268.50
Total Payments:	268.50
Finance Charges:	0.00
Total Now Due:	<u>247.50</u>

INVOICE REVIEW/PAYMENT APPROVAL	
Routing Date: <u>2/17/17</u>	Reviewer: <u>Josh</u>
Review Date: _____	Initials: _____
Comments: <u>OK to pay</u>	
City Attorney Review: <u>3/7</u>	<u>JMR</u>
Date	Initials

RECEIVED

MAR - 6 2017

CITY ATTORNEY
CITY OF HENDERSON

ATTORNEY-CLIENT
PRIVILEGE

**ATTORNEY-CLIENT
PRIVILEGE**

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

(702) 562-8820
Tax ID 20-3951680

Statement as of January 31, 2017
Statement No. 29279

RECEIVED

FEB - 7 2017

**CITY ATTORNEY
CITY OF HENDERSON**

Henderson City Attorney
Josh M. Reid
240 Water Street
Henderson, NV 89015

10713-016: Las Vegas Review-Journal

Professional Fees

			Hours	Rate	Amount
1/3/2017	KBS	[REDACTED]	0.20	300.00	60.00
1/9/2017	DLK	[REDACTED]	0.30	495.00	148.50
1/9/2017	KBS	[REDACTED]	0.20	300.00	60.00
Sub-total Fees:					<u>268.50</u>

Rate Summary

Dennis L. Kennedy	0.30 hours at \$	495.00 /hr	148.50
Kelly B. Stout	0.40 hours at \$	300.00 /hr	120.00
Total hours:	<u>0.70</u>		

Payments

2/1/2017	Payment	ACH	7,065.00
Sub-total Payments:			<u>7,065.00</u>

INVOICE REVIEW/PAYMENT APPROVAL	
Routing Date: <u>2/1/17</u>	Reviewer: <u>JSB</u>
Review Date: _____	Initials: _____
Comments: <u>Stout</u>	
City Attorney Review: <u>2/10</u>	<u>JSR</u>
Date	Initials

JA0507

Bailey Kennedy, LLP
Matter ID 10713-016

Page: 2
Stmt No: 29279
February 3, 2017

Total Current Billing:	<u>268.50</u>
Previous Balance Due:	7,065.00
Total Payments:	7,065.00
Finance Charges:	0.00
Total Now Due:	<u>268.50</u>



CITY OF HENDERSON
PAYMENT APPROVAL

Vendor Name: Bailey Kennedy LLP

Purchase Order Number: 0000657072

Invoice Number: 28771

	PO Line #	Amount	Account Coding
Amount Authorized:	<u>9.1</u>	<u>7,065.00</u>	<u>1001-0601-601009-00000</u>
	<u> </u>	<u> </u>	<u> </u>
	<u> </u>	<u> </u>	<u> </u>
	<u> </u>	<u> </u>	<u> </u>

TOTAL PAYMENT \$ 7,065.00

Date: January 19, 2017

Donna Crosson
Authorized Signature (required)

Additional Approval Signature (optional)

Notes (optional):
Las Vegas Review Journal 28771

PREPARED BY: Donna Crosson x1218

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

(702) 562-8820
Tax ID 20-3951680

Statement as of December 31, 2016
Statement No. 28771

RECEIVED

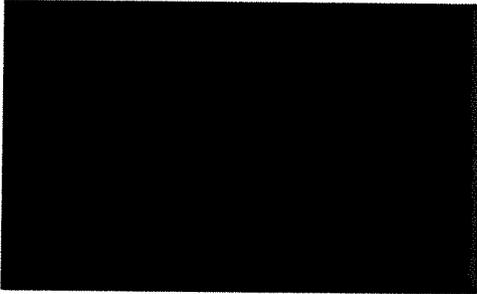
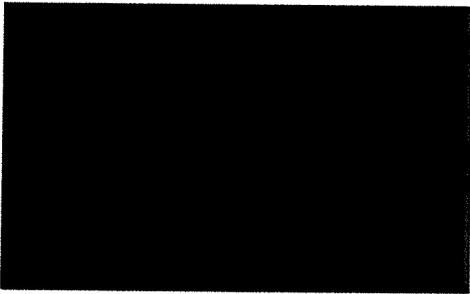
JAN - 5 2017

CITY ATTORNEY
CITY OF HENDERSON

**ATTORNEY-CLIENT
PRIVILEGE**

Henderson City Attorney
Josh M. Reid
240 Water Street
Henderson, NV 89015

10713-016: Las Vegas Review-Journal

Professional Fees	Hours	Rate	Amount
11/30/2016 SEH 	4.50	495.00	2,227.50
11/30/2016 DLK 	0.80	495.00	396.00
11/30/2016 KBS 	2.20	300.00	660.00
12/1/2016 SEH 	0.20	495.00	99.00
12/2/2016 SEH 	3.50	495.00	1,732.50

	[REDACTED]			
12/27/2016	KBS	[REDACTED]	1.50	300.00 450.00
12/29/2016	KBS	[REDACTED]	1.50	300.00 450.00
12/30/2016	KBS	[REDACTED]	1.00	300.00 300.00
12/31/2016	KBS	[REDACTED]	2.50	300.00 750.00
			Sub-total Fees:	<u>7,065.00</u>

Rate Summary			
Sarah E. Harmon	8.20 hours at \$	495.00 /hr	4,059.00
Dennis L. Kennedy	0.80 hours at \$	495.00 /hr	396.00
Kelly B. Stout	8.70 hours at \$	300.00 /hr	2,610.00
Total hours:		<u>17.70</u>	

Total Current Billing:	<u>7,065.00</u>
Previous Balance Due:	0.00
Total Payments:	0.00
Finance Charges:	0.00
Total Now Due:	<u>7,065.00</u>

INVOICE REVIEW/PAYMENT APPROVAL	
Routing Date: <u>1/5/17</u>	Reviewer: <u>JOSM</u>
Review Date: _____	Initials: _____
Comments: <u>[Signature]</u>	
City Attorney Review: <u>6/1/16</u>	<u>JMP</u>
Date	Initials

Cash Requirements Register

12/21/16-02/01/17

Reference	Date	Remit Vndr	Name	Sum Amount	Valid/Cancel	Cancelled
0000335805	1/24/2017	0000027753	ALLIED BARTON SECURITY SERVICES LLC	7,181.19		
0000335507	1/24/2017	0000002920	SAFE HOUSE	7,146.81		
0000033953	1/4/2017	0000001798	GCW, INC	7,141.06		
0000034247	1/31/2017	0000025632	BAILEY KENNEDY, LLP	7,065.00		
0000335241	1/18/2017	0000013605	BANK OF NEVADA	7,000.00		
0000034053	1/10/2017	0000022099	DANA KEPNER COMPANY INC	6,975.71		
0000009281	1/18/2017	0000001913	HENDERSON ELECTRIC MOTORS INC	6,930.40		
0000033949	1/4/2017	0000001682	HENDERSON CITY EMPLOYEES ASSOC	6,850.00		
0000335152	1/10/2017	0000027361	LAW OFFICE OF ROCHELLE T. NGUYEN, LTD	6,825.00		
0000335153	1/10/2017	0000027362	L MANINGO, LLC	6,825.00		
0000034143	1/24/2017	0000001682	HENDERSON CITY EMPLOYEES ASSOC	6,780.00		
0000334918	1/4/2017	0000024598	CA GROUP INC	6,745.50		
0000335833	1/31/2017	0000001385	CLARK COUNTY TREASURER	6,728.92		
0000009348	1/31/2017	0000002636	OFFICE DEPOT	6,499.81		
0000334997	1/10/2017	0000001017	LEXISNEXIS RISK SOLUTIONS	6,498.95		
0000009272	1/10/2017	0000026776	INDUSTRIAL SAFETY SUPPLY CORPORATION	6,435.14		
0000335038	1/10/2017	0000003068	STATE OF NEVADA TREASURER	6,425.00		
0000009289	1/18/2017	0000011729	PRECISION CRANE & HOIST SERVICES INC	6,421.00		
0000335981	1/31/2017	0000024556	CRUMP & CO INC	6,400.99		
0000334947	1/4/2017	0000026581	SONYA BASTENDORFF	6,396.25		
0000334900	1/4/2017	0000022990	HERNDON SOLUTIONS GROUP	6,305.05		
0000335049	1/10/2017	0000004316	ENDRESS HAUSER, INC	6,178.42		
0000034230	1/31/2017	0000022099	DANA KEPNER COMPANY INC	6,128.30		
0000034206	1/31/2017	0000002228	LAS VEGAS PAVING CORP	6,101.60		
0000335784	1/24/2017	0000026917	SILVER STATE TRUCK & TRAILER	6,059.26		
0000334915	1/4/2017	0000024448	SUNRISE REFRIGERATION	6,048.58		
0000335553	1/24/2017	0000012245	CREEL PRINTING COMPANY	6,000.00		

Cash Requirements Register

02/02/17-02/28/17

Reference	Date	Remit Vndr	Name	Sum Amount	Void/Cancel	Cancelled
0000336755	2/21/2017	00000026565	CITY ELECTRIC SUPPLY	268.56		
0000034519	2/28/2017	0000025632	BAILEY KENNEDY, LLP	268.50		
0000336482	2/14/2017	0000025814	MMC CONTRACTORS WEST, INC	265.17		
0000336253	2/7/2017	0000027213	R AND C PEST CONTROL LLC	265.00		
0000336739	2/21/2017	0000026022	GREENFIELDS OUTDOOR FITNESS, INC	265.00		
0000009474	2/14/2017	0000026641	GET FRESH SALES, INC	263.33		
0000336584	2/21/2017	0000004348	CITY OF HENDERSON/CULTURAL ARTS	262.00		
0000336232	2/7/2017	0000026062	HEALTHCARE PARTNERS OF NEVADA	260.20		
0000336165	2/7/2017	0000021531	CREATIVE FIT	260.00		
0000336169	2/7/2017	0000021531	DANIEL TILTON	260.00		
0000336947	2/28/2017	0000021531	SH ARCHITECTURE	260.00		
0000336386	2/14/2017	0000021512	JENNY MORRISON	259.59		
0000336264	2/7/2017	0000027428	AAA AIR FILTER COMPANY	253.70		
0000009499	2/21/2017	0000002999	SIMPSON NORTON CORP	252.00		
0000336485	2/14/2017	0000026082	AMERIGROUP	251.74		
0000034318	2/7/2017	0000026709	STERLING TALENT SOLUTIONS	251.00		
0000336446	2/14/2017	0000021531	BRADY J RICHARDS	251.00		
0000009387	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009388	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009389	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009390	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009437	2/14/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009438	2/14/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009439	2/14/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000336041	2/7/2017	0000001102	ANDREW S.T. FRITZ ESQ	250.00		
0000336238	2/7/2017	0000026322	PRECISION CONCRETE CUTTING	250.00		
0000336349	2/14/2017	0000004744	BOYS & GIRLS CLUBS OF SOUTHERN NEVADA	250.00		

EXHIBIT 4

Date	Note	Quantity	Price	Total	User
11/3/2016	Emails re Public Records Act request responses.	0.10	\$ 450.00	\$ 45.00	Margaret Mcletchie
11/4/2016	Emails with team re status on Trospier matter.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie
11/9/2016	Emails re setting up meeting.	0.10	\$ 450.00	\$ 45.00	Margaret Mcletchie
11/10/2016	Prepare for and attend client call.	1.20	\$ 450.00	\$ 540.00	Margaret Mcletchie
11/27/2016	Work on Petition; research re same.	1.80	\$ 450.00	\$ 810.00	Margaret Mcletchie
11/28/2016	Begin review of draft complaint. Check citations and find Henderson Public Records policy and relevant Henderson Municipal code re fee schedule.	1.80	\$ 300.00	\$ 540.00	Alina Shell
11/28/2016	Attention to compiling documentation for petition and drafting same. Circulate.	4.20	\$ 450.00	\$ 1,890.00	Margaret Mcletchie
11/29/2016	Voicemail for Mr. Reeves at City of Henderson re accepting service of petition.	0.10	\$ 300.00	\$ 30.00	Alina Shell
11/29/2016	Review and finalize petition for writ of mandamus.	1.20	\$ 300.00	\$ 360.00	Alina Shell
11/29/2016	Attention to finalizing filing.	2.00	\$ 450.00	\$ 900.00	Margaret Mcletchie
11/29/2016	Prepare and file Public Records Application and petition for Writ of Mandamus. Draft and file Initial Appearance Fee Disclosure and Civil Cover Sheet to create a new civil case in Eighth Judicial District Court. Attention to scheduling a legal process server re same. Email clients re same.	0.90	\$ 100.00	\$ 90.00	Pharan Burchfield
11/29/2016	Review emails re service.	0.10	\$ 450.00	\$ 45.00	Margaret Mcletchie
12/5/2016	Review and respond to letter from Josh Reid. Circulate letter to clients.	1.00	\$ 450.00	\$ 450.00	Margaret Mcletchie
12/6/2016	Further emails with Josh Reid. Emails with his office re setting up meeting.	0.30	\$ 450.00	\$ 135.00	Margaret Mcletchie
12/7/2016	Emails with RJ team regarding status and next steps.	0.10	\$ 450.00	\$ 45.00	Margaret Mcletchie
12/7/2016	Review pertinent media coverage.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie
12/14/2016	Prepare for and attend call with Josh Reid and two deputy City of Henderson attorneys. Negotiate for in-person inspection. Update clients re same.	1.70	\$ 450.00	\$ 765.00	Margaret Mcletchie
12/19/2016	Emails re documents available for inspection.	0.30	\$ 450.00	\$ 135.00	Margaret Mcletchie
12/19/2016	File Affidavit of Service.	0.10	\$ 100.00	\$ 10.00	Pharan Burchfield
12/20/2016	Attention to issues with review. Preliminary review of "privilege log." Call with client re litigation strategy. Confer with City of Henderson attorney Brian Reeve and plan meeting.	2.40	\$ 450.00	\$ 1,080.00	Margaret Mcletchie
12/21/2016	Emails with hendo and with clients. Successfully address issue with how documents were presented for review/ Attempt to obtain CD.	0.80	\$ 450.00	\$ 360.00	Margaret Mcletchie
12/23/2016	Emails re document review at City of Henderson.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie
12/27/2016	Follow up to Henderson to get Wednesday access for Natalie Bruzda.	0.10	\$ 450.00	\$ 45.00	Margaret Mcletchie
1/4/2017	Email re log re documents withheld by City of Henderson.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie
1/5/2017	Attention to compiling pertinent legislative history.	0.40	\$ 450.00	\$ 180.00	Margaret Mcletchie
1/9/2017	Trospier. Review NNS 34 to confirm compliance with same in submitting petition to Court.	0.30	\$ 300.00	\$ 90.00	Alina Shell
1/9/2017	Call with Henderson City Attorneys and follow up with client re same.	1.00	\$ 450.00	\$ 450.00	Margaret Mcletchie
1/9/2017	Calendarling - check Henderson deadline to respond to writ.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie
1/10/2017	Preliminary review of supplemental log received from City of Henderson.	0.70	\$ 450.00	\$ 315.00	Margaret Mcletchie
1/10/2017	Receive redacted documents from City of Henderson; create City of Henderson portal account to download, print, and save redacted documents from Public Records Act request (re Trospier).	0.20	\$ 100.00	\$ 20.00	Pharan Burchfield
1/11/2017	Edits to stipulation, call with and emails with City of Henderson attorneys.	0.60	\$ 450.00	\$ 270.00	Margaret Mcletchie
1/12/2017	Execute stipulation.	0.10	\$ 450.00	\$ 45.00	Margaret Mcletchie
1/12/2017	Call with client.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie
1/13/2017	Compile legislative history of the Nevada Public Records Act for Ms. Mcletchie; send same to Ms. Mcletchie.	0.60	\$ 125.00	\$ 75.00	Gabriel Czop
1/13/2017	Research assignment from Ms. Mcletchie - compiling legislative history.	0.70	\$ 125.00	\$ 87.50	Gabriel Czop
1/17/2017	Emails with client.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie
1/24/2017	Review privilege log for Ms. Mcletchie, analyze re what has been claimed as privileged.	2.40	\$ 125.00	\$ 300.00	Gabriel Czop

1/24/2017	Review documents attached to pleadings.	0.30	\$ 125.00	\$	37.50	Gabriel Czop
1/24/2017	Continue researching the legislative history for NRS 239.	1.60	\$ 125.00	\$	200.00	Gabriel Czop
1/24/2017	Attention to scheduling of review of privilege log, amending complaint, and filing supporting brief.	0.30	\$ 450.00	\$	135.00	Margaret Mcletchie
1/24/2017	Calls and emails with opposing counsel and court re case status, scheduling. Begin plans for amending.	0.40	\$ 450.00	\$	180.00	Margaret Mcletchie
1/25/2017	Attention to emails with court and opposing counsel re scheduling, update to clients re same.	0.30	\$ 450.00	\$	135.00	Margaret Mcletchie
1/25/2017	Email communications with Ms. Boyd (City of Henderson) re signed Stipulation re extension.	0.10	\$ 100.00	\$	10.00	Pharan Burchfield
1/26/2017	Research for Ms. Mcletchie about the requirements of a privilege log.	1.80	\$ 125.00	\$	225.00	Gabriel Czop
1/26/2017	Meet with Ms. Mcletchie to discuss the privilege log received from City of Henderson.	0.30	\$ 125.00	\$	37.50	Gabriel Czop
1/26/2017	Continue reviewing privilege log provided by City of Henderson, provide analysis to Ms. Mcletchie.	1.80	\$ 125.00	\$	225.00	Gabriel Czop
1/27/2017	Update privilege log analysis document for Ms. Mcletchie.	0.40	\$ 125.00	\$	50.00	Gabriel Czop
1/27/2017	Research the attorney/client privilege and work product privilege.	3.80	\$ 125.00	\$	475.00	Gabriel Czop
1/30/2017	Finalize privilege log analysis and provide same to Ms. Mcletchie for review.	0.20	\$ 125.00	\$	25.00	Gabriel Czop
2/1/2017	Continue reviewing documents received from City of Henderson.	1.10	\$ 125.00	\$	137.50	Gabriel Czop
2/8/2017	Confer with Ms. Mcletchie regarding amending petition for relief and drafting supporting brief. Review correspondence between Ms. Mcletchie and City of Henderson. Begin drafting brief in support of petition.	8.60	\$ 300.00	\$	2,580.00	Alina Shell
2/8/2017	Print out copies of the redacted documents received from City of Henderson.	0.40	\$ 125.00	\$	50.00	Gabriel Czop
2/8/2017	Amend and expand petition/ application; research issues; edit brief in support of petition/ application, declaration, and check exhibits.	6.20	\$ 450.00	\$	2,790.00	Margaret Mcletchie
2/8/2017	Prepare exhibits to brief and amended petition; begin drafting declaration in support of amended petition. File and serve/mail re same.	1.40	\$ 100.00	\$	140.00	Pharan Burchfield
3/9/2017	Emails with client re reply.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
3/14/2017	Draft public records request letter to City of Henderson for records pertaining to payment of law firm Bailey Kennedy for legal representation in this matter.	0.30	\$ 300.00	\$	90.00	Alina Shell
3/20/2017	Review City of Henderson response to amended petition and memorandum; confer with Ms. Mcletchie re same.	1.00	\$ 300.00	\$	300.00	Alina Shell
3/20/2017	Revise and finalize PRA letter to City of Henderson requesting records pertaining to payments to Bailey Kennedy for representation in Las Vegas Review-Journal v. City of Henderson.	0.40	\$ 300.00	\$	120.00	Alina Shell
3/20/2017	Review and analyze Henderson's response to our opening brief. Direct Ms. Shell re work on reply.	1.10	\$ 450.00	\$	495.00	Margaret Mcletchie
3/20/2017	Finalize and send (mail/email) Public Records Act request re Bailey Kennedy to City of Henderson's City Attorney.	0.20	\$ 100.00	\$	20.00	Pharan Burchfield
3/21/2017	Legal research regarding exclusive remedies argument raised by Henderson in its response to opening brief. Research regarding declaratory relief. Review of order entered in Gray v. Clark County School District matter regarding extraordinary use. Attention to drafting reply to Henderson's response.	4.30	\$ 300.00	\$	1,290.00	Alina Shell
3/21/2017	Research for Ms. Shell re statutory interpretation.	0.20	\$ 125.00	\$	25.00	Gabriel Czop
3/21/2017	Meet with Ms. Mcletchie and Ms. Shell re: research assignment to locate cases that discuss legislative history is not needed when the statute is clear.	0.10	\$ 125.00	\$	12.50	Gabriel Czop
3/22/2017	Continue drafting reply to response to amended petition/memorandum in support of petition.	5.10	\$ 300.00	\$	1,530.00	Alina Shell
3/22/2017	Review and edit stipulation for extension of time.	0.20	\$ 300.00	\$	60.00	Alina Shell
3/22/2017	Further review and analysis of Henderson's response to petition for work on reply; direct Ms. Burchfield to circulate response to clients.	1.80	\$ 450.00	\$	810.00	Margaret Mcletchie
3/22/2017	Draft Stipulation (re extension for Reply) for attorneys' review; email communications with Mr. Kennedy re same.	0.30	\$ 100.00	\$	30.00	Pharan Burchfield
3/22/2017	Resume drafting reply to Henderson response. Review Henderson's Third Privilege Log. Review communications with Henderson for inclusion in statement of facts. Legal research regarding scope of deliberative process privilege and attorney-client privilege.	9.60	\$ 300.00	\$	2,880.00	Alina Shell
3/23/2017	Edit declaration.	6.80	\$ 450.00	\$	3,060.00	Margaret Mcletchie
3/23/2017	Revising and editing of reply; attention to declaration; research and draft section re mootness.	2.10	\$ 100.00	\$	210.00	Pharan Burchfield
3/23/2017	Review external communications with City of Henderson re potential exhibits re Reply; draft Ms. Mcletchie's declaration re same; finalize, file, and serve/mail Reply re same.					

3/27/2017	File Stipulation and Order for Extension to Allow Las Vegas Review-Journal to File its Reply to Respondent City of Henderson's Response to Amended Petition.	0.10	\$ 100.00	\$ 10.00	Pharan Burchfield
3/28/2017	Draft, file, and serve/mail Notice of Entry of Order (reply extension).	0.10	\$ 100.00	\$ 10.00	Pharan Burchfield
3/29/2017	Review briefing and cases in preparation for upcoming hearing.	1.70	\$ 300.00	\$ 510.00	Alina Shell
3/30/2017	Prepare for and attend hearing on petition re Henderson public records.	1.60	\$ 300.00	\$ 480.00	Alina Shell
3/30/2017	Attend hearing; call to client; email summary to clients.	0.50	\$ 450.00	\$ 225.00	Margaret Mcletchie
4/4/2017	Review and circulate response to request for fees information for Henderson's outside counsel, Bailey Kennedy (records received).	0.20	\$ 45.00	\$ 9.00	Margaret Mcletchie
4/14/2017	Draft edits and commentary to Henderson's proposed order re NPRA petition. Review transcript of hearing on petition.	0.80	\$ 300.00	\$ 240.00	Alina Shell
4/21/2017	Update redline to proposed order re petition for public records. Circulate to Ms. Mcletchie for further review.	0.50	\$ 300.00	\$ 150.00	Alina Shell
4/27/2017	Draft letter to Honorable Judge Thompson re competing orders to be delivered to chambers with proposed order; email communications with opposing counsel re same.	0.20	\$ 100.00	\$ 20.00	Pharan Burchfield
5/11/2017	Phone call with AJ, law clerk in Department 18, re competing proposed order.	0.10	\$ 100.00	\$ 10.00	Pharan Burchfield
5/15/2017	Review order re petition for writ of mandamus. Verify calculated deadlines for filing motion for attorney's fees and notice of appeal.	0.10	\$ 300.00	\$ 30.00	Alina Shell
	<i>Deduction: duplicative time for Ms. Mcletchie attending 03/30/2017 hearing.</i>			\$ (675.00)	Margaret Mcletchie
TOTAL ATTORNEY'S FEES		97.30		\$ 30,931.50	

EXHIBIT 5

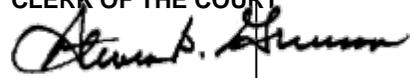
Date	Note	Quantity	Price	Total	User
11/28/2016	Begin review of draft complaint. Check citations and find Henderson Public Records policy and relevant Henderson Municipal code re fee schedule.	1.80	\$ 300.00	\$ 540.00	Alina Shell
11/29/2016	Voicemail for Mr. Reeves at City of Henderson re accepting service of petition.	0.10	\$ 300.00	\$ 30.00	Alina Shell
11/29/2016	Review and finalize petition for writ of mandamus.	1.20	\$ 300.00	\$ 360.00	Alina Shell
1/9/2017	Trosper: Review NRS 34 to confirm compliance with same in submitting petition to Court.	0.30	\$ 300.00	\$ 90.00	Alina Shell
2/8/2017	Confer with Ms. Mcletchie regarding amending petition for relief and drafting supporting brief. Review correspondence between Ms. Mcletchie and City of Henderson. Begin drafting brief in support of petition.	8.60	\$ 300.00	\$ 2,580.00	Alina Shell
3/14/2017	Draft public records request letter to City of Henderson for records pertaining to payment of law firm Bailey Kennedy for legal representation in this matter.	0.30	\$ 300.00	\$ 90.00	Alina Shell
3/20/2017	Review City of Henderson response to amended petition and memorandum; confer with Ms. Mcletchie re same.	1.00	\$ 300.00	\$ 300.00	Alina Shell
3/20/2017	Revise and finalize PRA letter to City of Henderson requesting records pertaining to payments to Bailey Kennedy for representation in Las Vegas Review-Journal v. City of Henderson.	0.40	\$ 300.00	\$ 120.00	Alina Shell
3/21/2017	Legal research regarding exclusive remedies argument raised by Henderson in its response to opening brief. Research regarding declaratory relief. Review of order entered in Gray v. Clark County School District matter regarding extraordinary use. Attention to drafting reply to Henderson's response.	4.30	\$ 300.00	\$ 1,290.00	Alina Shell
3/22/2017	Continue drafting reply to response to amended petition/memorandum in support of petition.	5.10	\$ 300.00	\$ 1,530.00	Alina Shell
3/22/2017	Resume and edit stipulation for extension of time.	0.20	\$ 300.00	\$ 60.00	Alina Shell
3/22/2017	Resume drafting reply to Henderson response. Review Henderson's Third Privilege Log. Review communications with Henderson for inclusion in statement of facts. Legal research regarding scope of deliberative process privilege and attorney-client privilege. Edit declaration.	9.60	\$ 300.00	\$ 2,880.00	Alina Shell
3/29/2017	Review briefing and cases in preparation for upcoming hearing.	1.70	\$ 300.00	\$ 510.00	Alina Shell
3/30/2017	Prepare for and attend hearing on petition re Henderson public records.	1.60	\$ 300.00	\$ 480.00	Alina Shell
4/14/2017	Draft edits and commentary to Henderson's proposed order re NPRA petition. Review transcript of hearing on petition.	0.80	\$ 300.00	\$ 240.00	Alina Shell
4/21/2017	Update redline to proposed order re petition for public records. Circulate to Ms. Mcletchie for further review.	0.50	\$ 300.00	\$ 150.00	Alina Shell
5/15/2017	Review order re petition for writ of mandamus. Verify calculated deadlines for filing motion for attorney's fees and notice of appeal.	0.10	\$ 300.00	\$ 30.00	Alina Shell
	TOTAL FOR ALINA SHELL	37.60		\$ 11,280.00	
1/13/2017	Compile legislative history of the Nevada Public Records Act for Ms. Mcletchie; send same to Ms. Mcletchie.	0.60	\$ 125.00	\$ 75.00	Gabriel Czop
1/13/2017	Research assignment from Ms. Mcletchie - compiling legislative history.	0.70	\$ 125.00	\$ 87.50	Gabriel Czop
1/24/2017	Review privilege log for Ms. Mcletchie, analyze re what has been claimed as privileged.	2.40	\$ 125.00	\$ 300.00	Gabriel Czop
1/24/2017	Review documents attached to pleadings.	0.30	\$ 125.00	\$ 37.50	Gabriel Czop
1/24/2017	Continue researching the legislative history for NRS 239.	1.60	\$ 125.00	\$ 200.00	Gabriel Czop
1/26/2017	Research for Ms. Mcletchie about the requirements of a privilege log.	1.80	\$ 125.00	\$ 225.00	Gabriel Czop
1/26/2017	Meet with Ms. Mcletchie to discuss the privilege log received from City of Henderson.	0.30	\$ 125.00	\$ 37.50	Gabriel Czop
1/26/2017	Continue reviewing privilege log provided by City of Henderson, provide analysis to Ms. Mcletchie.	1.80	\$ 125.00	\$ 225.00	Gabriel Czop
1/27/2017	Update privilege log analysis document for Ms. Mcletchie.	0.40	\$ 125.00	\$ 50.00	Gabriel Czop
1/27/2017	Research the attorney/client privilege and work product privilege.	3.80	\$ 125.00	\$ 475.00	Gabriel Czop
1/30/2017	Finalize privilege log analysis and provide same to Ms. Mcletchie for review.	0.20	\$ 125.00	\$ 25.00	Gabriel Czop
2/1/2017	Continue reviewing documents received from City of Henderson.	1.10	\$ 125.00	\$ 137.50	Gabriel Czop
2/8/2017	Print out copies of the redacted documents received from City of Henderson.	0.40	\$ 125.00	\$ 50.00	Gabriel Czop
3/21/2017	Research for Ms. Shell re statutory interpretation.	0.20	\$ 125.00	\$ 25.00	Gabriel Czop
3/21/2017	Meet with Ms. Mcletchie and Ms. Shell re: research assignment to locate cases that discuss legislative history is not needed when the statute is clear.	0.10	\$ 125.00	\$ 12.50	Gabriel Czop
	TOTAL FOR GABE CZOP	15.70		\$ 1,962.50	
11/3/2016	Emails re Public Records Act request responses.	0.10	\$ 450.00	\$ 45.00	Margaret Mcletchie
11/4/2016	Emails with team re status on Trosper matter.	0.20	\$ 450.00	\$ 90.00	Margaret Mcletchie

11/9/2016	Emails re setting up meeting.	0.10	\$ 450.00	\$	45.00	Margaret Mcletchie
11/10/2016	Prepare for and attend client call.	1.20	\$ 450.00	\$	540.00	Margaret Mcletchie
11/27/2016	Work on Petition; research re same.	1.80	\$ 450.00	\$	810.00	Margaret Mcletchie
11/28/2016	Attention to compiling documentation for petition and drafting same. Circulate.	4.20	\$ 450.00	\$	1,890.00	Margaret Mcletchie
11/29/2016	Attention to finalizing filing.	2.00	\$ 450.00	\$	900.00	Margaret Mcletchie
12/2/2016	Review emails re service.	0.10	\$ 450.00	\$	45.00	Margaret Mcletchie
12/5/2016	Review and respond to letter from Josh Reid. Circulate letter to clients.	1.00	\$ 450.00	\$	450.00	Margaret Mcletchie
12/6/2016	Further emails with Josh Reid. Emails with his office re setting up meeting.	0.30	\$ 450.00	\$	135.00	Margaret Mcletchie
12/7/2016	Emails with RJ team regarding status and next steps.	0.10	\$ 450.00	\$	45.00	Margaret Mcletchie
12/7/2016	Review pertinent media coverage.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
12/14/2016	Prepare for and attend call with Josh Reid and two deputy City of Henderson attorneys. Negotiate for in-person inspection. Update clients re same.	1.70	\$ 450.00	\$	765.00	Margaret Mcletchie
12/19/2016	Emails re documents available for inspection.	0.30	\$ 450.00	\$	135.00	Margaret Mcletchie
12/20/2016	Attention to issues with review. Preliminary review of "privilege log." Call with client re litigation strategy. Confer with City of Henderson attorney Brian Reeve and plan meeting.	2.40	\$ 450.00	\$	1,080.00	Margaret Mcletchie
12/21/2016	Emails with hendo and with clients. Successfully address issue with how documents were presented for review/ Attempt to obtain CD.	0.80	\$ 450.00	\$	360.00	Margaret Mcletchie
12/23/2016	Emails re document review at City of Henderson.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
12/27/2016	Follow up to Henderson to get Wednesday access for Natalie Bruzda.	0.10	\$ 450.00	\$	45.00	Margaret Mcletchie
1/4/2017	Email re log re documents withheld by City of Henderson.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
1/5/2017	Attention to compiling pertinent legislative history.	0.40	\$ 450.00	\$	180.00	Margaret Mcletchie
1/9/2017	Call with Henderson City Attorneys and follow up with client re same.	1.00	\$ 450.00	\$	450.00	Margaret Mcletchie
1/9/2017	Calendar - check Henderson deadline to respond to writ.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
1/10/2017	Preliminary review of supplemental log received from City of Henderson.	0.70	\$ 450.00	\$	315.00	Margaret Mcletchie
1/11/2017	Edits to stipulation, call with and emails with City of Henderson attorneys.	0.60	\$ 450.00	\$	270.00	Margaret Mcletchie
1/12/2017	Execute stipulation.	0.10	\$ 450.00	\$	45.00	Margaret Mcletchie
1/12/2017	Call with client.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
1/17/2017	Emails with client.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
1/24/2017	Attention to scheduling of review of privilege log, amending complaint, and filing supporting brief.	0.30	\$ 450.00	\$	135.00	Margaret Mcletchie
1/24/2017	Calls and emails with opposing counsel and court re case status, scheduling. Begin plans for amending.	0.40	\$ 450.00	\$	180.00	Margaret Mcletchie
1/25/2017	Attention to emails with court and opposing counsel re scheduling; update to clients re same.	0.30	\$ 450.00	\$	135.00	Margaret Mcletchie
2/8/2017	Amend and expand petition/ application; research issues; edit brief in support of petition/ application, declaration, and check exhibits.	6.20	\$ 450.00	\$	2,790.00	Margaret Mcletchie
3/9/2017	Emails with client re rely.	0.20	\$ 450.00	\$	90.00	Margaret Mcletchie
3/20/2017	Review and analyze Henderson's response to our opening brief. Direct Ms. Shell re work on reply.	1.10	\$ 450.00	\$	495.00	Margaret Mcletchie
3/22/2017	Further review and analysis of Henderson's response to petition for work on reply; direct Ms. Burchfield to circulate response to clients.	1.80	\$ 450.00	\$	810.00	Margaret Mcletchie
3/23/2017	Revising and editing of reply; attention to declaration; research and draft section re mootness.	6.80	\$ 450.00	\$	3,060.00	Margaret Mcletchie
3/30/2017	Attend hearing; call to client; email summary to clients.	0.50	\$ 450.00	\$	225.00	Margaret Mcletchie
4/4/2017	Review and circulate response to request for fees information for Henderson's outside counsel, Bailey Kennedy (records received). <i>Deduction: duplicative time for Ms. Mcletchie attending 03/30/2017 hearing.</i>	0.20	\$ 45.00	\$	9.00	Margaret Mcletchie
TOTAL FOR MARGARET MCLETCHIE		38.20		\$ 16,434.00		Margaret Mcletchie
11/29/2016	Prepare and file Public Records Application and petition for Writ of Mandamus. Draft and file Initial Appearance Fee Disclosure and Civil Cover Sheet to create a new civil case in Eighth Judicial District Court. Attention to scheduling a legal process server re same.	0.90	\$ 100.00	\$	90.00	Pharan Burchfield
12/19/2016	Email clients re same.					
12/19/2016	File Affidavit of Service.	0.10	\$ 100.00	\$	10.00	Pharan Burchfield

1/10/2017	Receive redacted documents from City of Henderson; create City of Henderson portal account to download, print, and save redacted documents from Public Records Act request (re Trospier).	0.20	\$ 100.00	\$	20.00	Pharan Burchfield
1/25/2017	Email communications with Ms. Boyd (City of Henderson) re signed Stipulation re extension.	0.10	\$ 100.00	\$	10.00	Pharan Burchfield
2/8/2017	Prepare exhibits to brief and amended petition; begin drafting declaration in support of amended petition. File and serve/mail re same.	1.40	\$ 100.00	\$	140.00	Pharan Burchfield
3/20/2017	Finalize and send (mail/email) Public Records Act request re Bailey Kennedy to City of Henderson's City Attorney.	0.20	\$ 100.00	\$	20.00	Pharan Burchfield
3/22/2017	Draft Stipulation (re extension for Reply) for attorneys' review; email communications with Mr. Kennedy re same.	0.30	\$ 100.00	\$	30.00	Pharan Burchfield
3/23/2017	Review external communications with City of Henderson re potential exhibits re Reply; draft Ms. McLetchie's declaration re same; finalize, file, and serve/mail Reply re same.	2.10	\$ 100.00	\$	210.00	Pharan Burchfield
3/27/2017	File Stipulation and Order for Extension to Allow Las Vegas Review-Journal to file its Reply to Respondent City of Henderson's Response to Amended Petition.	0.10	\$ 100.00	\$	10.00	Pharan Burchfield
3/28/2017	Draft, file, and serve/mail Notice of Entry of Order (reply extension).	0.10	\$ 100.00	\$	10.00	Pharan Burchfield
4/27/2017	Draft letter to Honorable Judge Thompson re competing orders to be delivered to chambers with proposed order; email communications with opposing counsel re same.	0.20	\$ 100.00	\$	20.00	Pharan Burchfield
5/11/2017	Phone call with AJ law clerk in Department 18, re competing proposed order.	0.10	\$ 100.00	\$	10.00	Pharan Burchfield
	TOTAL FOR PHARAN BURCHFIELD	5.80		\$	580.00	
	TOTAL ATTORNEY'S FEES	97.30		\$	30,931.50	

EXHIBIT 6

Date	Price	Note
11/29/2016	\$ 281.60	E-filing fee: Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus (Amount: \$3.50; Court Fee: \$270.00; Card Fee: \$8.10).
11/29/2016	\$ 3.50	E-filing fee: Initial Appearance Fee Disclosure (NRS Chapter 19).
12/19/2016	\$ 3.50	E-filing fee: Affidavit of Service.
12/29/2016	\$ 43.00	Junes Legal Service Invoice: EP125103 served Summons and Complaint to City of Henderson.
12/31/2016	\$ 0.32	Copying Costs: December 1, 2016 - December 31, 2016: 4 pages at \$0.08 per page.
12/31/2016	\$ 123.50	Legal Research: WestlawNext - charges for 47 transactions for 2016.
1/31/2017	\$ 13.44	Copying Costs: January 1, 2017 - January 31, 2017: 168 pages at \$0.08 per page.
2/8/2017	\$ 3.50	E-filing fee: Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief.
2/8/2017	\$ 13.60	Postage: mailing expense - Amended Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief and Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief mailed to opposing counsel.
2/8/2017	\$ 3.50	E-filing fee: Amended Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief.
2/28/2017	\$ 23.20	Copying Costs: February 1, 2017 - February 28, 2017: 290 pages at \$0.08 per page.
2/28/2017	\$ 38.77	Legal Research: WestlawNext - charges for 51 transactions for February 2017.
3/20/2017	\$ 0.46	Postage: mailing expense - Public Records Act request sent to City of Henderson's City Attorney's Office.
3/23/2017	\$ 3.50	E-filing fee: Reply to Respondent City of Henderson's Response to Amended Public Records Act Application Pursuant To NRS 239.001/ Petition For Writ Of Mandamus/ Application For Declaratory And Injunctive Relief.
3/23/2017	\$ 13.30	Postage: mailing expense - Reply to Respondent City of Henderson's Response to Amended Public Records Act Application Pursuant To NRS 239.001/ Petition For Writ Of Mandamus/ Application For Declaratory And Injunctive Relief to opposing counsel.
3/23/2017	\$ 20.57	Picked up signed Stipulation and Order for Extension to allow Las Vegas Review Journal to file its Reply to Respondent City of Henderson's Response to it's Amend Petition at office of Bailey Kennedy 8984 Spanish Ridge Ave, Las Vegas, NV 89148. Total miles: 38.1 at 0.54 cents per mile.
3/27/2017	\$ 3.50	E-filing fee: Stipulation and Order for Extension to Allow Las Vegas Review-Journal to file its Reply to Respondent City of Henderson's Response to Amended Petition.
3/28/2017	\$ 3.50	E-filing fee: Notice of Entry of Order.
3/28/2017	\$ 0.92	Postage: mailing expense - Notice of Entry of Order sent to opposing counsel.
3/31/2017	\$ 116.72	Copying Costs: March 1, 2017 - March 31, 2017: 1,459 pages at \$0.08 per page.
3/31/2017	\$ 178.30	Legal Research: WestlawNext - charges for 94 transactions for March 2017.
4/30/2017	\$ 10.64	Copying Costs: April 1, 2017 - April 30, 2017: 133 pages at \$0.08 per page.
	\$ 902.84	TOTAL COSTS AND EXPENSES



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

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

9 LAS VEGAS REVIEW-JOURNAL

10 Petitioner,

11 vs.

12 CITY OF HENDERSON,

13 Respondent.

Case No.: A-16-747289-W

Dept. No.: XVIII

NOTICE OF APPEAL

14 PLEASE TAKE NOTICE that Plaintiff/Petitioner, the Las Vegas Review-Journal
15 (“Review-Journal”), pursuant to Nevada Rule of Appellate Procedure 4(a)(2), hereby timely
16 appeals to the Supreme Court of Nevada from the final judgment entered in this case on May
17 15, 2017.

18 DATED this 9th day of June, 2017.

21 /s/ Margaret A. McLetchie

22 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
23 ALINA M. SHELL, Nevada Bar No. 11711
24 MCLETCHIE SHELL LLC
25 701 East Bridger Avenue, Suite. 520
26 Las Vegas, NV 89101
27 Telephone: (702)-728-5300
28 Email: maggie@nvlitigation.com
Counsel for Petitioner

MCLETCHIESHELL

ATTORNEYS AT LAW
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CERTIFICATE OF SERVICE

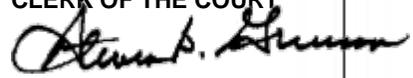
Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 9th day of June, 2017, I did cause a true copy of the foregoing NOTICE OF APPEAL in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 9th day of June, 2017, I mailed a true and correct copy of the foregoing NOTICE OF APPEAL by depositing the same in the United States mail, first-class postage pre-paid, to the following:

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11
12 LAS VEGAS REVIEW-JOURNAL,

13 Petitioner,

14 vs.

15 CITY OF HENDERSON,

16 Respondent.

Case No. A-16-747289-W

Dept. No. 28

Date of Hearing: Aug. 3, 2017

Time of Hearing: 9:00 A.M.

17
18 **CITY OF HENDERSON'S OPPOSITION TO LAS VEGAS REVIEW-JOURNAL'S**
19 **MOTION FOR ATTORNEY'S FEES AND COSTS**

20 Respondent, City of Henderson (the "City"), submits its Opposition to Las Vegas Review-
21 Journal's ("LVRJ") Motion for Attorney's Fees and Costs (the "Motion"). This Opposition is based
22 on the Memorandum of Points and Authorities below, the exhibits attached hereto and papers and
23 pleadings on file with the Court, and any oral argument the Court may entertain.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 It's not often that a party moves for attorney's fees as a "prevailing party" when it has lost
27 on *all* of its claims for relief. It's even rarer – no, virtually unheard of – to move for attorney fees
28 when the language of the Court's order *expressly contradicts* the basis of the motion for fees. But
then again, attorney fees have been LVRJ's motivation behind this action from the get-go, so while

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1 it is disappointing that LVRJ is forcing the Court and the City to expend time and resources to deal
2 with its Motion, it is not surprising.

3 The Court should deny LVRJ's motion for fees and costs because it is not a prevailing party.
4 LVRJ did not succeed on any significant issue in this litigation. Rather, the Court denied each of
5 LVRJ's claims for relief and ruled that the City complied with its obligations under the Nevada
6 Public Records Act (the "NPR"). LVRJ's argument that the Court "directed" the City to give
7 LVRJ copies of records – records that LVRJ had already inspected and never asked for copies
8 before the hearing – is belied by the plain language of the Court's Order.

9 LVRJ's Amended Petition asked the Court to issue a writ of mandamus compelling the City
10 to comply with the NPR. *See* Amended Petition at 11:18-19. The Amended Petition alleged that
11 "Henderson is continuing to refuse to make documents available for either inspection or copying
12 without having met its burden under the NPR." *Id.* at 11:19-20. It is not clear why LVRJ made
13 this allegation when it is undisputed that before LVRJ filed its Amended Petition, the City had
14 given LVRJ access to the records and LVRJ had spent *several days* inspecting them. Thus, the
15 notion that the City was "continuing to refuse to make documents available for either inspection or
16 copying" was simply not true. Hence, the Court *denied* LVRJ's claim for a writ of mandamus.

17 After LVRJ's inspection was complete, it never requested copies of any of the documents it
18 inspected. It wasn't until several months later at the hearing on LVRJ's Amended Petition that
19 LVRJ, in response to multiple questions by the Court, acquiesced in receiving copies of the
20 inspected records that it did not really want. The Court asked the City if it was "willing" to provide
21 copies of the inspected records to LVRJ and the City replied affirmatively. There was never any
22 "direction", order or other grant of judicial relief with the respect to the inspected documents to
23 make LVRJ a prevailing party on that issue. This is evident by the plain language of the Court's
24 Order, which (1) found that "[t]he City has complied with its obligations under the Nevada Public
25 Records Act (the "NPR")," (2) clearly stated that the only issue the Court was deciding was the
26 sufficiency of the City's final privilege log, and (3) expressly denied LVRJ's claims for a writ of
27 mandamus, injunctive relief, declaratory relief, and "any remaining request for relief." *See* May 12,
28 2017 Order at 2:11-12; 2:16-18; 3:2-4.

1 While the Court should deny LVRJ's Motion based on the plain language of its Order,
2 LVRJ's Motion may also be denied on the alternative grounds that the City is immune from
3 damages in the form of attorney fees pursuant to NRS 239.012. Under NRS 239.012, "[a] public
4 officer or employee who acts in good faith in disclosing or refusing to disclose information and the
5 employer of the public officer or employee are immune from liability for damages, either to the
6 requester or to the person whom the information concerns." Because the City acted in good faith in
7 disclosing the requested documents, and refusing to disclose confidential documents, the City is
8 immune from having to pay LVRJ's attorney's fees.

9 Finally, to the extent the Court determines that LVRJ is a limited prevailing party, its request
10 for attorney's fees and costs should be significantly reduced. The issues related to the City's
11 privilege log set forth in the Amended Petition are separate and distinct from the issues related to
12 LVRJ's access to the inspected documents in the original Petition. Because the Court denied
13 LVRJ's contentions regarding the adequacy of the privilege log, all fees related to that issue,
14 including the preparation of and events occurring after the Amended Petition, should be excluded
15 from any fee award. In addition, given that LVRJ lost on all of its claims for relief, lost on the sole
16 issue decided by the Court (adequacy of the privilege log), and the Court found that the City
17 complied with its obligations under the NPRA, even LVRJ's fees related to obtaining access to the
18 inspected documents should be reduced. Further, select billing entries highlighted below should be
19 excluded from any fee award as they are not reasonable.

20 II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

21 On October 4, 2016, the City received a public records request from LVRJ (the "Request")
22 asking for the following documents during the date range of January 1, 2016 to October 4, 2016:

- 23 (1) All emails to or from City of Henderson Communications Department
24 personnel, Council members, or the Mayor that contain the words "Trosper
25 Communications," "Elizabeth Trosper," or "crisis communications;" (2) All
26 emails pertaining to or discussing work performed by Elizabeth Trosper or
27 Trosper Communications on behalf of the City of Henderson; (3) All documents
28 pertaining to or discussing contracts, agreements, or possible contracts, with
Elizabeth Trosper or Trosper Communications; and (4) All documents pertaining
to or discussing the terms under which Elizabeth Trosper or Trosper
Communications provided, provide, or will provide services to the City of
Henderson.

See **Exhibits A** and **B** attached to the City's Response to LVRJ's Amended Petition. The Request

1 asked the City to waive any applicable fees, but noted: “[i]f you intend to charge any fees for
2 obtaining copies of these records, please contact us immediately (no later than 5 days from today) if
3 the cost will exceed \$50.” **Exhibit B** to Response.

4 On October 11, 2016, five business days after receiving the Request, the City provided its
5 initial written response as required by NRS 239.0107 (the “Initial Response”). *See* **Exhibit C** to
6 Response. In its Initial Response, the City informed LVRJ that it had found approximately 5,566
7 emails matching the search terms set forth in the expansive Request. *Id.* These 5,566 emails
8 contained approximately 9,621 electronic files and consisted of approximately 69,979 pages. *See*
9 **Exhibit A** to Response at ¶ 6. In light of the large universe of documents and the City’s
10 responsibility to safeguard confidential information, *i.e.* non-public records, the City explained that
11 the Request would require extraordinary research and use of City personnel to complete. *See*
12 **Exhibit C**. The City estimated that it would take approximately 74 hours for City staff to review
13 the electronic files to determine whether to withhold or redact any confidential documents or
14 information within the responsive files. *Id.* Under NRS 239.055, the City provided LVRJ with an
15 estimate of \$5,787.89 to complete the Request and explained how the City arrived at its estimate.
16 *Id.*

17 On October 12, 2016,¹ LVRJ’s attorney, Margaret McLetchie, called the City to discuss the
18 City’s Initial Response. *See* **Exhibit A** to Response at ¶ 8. Ms. McLetchie disputed the City’s
19 ability to charge extraordinary fees to complete the Request and wanted to know why the City had
20 so many emails matching LVRJ’s search terms. *Id.* at ¶ 9. Counsel for the City explained to Ms.
21 McLetchie that the City was still in the process of removing duplicate emails in its document review
22 system and that the estimated cost to produce the documents likely would decrease once this
23 process was completed. *Id.* at ¶ 10. During the call, the parties discussed potentially narrowing the
24 search terms to decrease the number of email hits and whether the City would be willing to lower its
25 fee estimate. *Id.* at ¶ 11. Counsel for both parties resolved to go back to their respective clients to
26

27 ¹ On October 12, 2016, the LVRJ reporter who submitted the Request, Natalie Bruzda, announced on Twitter that
28 she would officially begin the higher education beat the following Monday. *See* <https://twitter.com/NatalieBruzda/status/786238453931356160>. Based on this announcement, it was unclear whether LVRJ was still interested in the requested documents.

1 work on a solution. *Id.* Ms. McLetchie represented that she would call back on October 17, 2016,
2 to discuss the matter further. *Id.*

3 Ms. McLetchie did not call the City on October 17, 2016. *Id.* at ¶ 12. After waiting a week
4 with no contact from Ms. McLetchie, counsel for the City called Ms. McLetchie's office on October
5 25, 2016, to further the parties' October 12th discussion in an attempt to work out a resolution. *Id.*
6 at ¶ 13. Counsel for the City was informed by Ms. McLetchie's office that Ms. McLetchie was out
7 of town until November 4, 2016. *Id.* Counsel for the City asked for a return call once Ms.
8 McLetchie returned to the office. *Id.*

9 Ms. McLetchie never returned the City's phone call and did not otherwise attempt to contact
10 the City to work on a resolution. *Id.* at ¶ 14. Yet, Ms. McLetchie's billing entries show that she
11 was working on this matter on November 3rd, November 4th, November 9th, and November 10,
12 demonstrating that she was actively engaged at the time she ignored the City's request for a return
13 phone call to work on a resolution. *See* Exhibit 4 to LVRJ's Motion for Attorney's Fees and Costs.
14 Instead of working with the City in an effort to avoid wasting taxpayer dollars and this Court's time,
15 LVRJ and its counsel were strategizing about filing an opportunistic lawsuit. As explained below,
16 this would not be the only time LVRJ would rebuff the City's efforts to compromise in favor of
17 litigation.

18 After more than six weeks had passed since communicating with the City and without any
19 prior warning, LVRJ filed suit against the City on November 29, 2016, claiming that the City had
20 refused to provide LVRJ with the requested records. *Id.* This is simply not true. The City never
21 refused or denied LVRJ's request. *Id.* As demonstrated in the October 11, 2016 correspondence
22 and via telephone conversations, the City was prepared to review and provide copies of all
23 responsive public records.

24 After the City was served with LVRJ's original Petition in this action, the City wrote Ms.
25 McLetchie a letter expressing surprise at the lawsuit given LVRJ's silence with respect to the
26 Request for over six weeks and the fact that the City has always worked with LVRJ to modify the
27 scope of records requests by using agreed upon search terms, or other methods to reduce the time
28 and cost of producing large numbers of electronic documents. *See Exhibit A* to Response at ¶ 15;

1 and **Exhibit D** to Response. The City's letter noted that City employees spent 72 hours processing
2 LVRJ's Request and provided the actual cost of personnel time to complete the Request
3 (\$5,303.32). *See Exhibit D* to Response. As a compromise, however, the City offered to reduce
4 the fee to \$3,226.32. *Id.* The City emphasized that despite the filing of the lawsuit, it was still
5 amenable to working with LVRJ on a mechanism to provide LVRJ with the requested documents,
6 and working on a protocol for future requests. *Id.*

7 Subsequently, the parties' respective counsel conferred about LVRJ's Request and the City
8 offered to make the requested documents available for inspection at City Hall free of charge. *See*
9 **Exhibit A** to Response at ¶¶ 17-18. LVRJ's inspection of the records took place over the span of
10 several days. *Id.* Notably, after completing its inspection of the documents, LVRJ did not request a
11 single copy of any of the documents it reviewed. *Id.*

12 On December 20, 2016, the City provided LVRJ with an initial list of documents for which
13 it was asserting confidentiality or privilege ("Withholding Log"). *Id.* at ¶ 21. Thereafter, the City
14 provided two updated versions of the Withholding Log to LVRJ. *See Exhibits F, G and H* to
15 Response. Around the same time the City provided LVRJ's counsel with the third Withholding
16 Log, counsel for the City asked Ms. McLetchie to contact them if she had any questions or concerns
17 regarding the Withholding Log so that the parties could discuss them and attempt to resolve them
18 without having to involve the Court. *See Exhibit A* to Response at ¶ 28. Notwithstanding the
19 City's request to meet and confer about any questions or issues LVRJ might have with the third
20 Withholding Log, Ms. McLetchie never contacted the City. **Exhibit A** to Response at ¶ 29.
21 Instead, consistent with past behavior in this case, LVRJ chose to file an Amended Petition on
22 February 28, 2017 attacking the adequacy of the City's third Withholding Log.

23 LVRJ's Amended Petition "requested (1) that the Court issue a writ of mandamus requiring
24 Henderson to immediately make available all records the Review-Journal had previously requested
25 but had been withheld and/or redacted; (2) injunctive relief prohibiting Henderson from applying
26 the provisions of Henderson Municipal Code § 2.47.085 and the Henderson Public Records Policy
27 to demand fees in excess of those permitted by the NPRA; (3) declaratory relief stating that
28 Henderson Municipal Code § 2.47.085 and the City of Henderson's Public Records Policy invalid

1 to the extent they provide for fees in excess of those permitted by the NPRA; and (4) declaratory
2 relief limiting Henderson to charging fees for extraordinary use of personnel to fifty cents per page
3 and limiting Henderson from demanding fees for attorney review.” See LVRJ’s Motion for
4 Attorney’s Fees and Costs at 7:3-12. As set forth more fully below, the Court *denied all of these*
5 *requests for relief.*

6 On March 8, 2017, the City filed a Response to LVRJ’s Amended Petition. LVRJ filed a
7 Reply on March 23, 2017. On March 30, 2017, this Court held a hearing on LVRJ’s Amended
8 Petition and entertained the arguments of counsel.

9 At the hearing, LVRJ was forced to concede facts that were contrary to its allegations in the
10 Amended Petition:

11
12 THE COURT: But when your reporter went to the City and reviewed them I guess
13 online; is that right? Some computer or something?

14 MS. SHELL: They had made a computer available specifically for just the review.

15 THE COURT: And did your reporter ask for copies of any of the documents your
16 reporter saw?

17 MS. SHELL: She did not because we still had this issue – or Ms. McLetchie may
18 have an answer to that.

19 THE COURT: I think that they’ll give those to you or I thought that they would
20 have.

21 MR. KENNEDY: Just for the record, that’s correct. No copies were requested or
22 made.

23 THE COURT: Okay.

24 See Hearing Transcript dated March 30, 2017 at 5:19-6:7, and attached hereto as **Exhibit BB**. After
25 the foregoing exchange, the Court asked LVRJ’s counsel four times if its client still wanted copies
26 of the documents it had already inspected. *Id.* at 6:18-7:12. In response to the Court’s inquiries,
27 and despite not having asked the City for any copies of the documents it spent days reviewing at
28 City Hall in December 2016, LVRJ informed the Court that it wanted copies of the already-
inspected documents. See the Court’s Order entered on May 12, 2017 at 2:4-12, and attached hereto

1 as **Exhibit AA**. The Court then asked the City: “Are you – are you willing to give them a USB
2 drive with all the documents?” See **Exhibit BB** at 8:8-10. The City responded in the affirmative.
3 *Id.*; see also **Exhibit AA** at 2:8-12.

4 The Court concluded that “[t]he City has complied with its obligations under the Nevada
5 Public Records Act (the “NPR”).” **Exhibit AA** at 2:11-12. Because the City had already allowed
6 LVRJ to inspect the requested documents free of charge, and was willing to provide electronic
7 copies of the inspected documents on a USB drive, also free of charge, the Court determined that
8 LVRJ’s arguments regarding the propriety of charging fees and costs was moot and did not decide
9 them. *Id.* at 2:13-15.

10 The sole issue decided by the Court concerned certain documents the City withheld and/or
11 redacted on the grounds of attorney-client privilege or deliberative process privilege. *Id.* at 2:16-18.
12 The Court ruled that the Withholding Log the City provided to LVRJ was “timely, sufficient and in
13 compliance with the requirements of the NPR” and therefore denied LVRJ’s Amended Petition
14 with respect to the withheld documents. *Id.* at 2:19-21. The Court’s order concludes: “Based on the
15 foregoing, LVRJ’s request for a writ of mandamus, injunctive relief, and declaratory relief, and any
16 remaining request for relief in the Amended Petition is hereby DENIED.” *Id.* at 3:2-4.

17 III. ARGUMENT

18 The Court should deny LVRJ’s Motion for two reasons. First, only a prevailing party may be
19 awarded attorney fees under NRS 239.011, and LVRJ is *not* a prevailing party. Second, the City is
20 immune from having to pay attorney’s fees under NRS 239.012 because it acted in good faith in
21 responding to LVRJ’s public records request.

22 To the extent the Court were to find that LVRJ is a limited prevailing party, its request for
23 attorney fees should be significantly reduced because the issues related to the City’s withholding log
24 set forth in the Amended Petition are separate and distinct from the issues related to LVRJ’s access
25 to the inspected documents in the original Petition. Because the Court denied LVRJ’s contentions
26 regarding the adequacy of the withholding log, all fees related to that issue should be excluded from
27 any fee award. In addition, because LVRJ lost on all of its claims for relief, lost on the sole issue
28 decided by the Court (adequacy of the privilege log), and the Court found that the City complied

1 with its obligations under the NPRA, even LVRJ's fees related to obtaining access to the inspected
2 documents should be reduced. Finally, select billing entries highlighted below should be excluded
3 from any fee award as they are not reasonable.

4 **A. LVRJ is Not a Prevailing Party and Therefore Is Not Entitled To Attorney Fees.**

5 The Court should deny LVRJ's request for attorney's fees because LVRJ did not prevail on
6 any issue in the case. Instead, the Court *denied all of LVRJ's claims for relief*, found that the City
7 complied with its obligations under the NPRA, and ruled in the City's favor on the one issue it
8 decided – the adequacy of the City's Withholding Log. No amount of twisting or parsing words can
9 change those indisputable facts. Indeed, despite claiming to be a “prevailing party,” LVRJ does not
10 point to any language in the Court's Order supporting its position. Nor could it – as there is no
11 language in the Order upon which LVRJ may rely.

12 A court may not award attorney fees unless it is authorized by statute, agreement or rule.
13 *State Dept. of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993). Under the
14 NPRA, a requester is entitled to recover his or her costs and reasonable attorney fees in the
15 proceeding from the governmental entity who has custody of the book or record *if the requester*
16 *prevails*. NRS 239.011(2). “A party prevails ‘if it succeeds on any significant issue in litigation
17 which achieves some of the benefit it sought in bringing suit.’” *LVMPD v. Blackjack Bonding*, 131
18 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015). Importantly, “*a prevailing party must win on at least*
19 *one of its claims.*” *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d
20 103, 107 (2016) (emphasis added).

21 In *Golightly*, the law firm Golightly & Vannah (“G&V”) filed an interpleader action seeking
22 a ruling that its attorney lien had priority and that it receive its contingency fee from the recovery.
23 *Id.* One of the defendants argued that G&V's lien was not properly perfected and therefore had no
24 priority. *Id.* The court ruled in favor of the defendant, awarding it a full pro-rata share of the
25 recovery at the expense of G&V's requested recovery. *Id.* Although G&V received some money,
26 because G&V did not prevail on its sole claim of priority, it was not a prevailing party and therefore
27 was not entitled to its costs. *Id.*

28 The United States Supreme Court has explained that a litigant qualifies as a prevailing party

1 if it obtains a “court-ordered ‘chang[e] [in] the legal relationship between [the plaintiff] and the
2 defendant.” *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dept. of Health & Human Res.*, 532
3 U.S. 598, 604 (2001) (alterations in original). Thus, “enforceable judgments on the merits and court-
4 ordered consent decrees create the ‘material alteration of the legal relationship of the parties’
5 necessary to permit an award of attorney’s fees.” *Id.* But, a “defendant’s voluntary change in
6 conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks
7 the necessary judicial imprimatur on the change.”² *Id.* at 605. Instead, “[a] fee-seeking party must
8 show that (1) there has been a material alteration in the legal relationship of the parties and (2) it was
9 judicially sanctioned.” *Wood v. Burwell*, 837 F.3d 969, 973 (9th Cir. 2016).

10 LVRJ is not a prevailing party. It did not succeed on *any* issue – let alone a *significant* issue
11 – in the case. It did not succeed on any of its claims for relief. Nor did it obtain any judicially
12 enforceable actual relief on the merits of its claims that materially altered the parties’ legal
13 relationship. This is evident from the plain language of the Court’s Order.

14 In LVRJ’s own words, its Amended Petition sought four claims for relief: “(1) that the Court
15 issue a writ of mandamus requiring Henderson to immediately make available all records the
16 Review-Journal had previously requested but had been withheld and/or redacted; (2) injunctive relief
17 prohibiting Henderson from applying the provisions of Henderson Municipal Code § 2.47.085 and
18 the Henderson Public Records Policy to demand fees in excess of those permitted by the NPRA; (3)
19 declaratory relief stating that Henderson Municipal Code § 2.47.085 and the City of Henderson’s
20 Public Records Policy invalid to the extent they provide for fees in excess of those permitted by the
21 NPRA; and (4) declaratory relief limiting Henderson to charging fees for extraordinary use of
22 personnel to fifty cents per page and limiting Henderson from demanding fees for attorney review.”
23 *See* LVRJ’s Motion for Attorney’s Fees and Costs at 7:3-12. The Court *denied* each of these claims
24 for relief. *See Exhibit AA* at 3:2-4 (“Based on the foregoing, LVRJ’s request for a writ of
25 mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the
26

27 ² To the extent LVRJ is attempting to argue that it is a prevailing party under the “catalyst theory”, which “posits that a
28 plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the
defendant’s conduct,” this argument has been *rejected* by the U.S. Supreme Court. *See Buckhannon*, 532 U.S. at 601-05;
see also McMillen v. Clark Cty., No. 2:14-CV-00780-APG-PAL, 2016 WL 8735673, at *9 (D. Nev. Sept. 23, 2016) (“A
plaintiff cannot use a catalyst theory to establish herself as a prevailing party under *Buckhannon*.”).

1 Amended Petition is hereby DENIED.”). Because LVRJ did not succeed on any of its claims for
2 relief, it cannot be a prevailing party. *See Golightly & Vannah*, 132 Nev. Adv. Op. 41, 373 P.3d 103,
3 107 (2016) (explaining that “a prevailing party must win on at least one of its claims.”).

4 Further, nothing in the Court’s Order imposes a material alteration in the parties’ legal
5 relationship. LVRJ contends that at the March 30, 2017 hearing on its Amended Petition, “counsel
6 for Henderson finally agreed to provide the Review-Journal a USB drive with copies of the
7 requested documents” and that “Henderson did not produce a substantial amount of the records the
8 Review-Journal had sought until the Court directed it to do so.” *See* LVRJ’s Motion for Attorney’s
9 Fees and Costs at 7:16-18; 9:6-9. These arguments are factually incorrect and ignore the contents of
10 the Court’s Order.

11 The Court found that except for the items identified on the City’s privilege log, all requested
12 files and documents were prepared by the City, and “LVRJ had access to and inspected the Prepared
13 Documents prior to the hearing.” *See Exhibit AA* at 2:4-8. Thus, the notion that the City was
14 somehow withholding non-privileged documents at the time of the hearing and was going to
15 continue to withhold the documents until the Court “directed” it to provide them to LVRJ is false.
16 Further, the status of the parties’ relationship at the time of the hearing was that the City had already
17 given LVRJ access to the requested records and LVRJ had already spent several days inspecting the
18 records. This was all accomplished without the Court’s involvement.

19 The Court found that “[f]ollowing its inspection, LVRJ made no request for copies of the
20 Prepared Documents[.]” *Id.* at 2:8-9. This is important because LVRJ is attempting to use its
21 months-long silence in the aftermath of its inspection, and subsequent request for copies of the
22 documents at the March 30th hearing, as the basis for claiming “prevailing party” status. This is
23 nonsensical. Once LVRJ’s counsel revealed that LVRJ wanted electronic copies of the documents it
24 had previously inspected, the City *agreed* to provide the documents on a USB drive. *Id.* at 2:9-11.
25 There was no “direction” given by the Court or any material alteration in the parties’ legal
26 relationship; rather, the Court simply asked the City if it was willing to provide copies of the
27 inspected documents on a USB drive and the City responded affirmatively. The City’s willingness
28 to provide electronic copies of documents LVRJ had already inspected does not constitute a

1 judicially sanctioned material alteration in the parties' legal relationship.

2 Other aspects of the Court's Order further support the City's position. First, it is difficult to
3 imagine how LVRJ can be deemed a prevailing party in a Public Records Act case when the Court
4 specifically found that the City "complied with its obligations under" the Act. *Id.* at 2:11-12.
5 Second, the Court made it clear that the only issue it was deciding pertained to the documents the
6 City was withholding on the grounds of attorney-client or deliberative process privilege and the
7 adequacy of the City's Withholding Log. The Court found the City's Withholding Log was "timely,
8 sufficient and in compliance with the requirements of the NPRA" and therefore denied LVRJ's
9 Amended Petition concerning the withheld documents. *Id.* at 2:16-21. LVRJ cannot be a prevailing
10 party when it lost on the "sole issued decided by the Court." *Id.* Finally, the Court denied LVRJ's
11 request for a writ of mandamus, injunctive relief, and declaratory relief and "any remaining request
12 for relief in the Amended Petition[.]" *Id.* at 3:2-4. This language leaves no wiggle room or guess-
13 work – all of LVRJ's claims for relief were denied. There is simply no interpretation of the Order in
14 which LVRJ could be deemed a prevailing party.

15 **B. The City Is Immune From Having To Pay Attorney Fees Under NRS 239.011**
16 **Because It Acted In Good Faith.**

17 The NPRA is an important part of ensuring transparency in government, but Nevada's
18 legislators have long recognized that while providing access to public records is essential, it can also
19 be an expensive proposition for the public. *See* NPA sponsored survey, Legislative History re A.B.
20 365, attached hereto as **Exhibit CC**. Likewise, government employees and their employers have
21 important, but competing responsibilities under the NPRA. Governments and their employees are
22 responsible for locating and producing public records, but they are also responsible for safeguarding
23 and preventing disclosure of the confidential information that they hold on behalf of the public, which
24 may otherwise be responsive to a public records request. *See* NRS 239.010, NRS 239.0105.

25 Until 1993, government employees faced civil liability and even criminal penalties if they
26 made the wrong decision in determining whether to disclose or withhold information pursuant to a
27 public records request. In 1992, because legislators (and the public) were concerned about the high
28 cost of public records, and because legislators recognized the precarious position government
employees and their employers faced in choosing to withhold or disclose information, the Nevada

1 Legislature made significant amendments to the NPRA. Prior to opening the Sixty-Seventh
2 Legislative Session the Legislative Counsel Bureau Published a comprehensive study of Nevada
3 Laws Governing Public Books and Records. See Study of Nevada Laws Governing Public Books
4 and Records, attached hereto as **Exhibit DD**. Among other proposed changes were recommendations
5 from the Legislative Counsel Bureau to:

6 Enact legislation that prescribes the procedures for direct appeal to a court of law
7 seeking an order compelling access and giving such proceedings priority on the
8 court's calendar. Provide for court costs and attorneys' fees if the requester prevails.

9 Enact legislation providing that governmental entities and employees are immune
10 from suit and liability if they act in good faith in disclosing or refusing to disclose
11 information.

11 *See id.*

12 Consistent with these recommendations, A.B. 365 was proposed and included the following
13 summary of the bill:

14 Assembly Bill 365 removes the criminal penalty for a state officer who refuses to
15 allow access to a public record. Instead of the criminal penalty, the measure
16 substitutes a procedure for civil enforcement of the laws governing access to public
17 records. The bill also grants immunity from liability for damages to public officers,
employees and their employers who act in good faith in disclosing or refusing to
disclose information.

18 *See* Summary of Legislature for A.B. 365 attached hereto as **Exhibit EE**. A.B. 365 was passed and
19 enrolled, and as a result NRS 239.011 reads:

20 1. If a request for inspection, copying or copies of a public book or record open to
21 inspection and copying is denied, the requester may apply to the district court in the
22 county in which the book or record is located for an order:

23 (a) Permitting the requester to inspect or copy the book or record; or

24 (b) Requiring the person who has legal custody or control of the public book or
25 record to provide a copy to the requester, as applicable.

26 2. The court shall give this matter priority over other civil matters to which
27 priority is not given by other statutes. If the requester prevails, the requester is
28 entitled to recover his or her costs and reasonable attorney's fees in the proceeding
from the governmental entity whose officer has custody of the book or record.

This section is followed by NRS 239.012, which reads:

A public officer or employee who acts in good faith in disclosing or refusing to
disclose information and the employer of the public officer or employee are immune

1 from liability for damages, either to the requester or to the person whom the
2 information concerns.

3 Under NRS 239.011(2) a prevailing requestor has the ability to recover attorney fees, but that
4 ability is limited by, NRS 239.012, which unambiguously provides that so long as a public officer or
5 employee acts in good faith in determining whether to withhold or disclose information, they (and
6 their employer) are immune from damages to requestors or other parties whom the information
7 concerns. *Id.* This immunity from damages for government employees and employers when a
8 government employee acts in good faith includes immunity from an award of attorney fees.

9
10 Courts have determined that term “damages” can include attorney fees. *Sandy Valley Assocs.*
11 *v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 957-58, 35 P.3d 964, 970 (2001), clarified by
12 *Horgan v. Felton*, 123 Nev. 577, 584, 170 P.3d 982, 986 (2007); *Swaner v. Union Mortg. Co*, 105
13 P.2d 11 342, 345-46 (Utah 1940); *State ex rel. O’Sullivan v. District Court*, 256 P .2d 1076, 1078
14 (Mont. 1953) (holding that with for a petition for a writ of mandamus, a statute entitling petitioner to
15 damages necessarily included the fees incurred).

16 Awards for attorney fees are generally associated with bad faith or wrongful conduct. *Sandy*
17 *Valley Assocs.*, 117 Nev. at 957, 35 P.3d at 970 (2001) (“Attorney fees may also be awarded as
18 damages in those cases in which a party incurred the fees in recovering real or personal property
19 acquired through the wrongful conduct of the defendant” ((citing *Michelsen v. Harvey*, 110 Nev.
20 27, 29–30, 866 P.2d 1141, 1142 (1994) (attorney fees permissible as an element of damages in
21 slander of title action); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983) (granting courts the
22 discretion to award fees when a party rejects an offer of judgment, but only after balancing the
23 relative good faith of the parties); *Peterson v. Wiesner*, 62 Nev. 184, 146 P.2d 789 (1944); *McIntosh*
24 *v. Knox*, 40 Nev. 403, 165 P. 337 (1917) (award of attorney fees allowed as damages in wrongful
25 attachment actions)) NRS 7.085 (permitting award of fees when attorney acts in bad faith); NRS
26 18.010(2)(b) (permitting award of fees when litigant acts in bad faith).
27
28

1 The plain language of NRS 239.012 prohibits an award of attorney fees against a government
2 employee and his or her employer where the government employee acts in good faith, and the plain
3 language of the statute should resolve LVRJ's motion for fees. *Edgington v. Edgington*, 119 Nev.
4 577, 582-83, 80 P.3d 1282, 1286-87 (2003) (citation omitted) (“In interpreting a statute, ‘words. . .
5 should be given their plain meaning unless this violates the spirit of the act.’” (citation omitted). “. . .
6 [W]hen a statute’s language is clear and unambiguous, the apparent intent must be given effect, as
7 there is no room for construction.”) *Id.*

9 To the extent LVRJ argues that NRS 239.012 is ambiguous, the legislative history set forth
10 above and principles of statutory interpretation guide against exempting attorney fees from the
11 immunity provided under NRS 239.012. “[S]tatutes permitting the recovery of costs are to be strictly
12 construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the*
13 *Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-386 (1998). Awarding fees
14 is also a deviation from the common law, under the American Rule. Any statutory scheme awarding
15 fees must be construed narrowly, against fees. *Hardisty v. Astrue*, 592 F .3d 1072, 1077 12 (9th Cir.
16 2010). In contrast, “[w]aivers of immunity,’ of course, “must be construed strictly in favor of the
17 sovereign, and not enlarge[d] ... beyond what the language requires.” *Id.*, quoting *Ruckelshaus v.*
18 *Sierra Club*, 463 U.S. 680, 685-86 (1983). Thus whether under the plain language of NRS 239.012
19 or whether the Court decides some argued ambiguity, the result is the same – the government and its
20 employees are immune from award of attorney fees where they act in good faith.
21
22

23 Setting aside for a moment that the City never denied LVRJ's pubic records request and the
24 fact that this Court determined in its order that the City complied with the NPRA, there can be no
25 question that the City acted in good faith. In fact, if any party did not act in good faith, it is LVRJ:
26
27
28

Good Faith By City	Bad Faith by LVRJ
City communicates with LVRJ to assist LVRJ in refining its search terms and to reduce the cost of providing responsive records LVRJ.	LVRJ represents it will call the City to continue discussions but does not do so.
City proactively contacts LVRJ's counsel concerning LVRJ's request in attempt to work on resolution.	LVRJ's counsel ignores City's phone call and files suit.
City provides LVRJ access to records responsive to its request free of charge.	LVRJ inspects records, makes no request for copies of records, writes no news stories concerning records, but writes a story concerning the lawsuit it has filed against the City and a story about the cost of outside counsel the City hired to defend the lawsuit. LVRJ files an amended petition in which it does not request copies of documents.
City provides LVRJ detailed withholding log and asks LVRJ's counsel to contact City if it has any concerns about the withholding log to avoid further litigation	Instead of contacting the City to discuss its concerns related to the withholding log, LVRJ files an Amended Petition attacking the adequacy of the withholding log.
After learning in Court for the first time since LVRJ inspected the documents that LVRJ wanted copies of the documents, City agrees to provide copies free of charge.	LVRJ feigns interest in obtaining copies of the documents in Court hearing, but writes no stories concerning the documents, and instead writes a second story about the cost of counsel hired by the City to defend LVRJ's suit.

This is not the first time LVRJ has attempted to obtain fees in the face of the immunity set forth in NRS 239.012. In fact, one of LVRJ's requests was just recently denied. *See Las Vegas Review Journal v. Steven Wolfson*, Case No.: A-14-711233-W, attached as **Exhibit FF**. In *Wolfson*, the Nevada District Court determined that attorney fees were part of the damages from which Clark County District Attorney Steven Wolfson was immune under NRS 239.012 and further determined that Wolfson acted in good faith in producing and withholding documents. As a result, the Court determined that pursuant to NRS 239.012 Wolfson was immune from an award of attorney fees. *Id.* This Court should reach the same result.

C. LVRJ's Request For Attorney Fees Should Be Substantially Reduced.

Even if this Court were to find that LVRJ is somehow a "prevailing party" in this matter, which the City does not concede, the Court should reduce the award of attorney fees by excluding any fees incurred after December 29, 2016, which is when LVRJ finished inspecting the documents.

1 In the Amended Petition, LVRJ requested (1) that the Court issue a writ of mandamus requiring
2 Henderson to immediately make available all records the Review-Journal had previously requested
3 but had been withheld and/or redacted; (2) injunctive relief prohibiting Henderson from applying
4 the provisions of Henderson Municipal Code § 2.47.085 and the Henderson Public Records Policy to
5 demand fees in excess of those permitted by the NPRA; (3) declaratory relief stating that Henderson
6 Municipal Code § 2.47.085 and the City of Henderson’s Public Records Policy invalid to the extent
7 they provide for fees in excess of those permitted by the NPRA; and (4) declaratory relief limiting
8 Henderson to charging fees for extraordinary use of personnel to fifty cents per page and limiting
9 Henderson from demanding fees for attorney review. See LVRJ’s Amended Petition at 12:5-16.
10 The Original Petition sought “injunctive relieve ordering Defendant City of Henderson to
11 immediately make available complete copies of all records requested.” See LVRJ’s Original Petition
12 at 9:5-6. The difference between the language in the Original Petition and the Amended Petition
13 demonstrates a clear shift in focus.
14
15

16 Having already inspected the City’s documents, the Amended Petition focused on the
17 adequacy of the City’s Withholding log and whether a handful of documents, withheld by the City
18 under well-established exceptions such as the deliberative process privilege and the attorney-client
19 privilege, were properly withheld. In fact, at the hearing, the Court re-directed LVRJ’s arguments as
20 it stated: “I was – I was led to believe that our hearing today was to argue over the redacted
21 documents that you have in – that you attached to your petition.” See **Exhibit BB** at 10:1-3. Again,
22 by the time the Amended Petition was filed, the City had already provided LVRJ access to the
23 documents it requested. LVRJ never requested copies of any documents that it reviewed, nor did it
24 request copies of these documents in its Amended Petition. Instead, the Amended Petition only
25 sought records that were “previously requested but had been withheld and/or redacted.”

26 At the hearing on the Amended Petition, the Court held that the City’s Withholding Log
27 [was] [] [] timely, sufficient and in compliance with the requirements of the NPRA,” and it denied
28 LVRJ’s Amended Petition concerning the Withheld Documents. Accordingly, if LVRJ prevailed on

1 anything, which it did not, its “success” only related to the Original Petition that focused on access
2 to the documents responsive to its public records request – this was NOT requested or at issue in the
3 Amended Petition. One of the most critical factors that courts look to when determining attorneys’
4 fees awards is the degree of overall success in a case. *Hensley v. Eckerhart*, 461 U.S. 424, 436, 103
5 S. Ct. 1933, 1941, 76 L. Ed. 2d 40 (1983) (where a “plaintiff has achieved only partial or limited
6 success, the product of hours reasonably expended on the litigation as a whole times a reasonable
7 hourly rate may be an excessive amount. This will be true even where the plaintiff’s claims were
8 interrelated, nonfrivolous, and raised in good faith.”). Here, once LVRJ received the documents via
9 the inspection, it essentially filed a “new” lawsuit by amending its petition to focus on the City’s
10 privilege log and the LVRJ lost on all its claims. *See Hensley v. Eckerhart*, 461 U.S. 424, 434–35,
11 103 S. Ct. 1933, 1940, 76 L. Ed. 2d 40 (1983) (“In some cases a plaintiff may present in one lawsuit
12 distinctly different claims for relief that are based on different facts and legal theories. In such a suit,
13 even where the claims are brought against the same defendants . . . counsel’s work on one claim will
14 be unrelated to his work on another claim. Accordingly, work on an unsuccessful claim cannot be
15 deemed to have been “expended in pursuit of the ultimate result achieved.” (*citing Davis v. County*
16 *of Los Angeles*, 8 E.P.D. ¶ 9444, at 5049 (CD Cal.1974))).

17 LVRJ argues that the request for the documents in its Original Petition is related to its other
18 claims; however, that is simply not the case. The analysis related to whether the City should provide
19 copies of the documents under the public records act is completely distinct from the analysis about
20 whether the City’s Withholding Log was accurate and complete. LVRJ’s billing records related to
21 the City’s Withholding Log are clearly delineated from the billing records related to the Original
22 Petition, which was focused on the requested documents. Starting on January 4, 2017, the billing
23 entries begin to focus on the withheld documents noted in the City’s Withholding Log. As
24 demonstrated by LVRJ’s own billing entries, the legal theories/analysis concerning the attorney-
25 client privilege and the deliberative process privilege are separate and distinct from the legal
26 theories/analysis on the NPRA. *See Gracie v. Gracie*, 217 F.3d 1060, 1070 (9th Cir. 2000) (holding
27 that federal courts are actually required to apportion or attempt to apportion the fees from the award
28 that relate to claims for which attorney fees are not provided (such as non-prevailing claims) unless

1 the court finds all of the claims are so inextricably intertwined that even an estimated adjustment
2 would be meaningless).

3 LVRJ incurred approximately \$8,500.00 in attorney fees up through December 29, 2016.
4 However, the \$450 billing entry from December 7, 2016 should be excluded because the work
5 performed related to reviewing “pertinent media coverage.” Reviewing media coverage – likely
6 written by her own client – even if it is about the City, is an unreasonable and unnecessary charge
7 related to this case.

8 In addition to cutting off all attorney fees incurred after December 29, 2016, the Court should
9 further reduce the fees because LVRJ lost on all counts asserted in its Amended Petition.³ Under
10 *Brunzell v. Golden Gate Nat. Bank*, the fourth factor relates to whether the attorney was successful
11 and what benefits were derived. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349–50, 455 P.2d
12 31, 33 (1969). Here, the court denied “LVRJ’s request for a writ of mandamus, injunctive relief, and
13 declaratory relief and any remaining request for relief in the Amended Petition.” See May 12, 2017
14 Order at 3:2-4. As explained above, if the court finds that LVRJ prevailed, any and all such success
15 relates only to its request made in the Original Petition. After the City permitted LVRJ to inspect the
16 requested documents, LVRJ never sought any hard copies of the documents reviewed. Rather, the
17 focus in its Amended Petition was on the documents that the City withheld pursuant to its
18 Withholding Log. Because LVRJ lost on all four of its claims in the Amended Petition, the Court
19 should dramatically reduce LVRJ’s request and only award LVRJ 1/5 of its fees, which amounts to
20 \$1,610.00.

21 **IV. CONCLUSION**

22 Based on the foregoing, the City respectfully requests that the Court deny LVRJ’s Motion for
23 Attorney’s Fees and Costs because it is not a prevailing party and the City is immune from having to
24

25 ³ Should the Court decide that LVRJ should receive fees that were incurred after December 29, 2016, there are several
26 other unreasonable billing entries occurring after December 29, 2016 that should be excluded. For example, on January 9,
27 2017, Ms. McLetchie charged \$90 to “calendar” a deadline. See **LVRJ’s Exhibit 4**. On January 24, 2017, Mr. Czop
28 spent 2.4 hours (\$300) reviewing the City’s Withholding Log, which is excessive for the short length of the Withholding
log and the fact that the LVRJ said that the City only provided “boiler plate” entries. *Id.* On February 8, 2017, Mr. Czop
billed .40 (\$50) to print documents, which is not legal work and could be done by a legal assistant. *Id.* More astonishing,
Ms. McLetchie tries to include fees related to a separate public records request seeking the bills from the City’s outside
counsel, Bailey Kennedy. See entries on March 14, 2017 and two entries on March 20, 2017 relating to separate public
records request in **LVRJ’s Exhibit 4**.

1 pay them under NRS 239.012. Alternatively, to the extent the Court determines that LVRJ is a
2 limited prevailing party and entitled to attorney's fees, the amount requested should be significantly
3 reduced to an amount of \$1,610.00.
4

5 DATED this 10th day of July, 2017.
6

7 City of Henderson
8 JOSH M. REID, City Attorney

9 /s/ Brian R. Reeve

10 JOSH M. REID
11 City Attorney
12 Nevada Bar No. 7497
13 BRIAN R. REEVE
14 Assistant City Attorney
15 Nevada Bar No. 10197
16 240 Water Street, MSC 144
17 Henderson, NV 89015

18 Attorneys for Respondent
19 City of Henderson
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CITY ATTORNEY'S OFFICE
CITY OF HENDERSON
240 S. WATER STREET
HENDERSON, NV 89015



1
2
3 **CERTIFICATE OF SERVICE**

4 I certify that I am an employee of the Henderson City Attorney's office, and that on the
5 17th day of July, 2017, service of the foregoing CITY OF HENDERSON'S RESPONSE TO LAS
6 VEGAS REVIEW-JOURNAL'S MOTION FOR ATTORNEY'S FEES AND COSTS was made
7 through the Eighth Judicial District Court's electronic filing system (Odyssey), and that the date
8 and time of the electronic service is in place of the date and deposit in the U.S. mail.

9 MARGARET A. MCLETCHIE
10 ALINA M. SHELL
11 **MCLETCHIE SHELL LLC**
12 701 East Bridger Avenue, Suite 520
13 Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com
Maggie@nvlitigation.com

14 *Attorneys for Petitioner*
15 LAS VEGAS REVIEW-JOURNAL

16 /s/ Cheryl Boyd



EXHIBIT "A"

JA0547

1 **DECLARATION OF BRIAN R. REEVE IN SUPPORT OF CITY OF HENDERSON'S**
2 **RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S AMENDED PUBLIC**
3 **RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/PETITION FOR**
4 **WRIT OF MANDAMUS/APPLICATION FOR DECLARATORY**
5 **AND INJUNCTIVE RELIEF**

6 BRIAN R. REEVE, Assistant City Attorney for Respondent City of Henderson (the
7 "City"), hereby declares that the following is true and correct under the penalties of perjury:

8 1. I make this Declaration in support of the City's Response to Las Vegas Review-
9 Journal's Amended Public Records Request Act Application Pursuant to NRS §
10 239.001/Petition for Writ of Mandamus/Application for Declaratory and Injunctive Relief
11 (the "Response").

12 2. I have personal knowledge of the facts set forth herein.

13 3. I am over the age of eighteen years and am mentally competent.

14 4. On October 4, 2016, the City received a public records request from the Las Vegas
15 Review-Journal ("LVRJ") asking for certain documents related to Trosper Communications,
16 Elizabeth Trosper, and crisis communications from January 1, 2016 to October 4, 2016.

17 5. Exhibit B to the Response is a true and correct copy of the Las Vegas Review-
18 Journal's ("LVRJ") October 4, 2016 public records request to the City (the "Request").

19 6. On October 11, 2016, five business days after receiving the Request, the City
20 provided its initial written response as required by NRS 239.0107 (the "Initial Response").
21 In its Initial Response, the City informed LVRJ that it had found approximately 5,566 emails
22 matching the search terms set forth in the expansive Request. These 5,566 emails contained
23 nearly 10,000 individual electronic files and consisted of approximately 69,979 pages.
24

25 7. Exhibit C to the Response is a true and correct copy of the City's October 11, 2016,
26 Initial Response to LVRJ's October 4, 2016 Request.
27

1 8. On October 12, 2016, LVRJ's attorney, Margaret McLetchie, called me to discuss the
2 City's Initial Response.

3 9. Ms. McLetchie disputed the City's ability to charge extraordinary fees to complete
4 the Request and wanted to know why the City had so many emails matching LVRJ's search
5 terms.

6 10. I explained to Ms. McLetchie that the City was still in the process of removing
7 duplicate emails in its document review system and that the estimated cost to produce the
8 documents likely would decrease once this process was completed.

9 11. During the call, Ms. McLetchie and I discussed potentially narrowing the search
10 terms to decrease the number of email hits and whether the City would be willing to lower its
11 fee estimate. Ms. McLetchie and I both resolved to go back to our respective clients to work
12 on a solution. Ms. McLetchie represented that she would call back on October 17, 2016, to
13 discuss the matter further.

14 12. Ms. McLetchie did not call the City on October 17, 2016.

15 13. After waiting a week with no contact from Ms. McLetchie, I called Ms. McLetchie's
16 office on October 25, 2016, to further our October 12th discussion in an attempt to work out
17 a resolution. I was informed by Ms. McLetchie's office that Ms. McLetchie was out of town
18 until November 4, 2016. I asked for a return call once Ms. McLetchie returned to the office.

19 14. Ms. McLetchie never returned the City's phone call and did not otherwise attempt to
20 contact the City to work on a resolution. Instead, after more than six weeks had passed since
21 communicating with the City and without any prior warning, LVRJ filed suit against the City
22 on November 29, 2016, claiming that the City had refused to provide LVRJ with the
23 requested records. This is not true. The City never refused or denied LVRJ's request.
24
25
26
27

1 15. After the City was served with the Petition, on December 5, 2016, the City wrote Ms.
2 McLetchie a letter expressing surprise at the lawsuit given LVRJ's silence with respect to the
3 Request for over six weeks and the fact that the City has always worked with LVRJ to
4 modify the scope of records requests by using agreed upon search terms, or other methods to
5 reduce the time and cost of producing large numbers of electronic documents.
6

7 16. Exhibit D to the Response is a true and correct copy of the December 5, 2016, letter
8 to Ms. McLetchie.

9 17. After the City sent the December 5, 2016 letter to Ms. McLetchie, I conferred with
10 her about LVRJ's Request, making the documents available for inspection, and the City's
11 production of an initial confidentiality/privilege log.
12

13 18. The City agreed to allow LVRJ to inspect the documents on a computer at City Hall.
14 LVRJ's inspection took place over the span of several days. After completing its inspection
15 of the documents, LVRJ did not request a copy of any of the documents it reviewed.

16 19. After the City permitted LVRJ to inspect the documents free of charge, I received an
17 email from Ms. McLetchie questioning why LVRJ reviewed a number of documents it
18 believed were not responsive to LVRJ's search terms, including an image of the gorilla
19 Harambe.

20 20. Exhibit E to the Response is a true and correct copy of an email chain and
21 attachments between Ms. McLetchie, myself, Josh Reid, and Brandon Kemble.
22

23 21. On December 20, 2016, the City provided LVRJ with an initial list of documents for
24 which it was asserting confidentiality or privilege.

25 22. Exhibit F is a true and correct copy of the initial withholding log.
26
27

1 23. Approximately two weeks later, Ms. McLetchie asked the City to provide a more
2 detailed withholding log that would allow her to evaluate the City's confidentiality
3 assertions. The City complied with this request and provided an updated log on January 9,
4 2017 ("Second Withholding Log").

5 24. Exhibit G is a true and correct copy of the Second Withholding Log.

6
7 25. Ms. McLetchie was not satisfied with the Second Withholding Log because it did not
8 list the actual names of attorneys and paralegals or other staff members sending or receiving
9 correspondence and requested another revised log.

10 26. The City, once again, accommodated LVRJ's request and provided the attorneys' and
11 paralegals' names to LVRJ in a third version of the withholding log ("Third Withholding
12 Log").

13 27. Exhibit H to the Response is a true and correct copy of the Third Withholding Log.

14 28. Around the same time the City provided LVRJ's counsel with the Third Withholding
15 Log, I asked Ms. McLetchie to contact me if she had any questions or concerns regarding the
16 log so that the parties could discuss them and attempt to resolve them without having to
17 involve the Court.
18

19 29. Notwithstanding my request to meet and confer about any questions or issues LVRJ
20 might have with the Third Withholding Log, Ms. McLetchie did not contact me about the
21 issues she now raises in the Amended Petition.

22 30. Exhibit I to the Response is a true and correct copy of S.B. 123, 2007 Leg., 74th Sess.
23 (Nev. 2007).
24

25 31. Exhibit J to the Response is a true and correct copy of Amendment 415 to S.B. 123.
26
27

1 32. Exhibit K to the Response is a true and correct copy of the Minutes of the
2 Subcommittee of the Senate Committee on Government Affairs dated April 9, 2007.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 DATED this 7 day of March, 2017.

5
6
7
8 By 

BRIAN R. REEVE
Assistant City Attorney
Nevada Bar No. 10197
240 Water Street, MSC 144
Henderson, NV 89015

EXHIBIT "B"

Via Email

Oct. 4, 2016

Laura Fucci, Chief Information Officer
Henderson City Hall
240 Water St. MSC 123
P.O. Box 95050
Henderson, NV 89009-5050
Office Fax: 702-267-4301
E-Mail: Laura.Fucci@cityofhenderson.com

Javier Trujillo, Director of Intergovernmental Relations
Henderson City Hall
P.O. Box 95050
Henderson, NV 89009-5050
Office Fax: 702-267-2081
E-Mail: Javier.Trujillo@cityofhenderson.com

Dear Ms. Fucci and Mr. Trujillo,

Pursuant to Nevada's Public Records Act (Nevada Revised Statutes § 239.010 et. seq.) and on behalf of the Las Vegas Review-Journal, we hereby request the Communications Department documents listed below.

Documents requested:

- All emails to or from City of Henderson Communications Department personnel, Council members, or the Mayor that contain the words "Trosper Communications," "Elizabeth Trosper," or "crisis communications;"
- All emails pertaining to or discussing work performed by Elizabeth Trosper or Trosper Communications on behalf of the City of Henderson;
- All documents pertaining to or discussing contracts, agreements, or possible contracts, with Elizabeth Trosper or Trosper Communication; and
- All documents pertaining to or discussing the terms under which Elizabeth Trosper or Trosper Communications provided, provide, or will provide services to the City of Henderson.

Date limitations:

For all documents requested, please limit your searches for responsive documents from January 1, 2016 to the present.

///
///
///

JA0554

Further instructions:

Please provide copies of all responsive records. For electronic records, please provide the records in their original electronic form attached to an email, or downloaded to an electronic medium. We are happy to provide the electronic medium and to pick up the records. For hard copy records, please feel free to attach copies to an email as a .pdf, or we are happy to pick up copies. We will also gladly take information as it becomes available; please do not wait to fill the entire request, but send each part or contact us as it becomes available.

If you intend to charge any fees for obtaining copies of these records, please contact us immediately (no later than 5 days from today) if the cost will exceed \$50. In any case, we would like to request a waiver of any fees for copies because this is a media request, and the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the operation of the Communications Department and Intergovernmental Relations.

If you deny access to any of the records requested in whole or in part, please explain your basis for doing so in writing within five (5) days, citing the specific statutory provision or other legal authority you rely upon to deny access. NRS § 239.011(1)(d). Please err on the side of fully providing records. Nevada's Public Records Act requires that its terms be construed liberally and mandates that any exception be construed narrowly. NRS § 239.001(2), (3). Please also redact or separate out the information that you contend is confidential rather than withholding records in their entirety, as required by Nev. Rev. Stat. § 239.010(3).

Again, please cite the statutory provision you rely upon to redact or withhold part of a record. Please also keep in mind that the responding governmental entity has the burden of showing that the record is confidential. NRS § 239.0113; *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) ("The public official or agency bears the burden of establishing the existence of privilege based upon confidentiality. It is well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly.")

Please provide the records or a response within five (5) business days pursuant to Nev. Rev. Stat. §239.0107. Again, please email your response to nbuzda@reviewjournal.com and tspousta@reviewjournal.com rather than U.S. Mail so we can review as quickly as possible.

Thank you in advance for your cooperation with my request. Please contact us with any questions whatsoever. In addition to email, you can reach Natalie by phone at 702-477-3897.

Sincerely,

Natalie Bruzda
Reporter

Tom Spousta
Assistant City Editor

EXHIBIT "C"

JA0556

Brian Reeve

From: Brian Reeve
Sent: Tuesday, October 11, 2016 5:11 PM
To: nbruzda@reviewjournal.com; tspousta@reviewjournal.com
Cc: Javier Trujillo; David Cherry; Kristina Gilmore
Subject: Public Records Request regarding Trospen Communications

Dear Ms. Bruzda and Mr. Spousta,

I'm writing in response to your public records request to the City of Henderson dated October 4, 2016 regarding Elizabeth Trospen and Trospen Communications. We are in the process of searching for and gathering responsive e-mails and other documents. Due to the high number of potentially responsive documents that meet your search criteria (we have approximately 5,566 emails alone) and the time required to review them for privilege and confidentiality, we estimate that your request will be completed in three weeks from the date we commence our review.

The documents you have requested will require extraordinary research and use of City personnel. Accordingly, pursuant to NRS 239.052, NRS 239.055, and Henderson Municipal Code 2.47.085, we estimate that the total fee to complete your request will be \$5,787.89. This is calculated by averaging the actual hourly rate of the two Assistant City Attorneys who will be undertaking the review of potentially responsive documents (\$77.99) and multiplying that rate by the total number of hours it is estimated it will take to review the emails and other documents (approximately 5,566 emails divided by 75 emails per hour equals 74.21 hours). Under the City's Public Records Policy, a fifty percent deposit of fees is required before we can start our review. Therefore, please submit a check payable to the City of Henderson in the amount of \$2,893.94. Once the City receives the deposit, we will begin processing your request. When your request is completed, we will notify you and, once the remainder of the fee is received, the records and any privilege log will be released to you.

Please let me know if you have any questions or would like to discuss your request further.

Regards,

Brian R. Reeve
Assistant City Attorney
702.267.1385

EXHIBIT "D"

JA0558



CITY ATTORNEY'S OFFICE
CITY OF HENDERSON
240 Water Street
P.O. Box 95050 MSC 144
Henderson, NV 89009-5050
Tel. 702-267-1200
Fax 702-267-1201

JOSH M. REID, CITY ATTORNEY

VIA U.S. Mail and Email

December 5, 2016

Maggie McLetchie
McLetchie Shell LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 80101

Re: Las Vegas Review-Journal's October 4, 2016 Records Request

Dear Maggie:

I hope that you had a great Thanksgiving holiday. This letter relates to a public records request made by your client, Las Vegas Review-Journal ("LVRJ"), on October 4, 2016, regarding Trosper Communications and Elizabeth Trosper. The City of Henderson ("City") provided its initial response to LVRJ's request in writing within the five-day time-frame required by NRS 239.0107 on October 11, 2016. In its initial response, the City informed LVRJ that it had found approximately 5,566 emails matching the search terms set forth in LVRJ's request. These 5,566 emails contained nearly 10,000 individual electronic files. In light of the large universe of documents created by LVRJ's search terms and the City's responsibility to safeguard confidential information, the City determined that it would take approximately 80 hours for City staff to review the electronic files to remove or redact any confidential files or information. Accordingly, pursuant to NRS 239.055, the City's October 11 response contained an estimate of the cost for the "extraordinary use" of City personnel in the amount of \$5,787.89 to prepare LVRJ's record request.

On October 12, 2016, you contacted Assistant City Attorney Brian Reeve ("Mr. Reeve") to discuss the City's response. As you know, when there is a records request for electronic files the initial cost estimate that must be provided within five days can often be larger than the City's actual cost incurred due a number of factors common with collecting large numbers of electronic documents (e.g. duplicate emails, imprecise search terms). In the past, the City has always worked with LVRJ to modify the scope of an electronic document search by using agreed-upon search terms, or other methods, to reduce the time and cost of producing large numbers of electronic documents.

During your October 12 discussion with Mr. Reeve, you were informed that the City was in the process of removing duplicate emails from the universe of documents using its document

Letter to McLetchie Re: Records Request

December 5, 2016

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management system and that the estimated cost to produce the documents would likely decrease once this process was complete. The conversation concluded with you stating that you would speak with your client and get back to the City by October 17, 2016. After your call, the City looked at various ways to reduce the time and expense of producing the requested documents. Mr. Reeve was prepared to discuss these options with you, but you never called back. Therefore, I requested that Mr. Reeve call your law office to continue the dialogue with you. Mr. Reeve contacted your office on October 25, 2016 and he was informed by your assistant that you were out of town until November 4, 2016. Mr. Reeve left a message with your assistant asking for a return call once you returned to the office. As of the date of this letter, we have still not heard back from you.

Accordingly, I was surprised to find out through a news article on Wednesday November 29, 2016, that you had filed suit against the City stating that we had refused to provide LVRJ with the requested records. This is simply not true. The lawsuit is also disappointing given our past history of working together to resolve these types of requests and your (or LVRJ's) decision not to do so in this instance. The records responsive to LVRJ's October 4, 2016 records request have already been reviewed and are ready to be transmitted to LVRJ upon payment of the required fees. Had you simply called the City on October 17, or returned Mr. Reeve's October 25 phone call, you could have saved your client, and now the court, both time and resources. This type of dialogue is contemplated under NRS 239.0107(c)(1), which sets forth that the requestor may inquire regarding the request if a public book or record has not been provided.

Over the past two years, the City Attorney's Office has invested significant time and money on acquiring new electronic document review software and has hired IT staff to make the production of electronic records for public records requests and electronic discovery in litigation less costly and more efficient. As you know, LVRJ made another public records request at the same time as the one now in dispute, and those records were provided to your client quickly and without complaint. The issue with this particular request is that it resulted in an estimated 69,979 pages (if printed) and 9,621 individual electronic files. Even with our new document review software, which can remove duplicate emails (of which we only found roughly 300), it still required over 70 hours for employees to review the responsive documents pursuant to your request.

While it is LVRJ's right to request and obtain public records from the City, I am fairly certain that the overwhelming majority of the estimated 69,979 pages of responsive documents are not of any interest to LVRJ (at least to the question of Trosper Communication's contract and public relations work for the City). Had you communicated with the City, you would have learned that many of the responsive documents relate to Liz Trosper's service on the Henderson Development Authority Board and the Henderson Strong Advisory Committee. I suspect these emails are not of interest to LVRJ. As we have done in the past, we could have allowed your client to inspect some of these types of documents in order to remove certain categories of documents, thus reducing the time and expense of the records request for both the City and LVRJ.

Based upon LVRJ's account of this public records request in its news articles, and your Complaint served upon the City yesterday, there does seem to be a genuine dispute between

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the City and LVRJ with regard to the definition and application of the "extraordinary use of personnel" fee provisions in NRS 239.055. The City and LVRJ have been able to resolve issues relating to the cost of producing public records in the past, which has resulted in the LVRJ paying a minimal amount for public records over the past two years. The City has always been cautious in charging fees for the "extraordinary use of personnel" relating to public records requests. Our City records indicate that LVRJ has made 46 separate public records requests to the City since 2015, and LVRJ has paid the City a total of \$241.11 in fees for these record requests.

City employees spent 72 hours processing LVRJ's public records request. The breakdown of the employee time spent on this request is outlined below.

Attorney Review of 9,621 electronic files for confidentiality:	68 hours
Senior Legal Information Systems Analyst review of electronic files (preparation of documents for review and production and the de-duplication of documents):	4 hours

Pursuant to Henderson Municipal Code 2.47.085 and NRS 239.055, the City's fee for the "Extraordinary Use of Personnel or Technology" is comprised of the employee(s)' actual hourly rate to review and produce the requested documents or \$0.50 page, whichever is less. The average hourly rate for the attorneys who performed the review was \$77.99 per hour, and the hourly rate for the Senior Legal Information Systems Analyst is \$44.81. Accordingly, the City's actual cost for your client's records request is \$5,482.56 ($(\$77.99 \times 68 = \$5,303.32) + (\$44.81 \times 4 = \$179.24)$), and per our City-wide fee schedule for public records this is the amount that your client would have to pay to receive the records in electronic format.¹

The City understands that the fees authorized by NRS 239.055, which allows local governments to charge the costs that they actually incur for the extraordinary use of their personnel or technological resources, "must be reasonable." While it may not resolve the difference of opinion between the City and your client regarding the meaning of NRS 239.055, the City is willing (and was willing back in October) to provide the requested records at the lowest hourly rate of the employees who reviewed the requested documents. This would put the fee for production of your client's records request at \$3,226.32.

Please let me know how LVRJ wishes to proceed with the records that have been prepared for it. If LVRJ would rather resolve the matter through your recently filed litigation, then the City will respond appropriately. The City is interested in having the courts provide clarity to the meaning and application of NRS 239.055, as clear and concise guidance on these provisions would greatly benefit both local governments and the public. With that said, the City is not

¹ The requested records comprise approximately 69,979 printed pages (this is an estimate from the document management software), which at \$.50 per page would cost your client roughly \$34,989.50. While I am fairly certain that your client is not interested in printed copies of these records, the City will comply with that request if made.

Letter to McLetchie Re: Records Request

December 5, 2016

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interested in litigation as a method of preventing the disclosure of the requested documents. In fact, the City is amenable to working with you and the court on a mechanism to provide LVRJ the requested documents while the court entertains our arguments on the fee issue.

In addition to working through litigation to get the courts to provide clear guidance on the issue of public records fees, the City would also like to offer to work with LVRJ on a legislative solution in the upcoming 2017 Legislative Session. While attorneys may benefit by the lack of clarity in the statute, I believe that a legislative solution presented jointly by media organizations and local governments would be welcomed by the Legislature, and would benefit both our clients and the public.

Best wishes,

A handwritten signature in black ink, appearing to read "Josh M. Reid". The signature is stylized and somewhat cursive, with a large loop at the end.

Josh M. Reid
City Attorney

Cc: Robert Murnane, City Manager

EXHIBIT "F"

JA0563

Doc #	Basis for Redaction/Non-Production	Authority	Redaction
3	Attorney Client Privilege	NRS 49.095	Redaction
181	Attorney Client Privilege	NRS 49.095	Redaction
184	Attorney Client Privilege	NRS 49.095	Redaction
191	Attorney Client Privilege	NRS 49.085	Redaction
193	Attorney Client Privilege	NRS 49.095	Redaction
195	Attorney Client Privilege	NRS 49.095	Redaction
198	Attorney Client Privilege	NRS 49.095	Redaction
226	Attorney Client Privilege	NRS 49.095	Redaction
227	Attorney Client Privilege	NRS 49.095	Redaction
233	Attorney Client Privilege	NRS 49.095	Redaction
234	Attorney Client Privilege	NRS 49.085	Redaction
237	Attorney Client Privilege	NRS 49.095	Redaction
238	Attorney Client Privilege	NRS 49.095	Redaction
244	Attorney Client Privilege	NRS 49.095	Redaction
245	Attorney Client Privilege	NRS 49.095	Redaction
248	Attorney Client Privilege	NRS 49.095	Redaction
249	Attorney Client Privilege	NRS 49.095	Redaction
251	Attorney Client Privilege	NRS 49.095	Redaction
252	Attorney Client Privilege	NRS 49.095	Redaction
267	Attorney Client Privilege	NRS 49.085	Redaction
659	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
1352	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
1363	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 118 Nev. 616	Redaction
1363	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
1384	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
1385	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
1386	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
1367	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
1807	Attorney Client Privilege	NRS 48.095	Redaction
1808	Attorney Client Privilege	NRS 49.095	Redaction
1809	Attorney Client Privilege	NRS 49.095	Redaction
2485	Attorney Client Privilege	NRS 49.095	Redaction
2487	Attorney Client Privilege	NRS 49.095	Redaction
2491	Attorney Client Privilege	NRS 48.095	Redaction
3352	Attorney Client Privilege	NRS 49.095	Redaction
3862	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
3864	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
3866	Deliberative Process Privilege	DR Partners v. Board of County Com'ts of Clark County, 116 Nev. 616	Redaction
4016	Attorney Client Privilege	NRS 49.095	Redaction
4056	Attorney Client Privilege	NRS 49.095	Redaction
4057	Attorney Client Privilege	NRS 49.095	Redaction
4058	Attorney Client Privilege	NRS 49.095	Redaction
4078	Attorney Client Privilege	NRS 49.095	Redaction

Doc #	Basis for Redaction/Non-Production	Authority	Redaction
4083	Attorney Client Privilege	NRS 49.095	
4084	Attorney Client Privilege	NRS 49.095	
4090	Attorney Client Privilege	NRS 49.095	
4091	Attorney Client Privilege	NRS 49.095	
4092	Attorney Client Privilege	NRS 49.095	
4093	Attorney Client Privilege	NRS 49.095	
4094	Attorney Client Privilege	NRS 49.095	
4095	Attorney Client Privilege	NRS 49.095	
4944	Attorney Client Privilege	NRS 49.095	Redaction
4954	Attorney Client Privilege	NRS 49.095	Redaction
4955	Attorney Client Privilege	NRS 49.095	Redaction
5249	Attorney Client Privilege	NRS 49.095	Redaction
5253	Attorney Client Privilege	NRS 49.095	Redaction
5695	Attorney Client Privilege	NRS 49.095	Redaction
6535	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616	Redaction
6759	Attorney Client Privilege	NRS 49.095	
6882	Attorney Client Privilege	NRS 49.095	
6883	Attorney Client Privilege	NRS 48.085	
6956	Attorney Client Privilege	NRS 49.095	
6958	Attorney Client Privilege	NRS 49.095	
6978	Attorney Client Privilege	NRS 49.095	
7009	Attorney Client Privilege	NRS 49.095	
7018	Attorney Client Privilege	NRS 49.095	Redaction
7058	Attorney Client Privilege	NRS 49.095	
7127	Attorney Client Privilege	NRS 49.095	
7199	Attorney Client Privilege	NRS 48.085	
7406	Attorney Client Privilege	NRS 48.085	
7496	Attorney Client Privilege	NRS 49.095	
7507	Attorney Client Privilege	NRS 48.085	
7509	Attorney Client Privilege	NRS 49.095	
7631	Attorney Client Privilege	NRS 49.095	
7636	Attorney Client Privilege	NRS 49.095	
7676	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	
7678	Confidential personal information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
7698	Attorney Client Privilege	NRS 49.095	
7703	Attorney Client Privilege	NRS 48.095	
7717	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
7718	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	

Doc #	Basis for Redaction/Non-Production	Authority	Redaction
9218	Deliberative Process Privilege	DR Partners v. Board of County Com'rs of Clark County, 116 Nev. 618 (2000)	Redaction
12153	Attorney Client Privilege	NRS 49.095	
12154	Attorney Client Privilege	NRS 49.095	
12156	Attorney Client Privilege	NRS 49.095	
12184	Attorney Client Privilege	NRS 49.095	
12185	Attorney Client Privilege	NRS 49.095	
12189	Attorney Client Privilege	NRS 49.095	
12328	Attorney Client Privilege	NRS 49.095	Redaction
13422	Attorney Client Privilege	NRS 49.095	Redaction
13423	Attorney Client Privilege	NRS 49.095	Redaction
13425	Attorney Client Privilege	NRS 49.095	Redaction
13428	Attorney Client Privilege	NRS 49.095	Redaction

EXHIBIT "G"

JA0567

Doc #	Email senders and recipients	Description	Beats for Redaction/Non-Production	Authority	Redaction
3		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services and/or containing legal advice	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
181	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
184	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
191	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
193		Draft Trooper contract containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
195	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
199	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
226	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
227	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
233	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
234	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
237	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
238	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
244	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
245	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.035	
246	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.035	
249	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.035	
251	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.035	
252	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.035	
257	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.035	
647		Employer Identification Number for tax return, possible SS#	Confidential personal information - Employer Identification Number	Donrey of Nevada, Inc. v. Bradshaw, 108 Nev. 630 (1990)	Redaction
669		Employer Identification Number for tax return, possible SS#	Confidential personal information - Employer Identification Number	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	Redaction
1362	David Cherry (PIO) Liz Trosper (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Comm's of Clark County, 116 Nev. 616 (2000)	
1363	David Cherry (PIO) Liz Trosper (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Comm's of Clark County, 116 Nev. 616 (2000)	
1364	David Cherry (PIO) Liz Trosper (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Comm's of Clark County, 116 Nev. 616 (2000)	
1355	David Cherry (PIO) Liz Trosper (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Comm's of Clark County, 116 Nev. 616 (2000)	
1366	David Cherry (PIO) Liz Trosper (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Comm's of Clark County, 116 Nev. 616 (2000)	
1367	David Cherry (PIO) Liz Trosper (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v. Board of County Comm's of Clark County, 116 Nev. 616 (2000)	
1807	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.035	Redaction

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
1808	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
1809	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
2485	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
2487	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
2491	attorney and Goni Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services to HAD	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
3352		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
3852	David Cherry (PIO) Liz Trospor (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 118 Nev 616 (2000)	
3854	David Cherry (PIO) Liz Trospor (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 118 Nev 616 (2000)	
3856	David Cherry (PIO) Liz Trospor (agent), Robert Mumano (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 118 Nev 616 (2000)	
4016	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4056	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4057	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4058	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4078	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4083	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4084	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4090	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
4091	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4092	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4093	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4094	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4095	attorney, David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
4944	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Evichart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
4954	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Evichart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
4955	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Evichart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5249		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5253		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
5695		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
6759		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6882	attorneys within the City Attorney's Office	Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6883		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6958		Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6959		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
6978	attorney and paralegal and/or Bud Craner (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Truspor contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7009	attorney and paralegal and/or Bud Craner (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Truspor contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction

Doc #	Email sender and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
7019	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7059	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7127	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7199	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7406		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7498	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7507	attorney and paralegal and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7509	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7631	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7636	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7676		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Donroy of Nevada, Inc v Bradshaw, 106 Nev. 830 (1990)	
7678		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Donroy of Nevada, Inc v Bradshaw, 105 Nev. 630 (1989)	Redaction
7698	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7703	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7717	Laura Shoarin (City Manager's Office), Jennifer Fennema (Human Resources)	Electronic correspondence containing mental impressions and strategy of City management regarding changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	
7718		Draft document reflecting deliberations, thoughts, and impressions concerning changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev. 616 (2000)	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
12153	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12154	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12155	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12184	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trospen records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12185	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trospen records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12189	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trospen records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12328	City attorney staff and attorney(s)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13422	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13423	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13425	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13428	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction

EXHIBIT "H"

JA0574

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
3		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services and/or containing legal advice	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	Redaction
181	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
184	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	Redaction
191	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
193		Draft Trospen contract containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
195	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	Redaction
199	Kristina Gilmore (attorney) and Laura Kopanski (paralegal) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
226	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
227	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
233	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
234	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
237	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	
238	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.055	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
244	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
245	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
246	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
249	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
251	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
252	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
267	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trospen contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
647		Employer Identification Number for tax return, possible SSN	Confidential personal information - Employer Identification Number	Donroy of Nevada, Inc. v Bradshaw, 108 Nev 630 (1990)	Redaction
659		Employer Identification Number for tax return, possible SSN	Confidential personal information - Employer Identification Number	Donroy of Nevada, Inc. v Bradshaw, 108 Nev 630 (1990)	Redaction
1362	David Cherry (PIO) Liz Trospen (agent), Robert Mumana (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev 618 (2000)	
1363	David Cherry (PIO) Liz Trospen (agent), Robert Mumana (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev 618 (2000)	
1364	David Cherry (PIO) Liz Trospen (agent), Robert Mumana (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev 618 (2000)	
1365	David Cherry (PIO) Liz Trospen (agent), Robert Mumana (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev 618 (2000)	
1366	David Cherry (PIO) Liz Trospen (agent), Robert Mumana (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev 618 (2000)	
1367	David Cherry (PIO) Liz Trospen (agent), Robert Mumana (City Manager, Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Com'rs of Clark County, 116 Nev 618 (2000)	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
1807	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 075	Redaction
1808	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 075	Redaction
1809	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 075	Redaction
2485	Josh Reid (attorney) and Gem Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	Redaction
2487	Josh Reid (attorney) and Gem Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	Redaction
2491	Josh Reid (attorney) and Gem Schroeder (Council)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re HAD	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	Redaction
3052		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	Redaction
3862	David Cherry (PIO), Liz Trosper (agent), Robert Mumana (City Manager), Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Comm's of Clark County, 116 Nev 515 (2000)	
3864	David Cherry (PIO), Liz Trosper (agent), Robert Mumana (City Manager), Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Comm's of Clark County, 116 Nev 515 (2000)	
3866	David Cherry (PIO), Liz Trosper (agent), Robert Mumana (City Manager), Javier Trujillo (Public Affairs)	Electronic correspondence containing mental impressions and strategy of City management regarding preparation of public statement and comments on draft statement	Deliberative Process Privilege	DR Partners v Board of County Comm's of Clark County, 116 Nev 515 (2000)	
4016	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	
4056	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	
4057	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	
4058	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	
4078	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	
4083	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	
4084	Kristina Gilmore (attorney), Brian Reeve (attorney), David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 055	

Doc #	Email senders and recipients	Description	Exemptions for Redaction/Non-Production	Authority	Redaction
4090	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4091	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4092	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4093	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4094	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4095	Kristina Gilmore (attorney), Brian Reeve (attorney) David Cherry (PIO), Javier Trujillo (Public Affairs)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
4044	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
4951	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
4955	Kathy Blaha (PIO), Joanne Wershba (City staff), Ray Everhart (City staff)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
5249		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
5253		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
5885		Internal report containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	Redaction
6759		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
6662	Kristina Gilmore (attorney), Josh Reid (attorney), Cheryl Navitskis (City Attorney Staff)	Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
6663		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
6953	Kristina Gilmore (attorney), Josh Reid (attorney), Cheryl Navitskis (City Attorney Staff)	Electronic correspondence containing internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
6959		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	
6978	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trasper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49 095	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
7009	Kristina Gilmore (attorney), Laura Kopanski (paralegal) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
7019	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7059	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7127	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7199	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7406		Internal status report prepared by attorney containing legal thoughts, impressions, and advice concerning legal matters	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7498	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7507	Kristina Gilmore (attorney) and/or Bud Cranor (PIO/Council Support Services) and/or Luke Fritz (Finance)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trooper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7509	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7631	Karina Milana (Public relations) and attorney	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7636	Karina Milana (Public relations), Kristina Gilmore (attorney) and Laura Kopanski (paralegal)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7676		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Dorsey of Nevada, Inc v Bradshaw, 108 Nev. 839 (1996)	
7678		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Dorsey of Nevada, Inc v Bradshaw, 108 Nev. 839 (1996)	Redaction
7698	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7703	Karina Milana (Public relations) and Kristina Gilmore (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
7717	Laura Shannan (City Manager's Office), Jennifer Pennema (Human Resources)	Electronic correspondence containing mental impressions and strategy of City management regarding changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v. Board of Clark County Comm. of Clark County, 116 Nev. 579 (2002)	

Doc #	Email senders and recipients	Description	Basis for Redaction/Non-Production	Authority	Redaction
7718		Draft document reflecting deliberations, thoughts, and impressions concerning changes to organizational structure within the City Manager's Office	Deliberative Process Privilege	DR Partners v. Board of County Comm'n of Clark County, 110 Nev 616 (2000)	
12153	Cheryl Navitskis (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12154	Cheryl Navitskis (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12156	Cheryl Navitskis (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re Trosper contract	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12184	Michael Naseem (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trosper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12185	Michael Naseem (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trosper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
12189	Michael Naseem (City Attorney staff) and Josh Reid (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re LVRJ Trosper records request	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
13426	Sally Gaiati (attorney) and Rory Robinson (attorney)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13422	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13423	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation), Shan Ferguson (Parks and Recreation), Adam Blackmore (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13425	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction
13428	Kim Becker (PIO), David Cherry (PIO), Javier Trujillo (Public Relations), Coery Clark (Parks and Recreation), Shan Ferguson (Parks and Recreation), Adam Blackmore (Parks and Recreation)	Electronic correspondence containing communication between attorney and staff made for the purpose of facilitating the rendition of professional legal services re presentation on fuel indexing	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	Redaction

EXHIBIT “AA”

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15 **CITY OF HENDERSON**

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 LAS VEGAS REVIEW-JOURNAL,
15
16 Petitioner,
17
18 vs.
19
20 CITY OF HENDERSON,
21
22 Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

BAILEY ❖ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
702.562.8820

21 The Amended Public Records Act Application/Petition for Writ of Mandamus/Application
22 for Declaratory Relief (the "Petition") of Petitioner Las Vegas Review Journal (the "LVRJ") came
23 on for hearing at 9:00 a.m. on March 30, 2017 on expedited basis pursuant to NRS 239.011; the
24 LVRJ was represented by Alina Shell and Margaret A. McLetchie; Respondent City of Henderson
25 (the "City") was represented by Dennis L. Kennedy of Bailey ❖ Kennedy, City Attorney Josh M.
26 Reid and Assistant City Attorney Brian R. Reeve; the Court having read the pleadings and
27 memoranda filed by the parties, having considered the evidence presented and having heard the
28 argument of counsel, hereby **ORDERS AS FOLLOWS:**

1 1. The Petition presents three principal issues: (i) preparation and access to public
2 records; (ii) assessing costs and charging fees for copying and preparing public records; and (iii)
3 withholding and redacting certain records.

4 2. Preparation and Access to Records. In response to the LVRJ's public record request,
5 the City performed a search that returned 9,621 electronic files consisting of 69,979 pages of
6 documents. Except for the items identified on the City's withholding log (discussed in paragraph 4,
7 below), all such files and documents (the "Prepared Documents") were prepared by the City, and
8 LVRJ had access to and inspected the Prepared Documents prior to the hearing. Following its
9 inspection, LVRJ made no request for copies of the Prepared Documents; however, following
10 LVRJ's counsel's representations at the hearing that it also wanted electronic copies of the Prepared
11 Documents, the City agreed to provide electronic copies of the Prepared Documents. The City has
12 complied with its obligations under the Nevada Public Records Act (the "NPRA").

13 3. Costs and Fees. The City has provided the Prepared Documents without charging
14 costs or fees to the LVRJ. Therefore, LVRJ's claims regarding the propriety of charging such costs
15 and fees are moot, and the Court does not decide them.

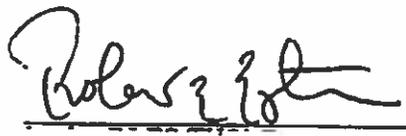
16 4. Withheld Documents. The sole issue decided by the Court concerns certain
17 documents the City withheld and/or redacted (the "Withheld Documents") on the grounds of
18 attorney-client or deliberative process privilege. The operative privilege log (the "Privilege Log")
19 was attached as Exhibit "H" to the City's Response to the Petition. The Court finds the Privilege
20 Log to be timely, sufficient and in compliance with the requirements of the NPRA, and therefore
21 DENIES the LVRJ's Amended Petition concerning the Withheld Documents.

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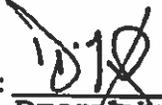
5. CONCLUSION. Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition is hereby DENIED.

DATED this ____ day of April, 2017.



Submitted by:
BAILEY ♦ KENNEDY

Approved as to Form and Content:
MCLETCHIE SHELL LLC

By: 

By: _____
ALINA SHELL
MARGARET A. MCLETCHIE

and
JOSH M. REID, City Attorney
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EXHIBIT “BB”

JA0585


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DISTRICT COURT
CLARK COUNTY, NEVADA

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LAS VEGAS REVIEW-JOURNAL,)

8

Plaintiff,)

CASE NO. A-16-747289-W

9

vs.)

DEPT. XVIII

10

CITY OF HENDERSON,)

11

Defendant.)

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13

BEFORE THE HONORABLE J. CHARLES THOMPSON, DISTRICT COURT JUDGE

14

THURSDAY, MARCH 30, 2017

15

TRANSCRIPT OF PROCEEDINGS RE:

16

PETITION FOR WRIT OF MANDAMUS

17

18

APPEARANCES:

19

For the Plaintiff:

ALINA SHELL, ESQ.,
MARGARET A. McLETCHIE, ESQ.

20

For the Defendant:

DENNIS L. KENNEDY, ESQ.,
JOSH M. REID, ESQ.,
BRIAN R. REEVE, ESQ.

21

22

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RECORDED BY: JENNIFER P. GEROLD, COURT RECORDER

1 LAS VEGAS, NEVADA; THURSDAY, MARCH 30, 2017

2 [Proceeding commenced at 8:57 a.m.]

3
4 THE COURT: Page five, the Las Vegas Review-Journal versus
5 Henderson. Okay. Counsel, for the record.

6 MS. SHELL: Good morning, Your Honor. Alina Shell and
7 Margaret McLetchie on behalf of the Review-Journal.

8 MS. McLETCHE: Good morning, Your Honor.

9 MR. KENNEDY: And for the Defendant, City of Henderson, Dennis
10 Kennedy along with City Attorney Josh Reid and Assistant City
11 Attorney Brian Reeve.

12 MR. REEVE: Good morning, Your Honor.

13 THE COURT: Okay. This is the Review-Journal's petition.

14 MS. SHELL: Yes, Your Honor. Thank you. In its opposition to
15 our memorandum, Your Honor, the City of Henderson has thrown up a
16 lot of red herrings that it hopes Your Honor might catch onto, but
17 really what is important in this case and what is central to this
18 Court's consideration is the Nevada Public Records Act and what --
19 and the intent of the Nevada Public Records Act. And that is to
20 ensure that the public has easy access to government records.

21 What we have here is an issue where the City of Henderson
22 has enacted an ordinance and is trying to enforce an ordinance
23 against the Review-Journal that is at conflict with the NPRA.
24 Specifically, the NPRA provides that, as I said, the public should
25 have easy access to records. And that the -- that to the extent

1 that there's -- are any charges that attach to a request for
2 records, those charges only attach to providing copies or to
3 extraordinary use in providing those copies.

4 What we have here is not a charge that the City wants to
5 offer up for providing copies. What they are trying to charge the
6 Review-Journal for is a privilege review. And that, Your Honor, is
7 at odds with the -- with the NPRA. It's not the -- and the reason
8 that it's at odds with the NPRA, Your Honor, is because it's not
9 the public's job to pay for a municipality like the City of
10 Henderson to conduct a privilege review.

11 Now, one of the issues that the -- that the City of
12 Henderson has presented is that this is a moot issue. Now,
13 granted, we have -- as we've acknowledged in our papers and as
14 discussed at length in the response by the City of Henderson, we
15 put forth this public records request. When we received the notice
16 from the City of Henderson that it wanted to charge these -- the
17 Review-Journal almost \$6,000, not even to provide copies of the
18 documents, but just to tell us whether they would even provide the
19 documents for the copies.

20 Ms. McLetchie, my law partner who is sitting with me at
21 counsel table, called the City of Henderson and attempted to work
22 this out. We attempted to come to an arrangement. We attempted to
23 ask them to reconsider the ordinance in the policy that they have
24 in place that is -- that they're relying on to charge this frankly
25 serious fee just to get copies of records. Just to -- not even to

1 get the copies, just to tell us if they'll give us the copies.

2 When Ms. McLetchie spoke to the City of Henderson, they
3 made their position very clear, and indeed as indicated in Exhibit
4 D to the City's response, they said, we believe that this policy is
5 proper, but it said the City is interested in having the Courts
6 provide clarity to the meaning and application of NRS 239.005 as
7 clear and concise guidance on these provisions would greatly
8 benefit both local governments.

9 So although we tried to work this out, once it became
10 clear that they're -- that the City of Henderson was not going to
11 rescind its policy and was not going to rescind its request for
12 this fee to conduct a privilege review, this litigation was
13 started.

14 After we started the litigation, Henderson and
15 Ms. McLetchie -- Ms. McLetchie had several phone calls -- I wasn't
16 on the calls, but I got to hear quite a few of them where she was
17 speaking sometimes to two or three attorneys at once trying to
18 resolve this. Eventually in December, they permitted our clients,
19 the reporter, to review the documents. They've never provided
20 copies. I mean, this is part of the --

21 THE COURT: Did you ask for copies?

22 MS. SHELL: We have asked for copies and we've asked --

23 THE COURT: Even copies of the ones that are not -- that they
24 claim privilege or have redacted some of them.

25 MS. SHELL: Correct.

1 THE COURT: And I think it's your Exhibit 7 to your petition;
2 is that right?

3 MS. SHELL: That includes some documents that they provided,
4 Your Honor.

5 THE COURT: I think your Exhibit 7 is the ones that we are
6 primarily in dispute; is that right?

7 MS. SHELL: I'm sorry, Your Honor. What was that?

8 THE COURT: Your Exhibit 7 to --

9 MS. SHELL: Yes --

10 THE COURT: -- those are the ones that you -- that are
11 primarily in dispute at this point; is that right?

12 MS. SHELL: That is part of the issue. There are still copies
13 that we've -- our reporter has reviewed some copies.

14 Now, they provided these -- Exhibit 7 were provided so
15 that we can review and assess the redactions that Henderson had
16 done.

17 THE COURT: All right. But --

18 MS. SHELL: So there are still copies of documents.

19 THE COURT: But when your reporter went to the City and
20 reviewed them I guess online; is that right? Some computer or
21 something?

22 MS. SHELL: They had made a computer available specifically
23 for just the review.

24 THE COURT: And did your reporter ask for copies of any of the
25 documents your reporter saw?

1 MS. SHELL: She did not because we still had this issue -- or
2 Ms. McLetchie may have an answer to that.

3 THE COURT: I think that they'll give those to you or I
4 thought that they would have.

5 MR. KENNEDY: Just for the record, that's correct. No copies
6 were requested or made.

7 THE COURT: Okay.

8 MS. McLETCHE: Your Honor, if I may so just to clarify what
9 we originally requested you have two rights under the Nevada Public
10 Records Act. You can request copies or you can request an in-
11 person inspection. We requested copies. What Mr. Reid offered and
12 what I accepted as an interim solution while this Court was
13 resolving issues, was to allow an in-person inspection.

14 Now, whether or not they would have made one or two
15 copies available at that inspection is frankly not -- is frankly
16 not the point, Your Honor. The point is that we wanted copies and
17 they said in order --

18 THE COURT: Do you still want the copies?

19 MS. McLETCHE: We would still have -- we would still like,
20 without the exorbitant charge, a USB drive with the documents
21 requested, yes, Your Honor.

22 THE COURT: If you wanted copies and they gave -- there's
23 69,000 pages according to what I read.

24 MR. KENNEDY: Right.

25 THE COURT: If you want 69,000 pages, I guess they can run

1 that off.

2 MS. McLEETCHIE: Well, Your Honor, the usual practice --

3 THE COURT: Do you want that?

4 MS. McLEETCHIE: Your Honor, at this point -- at this point we
5 don't need 69,000 pages printed out, but what -- what my reporter
6 wanted originally rather than have to go and spend almost a week, I
7 think, at Henderson's office and to review under difficult
8 circumstances, what we had asked for was the right to inspect --

9 THE COURT: But you still want the copies?

10 MS. McLEETCHIE: -- copies. We -- we that issue isn't moot,
11 Your Honor, because we requested copies. The usual --

12 THE COURT: So you still want the copies?

13 MS. McLEETCHIE: Your Honor, what -- what usually the practice
14 is, so I'm clear, is what the usual practice is is that they give
15 us a USB drive rather than allow -- rather than require us to come
16 in person and then everybody can avoid the expense of copies.

17 THE COURT: I'm a very old Judge. A USB drive?

18 MS. McLEETCHIE: I'm sorry, Your Honor.

19 MS. SHELL: It's like a little stick that you put in the
20 computer that's like --

21 THE COURT: Okay. I know what an email is, but I'm --

22 MS. McLEETCHIE: It's a -- it's a --

23 MS. SHELL: It's a portable storage device.

24 MS. McLEETCHIE: -- essentially instead of the old floppy
25 drives that we've had --

1 THE COURT: Okay.

2 MS. SHELL: -- or CDs --

3 THE COURT: It's the stick you stick in the computer?

4 MS. McLETTCHIE: Correct, Your Honor.

5 THE COURT: Okay.

6 MS. McLETTCHIE: And it's an easy way for us to solve some of
7 the logistical issues of providing copies, but from our position --

8 THE COURT: Are you -- are you willing to give them a USB
9 drive with all the documents?

10 MR. KENNEDY: Sure.

11 THE COURT: Okay. Well does that resolve --

12 MS. SHELL: It does not, Your Honor, and here's why it
13 doesn't.

14 THE COURT: Okay.

15 MS. SHELL: Because we still have this ordinance in place in
16 Henderson that is directly at odds with the NPRA. And, you know,
17 it's -- it's a bit of an old chestnut, but there is this rule of
18 construction called Dillon's Rule which says that when a
19 legislature evidences an intent to regulate a particular area of
20 law that you can't have a municipality, have a law that's at
21 conflict with the legislature's intent.

22 THE COURT: If they're willing to give you what you requested
23 on a drive rather than printing the paper, maybe we don't need to
24 get to the constitutionality of their rules. I mean, if they're
25 willing to give it to you that would resolve the case wouldn't it?

1 MS. SHELL: It would only revolve it with regards to this
2 particular issue --

3 THE COURT: Well, that's what we're worried about.

4 MS. SHELL: -- but this is -- this is something that is
5 capable of repetition and that is another issue that we have in
6 this matter. Is that this is --

7 THE COURT: Well, up until this case what I read was that you
8 guys had been cooperating and getting things back and forth -- or
9 at least getting things to the RJ when they requested it.

10 MS. SHELL: I don't think that there is -- this is not -- this
11 is not an issue, Your Honor, respectfully, where simply because you
12 have a pattern and practice of everything being okay most of the
13 time and then you have like this one incident that --

14 THE COURT: I'm just worried about this case. If they're
15 willing to give you the documents, I think that that ought to solve
16 it.

17 MS. SHELL: I understand your -- what you're saying, Your
18 Honor, but again our concern is that this will be an impediment in
19 future cases not just for the RJ.

20 THE COURT: Well, let's worry about the future cases when we
21 get there. That's for maybe a younger Judge.

22 MS. SHELL: Well, Your Honor, we are -- we are concerned that
23 this is something that is capable of repetition. And there's no
24 indication that they're going to rescind a policy which is at odds
25 with the NPRA.

1 THE COURT: I was -- I was led to believe that our hearing
2 today was to argue over the redacted documents that you have in --
3 that you attached to your petition.

4 MS. SHELL: Yes, we also have issues with the redactions, Your
5 Honor. And I won't -- I think I went through in detail in my reply
6 some of my issues with the redactions and the withholdings.

7 But, the thing to remember in NPRA cases dealing with the
8 Public Records Act is that the burden -- there's a presumption. We
9 start with a presumption under the law that records are public and
10 that they should be easily accessible. And that's a presumption
11 that can only be overcome by the government entity who wants to
12 withhold the documents. And they have to prove that by the
13 preponderance of the evidence.

14 And what we have here is an issue where in certain
15 instances -- and I would direct Your Honor's attention to the most
16 recent log, the third privilege log that was produced by the by the
17 City and that would be at --

18 THE COURT: That's your Exhibit 6.

19 MS. SHELL: It's actually, I was looking at the Exhibit H to
20 the -- I think it is our Exhibit 6, but it's also Exhibit H to the
21 City's response. And what we have here --

22 MR. KENNEDY: That is the most recent --

23 THE COURT: It's the same one. I've got it here.

24 MS. SHELL: Correct. It is the third privilege log. And we
25 have dozens of documents here where the -- there's a few different

1 categories, one of them is attorney-client privilege.

2 THE COURT: Right.

3 MS. SHELL: There are dozens of documents here where the City
4 has asserted they can't release the -- they won't release them
5 because of attorney-client privilege. However --

6 THE COURT: There's also the liberty of processed privilege a
7 confidential personal information which I guess would contain
8 social security numbers and things like that.

9 MS. SHELL: And, Your Honor, we don't contest that last
10 category. When it comes to personal identifying information, we
11 agree that those redactions are appropriate. Our concern comes
12 more with the assertions of attorney-client privilege, deliberative
13 process privilege, and, I believe, that -- yeah, those were the two
14 main categories of documents that were withheld.

15 Now when it comes to attorney-client privilege as I said
16 in our papers, attorney-client privilege needs to be construed
17 narrowly because it can be an impediment to open access to
18 documents and that's what the Supreme Court said in the *Whitehead*
19 case.

20 And the other thing that has been said by the Supreme
21 Court is you can't just -- this is a law in some ways like
22 discovery issue. You can't just put forth a boilerplate assertion
23 of privileged documents without providing more detail so that the
24 person requesting the document can assess whether that is an
25 appropriate withholding or redaction.

1 And what we have here with their third privilege log,
2 when you have these assertions of attorney-client privilege, it's
3 very generalized language that makes it impossible for the
4 Review-Journal to discern what exactly the nature of the
5 attorney-client privilege is.

6 You have dozens of them where it's just electronic
7 correspondence containing communication between attorney and staff
8 made for the purposes of facilitating legal -- the rendition of
9 professional legal services to the Trospen contract terms.

10 I mean, it's so vague that it's essentially meaningless
11 to me. Like, every time I wrote that I didn't understand what that
12 meant. And that's part of the problem we don't know what those
13 documents are. If -- if --

14 THE COURT: What is the Trospen contract?

15 MS. SHELL: Your Honor, Trospen Communications was a
16 communications firm that had contracted for a period of time with
17 the City of Henderson to provide different services like public
18 relation services.

19 THE COURT: Did they have a contract?

20 MS. SHELL: As far as I know, they had a contract.

21 THE COURT: Well, the contract itself should be available to
22 you.

23 MR. KENNEDY: Correct. It's public record.

24 MS. SHELL: And that, Your Honor, there was actually one other
25 --

1 THE COURT: I guess, if there was negotiations involving that
2 contract and -- and staff was discussing what to offer or what to
3 agree to or how much to pay or something like that that probably
4 would be -- between the attorneys and the staff that would probably
5 be something that would be privileged, but there's an awful lot of
6 those same things, I agree with you.

7 MS. SHELL: Yes, Your Honor. I mean, to the extent that there
8 may be those documents. Those may be properly withheld, but it's
9 impossible to discern from their log what those documents are and
10 what they actually talk about. The actually -- and, Your Honor, I
11 actually --

12 THE COURT: How do I -- how do I resolve this?

13 MS. SHELL: I think the way to revolve it, Your Honor, is to
14 take the documents in camera and review them to see if they had
15 been properly withheld.

16 THE COURT: Well, they offered to give them to me in camera.
17 I was really excited about reading a couple hundred documents.

18 MR. KENNEDY: I'm sure -- I'm sure that you were.

19 MS. SHELL: Well, yeah, and Ms. McLetchie also pointed out
20 another thing would be, and it's actually what I put in the reply,
21 is that we need a better log so that we can assess the privilege
22 because they're asserting the privilege. It's their burden to
23 prove it. We can't tell if they're meeting their burden.

24 THE COURT: And that's true. I agree. They have to make a
25 demonstration and --

1 MS. SHELL: They also asserted deliberative privilege process,
2 Your Honor, as to a lot of the same documents, so. I just -- I had
3 only mentioned two categories.

4 THE COURT: I guess that deliberative privilege exception is
5 where you've got staff members discussing how they're going to
6 present something or give it to the commissioners to decide; is
7 that right?

8 MS. SHELL: Right. And that's not what the deliberative
9 process privilege is meant to encompass, Your Honor. And as I
10 pointed out, indeed, in one of the cases that is actually sighted
11 in Henderson's moving papers, the deliberative process privilege is
12 meant to apply to communications and records that deal with
13 significant policy judgments.

14 And there's no evidence when you look where they've
15 asserted, the -- you'll forgive me, Your Honor, as I flip back and
16 forth between these things -- the deliberative process privilege
17 one of the documents that they cite is electronic correspondence
18 containing mental impressions and strategy of city management
19 regarding preparation of public statement and comments on draft
20 statement. A public statement isn't a significant policy judgment
21 issue.

22 THE COURT: I guess it depends about what the statement is.

23 MS. SHELL: Well, and it's impossible -- frankly, Your Honor,
24 it's impossible to discern from the log what that policy statement
25 is.

1 THE COURT: I must confess I had not heard about the
2 deliberative privilege previously, so I wasn't very familiar with
3 it.

4 MS. SHELL: Your Honor, just -- and as another alternative to
5 in camera review, that -- your Court -- the Court could find that
6 they haven't met their burden and just direct the City of Henderson
7 to produce the records.

8 THE COURT: Okay.

9 MS. SHELL: All right. Your Honor, thank you.

10 THE COURT: Thank you.

11 MR. KENNEDY: Your Honor, with respect to the first issue and
12 that is the inspection and production of the documents. We
13 produced almost 70,000 pages. Nobody asked for a single copy of
14 anything and as we told the Court this morning, we're willing to
15 provide those.

16 THE COURT: Okay. Well, I guess they want them.

17 MR. KENNEDY: Well, okay. They didn't have to sue us to get
18 them.

19 THE COURT: We'll -- I'll accept that as a stipulation that
20 you will provide it within five days.

21 MR. KENNEDY: Yes. We will.

22 THE COURT: All right. Thank you. That will resolve that
23 issue.

24 MR. KENNEDY: Secondly, the Court is correct. With respect to
25 the argument about can you or can't you charge a fee, what can the

1 fee be, and all of that, we're just -- we're going to produce
2 these. That's really not an issue before the Court.

3 THE COURT: Well, at one time it was. You did request money
4 for privilege review. I don't know that the statute says you're
5 entitled to money for privilege review. Now, if it's an
6 extraordinary request, maybe that's part of it, but I -- that's
7 arguable either way.

8 MR. KENNEDY: It is arguable either way. Just -- the Court
9 doesn't have to decide it. The last issue is on the -- the
10 privilege law.

11 THE COURT: The privilege.

12 MR. KENNEDY: Okay. And the Nevada Supreme Court has dealt
13 with this. In the context of the Public Records Act in *Reno*
14 *Newspaper versus Gibbons* one of the questions before the Supreme
15 Court was, what do you have to put in this privilege log? Because
16 the statute says if -- you'll say we can't produce it, we give you
17 the reasons why, and cite the statute. That's -- that's what the
18 Public Records Act says. And the Nevada Supreme Court said, well,
19 exactly what do you have to tell the other party?

20 And the question involved the legendary Vaughn Index.
21 It's a federal case and it says under the Federal Act here's what
22 you have to do. The Supreme Court said, well, you don't have to do
23 a Vaughn Index 'cause every case is different. The Supreme Court
24 said, in order to -- and I'm reading out of the *Gibbons* case, in
25 order to preserve a fair adversarial environment, the log should

1 contain, at a minimum, a general factual description of each record
2 withheld and a specific explanation for nondisclosure. So describe
3 the document and tell us why you're not disclosing it.

4 So in our Exhibit H, what we did was we described the
5 document, by document number and a description of it, and then --
6 and, you know, who wrote it, who sent it, that, and then cited
7 whatever the -- whatever the reason for withholding was; either
8 attorney-client communication or the deliberative privilege. And
9 so that's what we did and that -- that satisfies the test in
10 *Gibbons*.

11 Now, in the next paragraph the Supreme Court in *Gibbons*
12 -- and this is at -- it's 127 Nevada Advance Opinion 79, I just
13 have the cite to the Pacific page it's at 884. The Supreme Court
14 said, and if that's not sufficient -- what is it, describe it, and
15 tell us why you're withholding it, Supreme Court said, if that's
16 not enough in order for a decision to be made, the Supreme Court
17 says, to the delight of trial Judges everywhere, in other words an
18 in camera review may be used to supplement a log, but it may not be
19 used as a substitute where a log is necessary. Which means provide
20 the log. If that's not good enough, then in camera review.

21 That's why we said in your response, we'll provide them
22 to the Court in camera. And that's what *Gibbons* says. If you look
23 at the log and you say, fine, I know what the document is, I know
24 what the privilege is, but I've got to look at it, then in camera
25 review --

1 THE COURT: My concern is that you have repeated kind of a
2 boilerplate explanation. It's fairly detailed, but it's still a
3 boilerplate explanation for an awful lot of documents.

4 MR. KENNEDY: Yeah. It is. And you know -- you know, Your
5 Honor, what the response to that is? It is in footnote three in
6 that *Gibbons* opinion, footnote three the Supreme Court addresses
7 that issue. And it says, you know what, you can't ask for too much
8 because if you give a little bit more, you're going to waive the
9 privilege.

10 And in footnote three, the Court says we understand that
11 problem. And so here's why we're deciding the case the way we do.
12 And in -- in footnote three they cite a couple cases which -- which
13 hold that which say you don't -- you don't have to go so far as to
14 endanger the privilege. So that's what we did. Said here's the
15 document attorney-client or deliberative and as the Supreme Court
16 said in *Gibbons*, we'll give them to the Court in camera if that's
17 necessary.

18 And so what we did was really strictly complied with the
19 Public Records Act as the Supreme Court interpreted it in *Gibbons*.
20 As I said, much to the delight of trial Judges everywhere, but that
21 is -- that is what the Supreme Court said so that's why we did what
22 we did.

23 And those are -- those are all the points I want to make.
24 Okay. Thank you.

25 MS. SHELL: Thank you, Your Honor, I just have a couple of

1 brief points. The first thing that I would to say is Mr. Kennedy
2 said we didn't have to sue to get these records. Clearly we did
3 because this is the first time we've been given an -- they've told
4 us they're going to give us a USB drive so obviously we did have to
5 bring this case to the Court.

6 THE COURT: That's done.

7 MS. SHELL: Yeah. And, Your Honor, in terms of the privilege
8 log, there's actually on the next page of the *Gibbons* opinion so
9 that would be the Pacific Reporter on page 885, what *Gibbons* says,
10 and I think it echoes what Your Honor's concerns were, we cannot
11 conclude that merely pinning a string of citations to a boilerplate
12 declaration of confidentiality satisfies the State's prelitigation
13 obligation under NRS 239.0107 to cite specific authority that makes
14 the public book or record a part or a part thereof confidential.

15 And in fact, I actually believe, Your Honor, although
16 it's been an hour or two since I read the *Gibbons* opinion, that in
17 *Gibbons* the Supreme Court actually told the State to go and revise
18 its privilege log to provide more information. And we're in the
19 same situation here where we don't have sufficient --

20 THE COURT: Well, 'cause I didn't go back and read the *Gibbons*
21 case. I know that you both referenced it, but I didn't go back and
22 read it. What was the explanation offered in the *Gibbons* case that
23 was insufficient?

24 MS. SHELL: I believe those -- some of those fell under -- and
25 forgive me, Your Honor, this was in the *Gibbons* case, the Reno

1 Newspapers had asked for emails between then Governor Jim Gibbons
2 and a series of individuals. And there were I believe -- I
3 believe, gosh, Maggie, do you remember?

4 THE COURT: I mean --

5 MS. SHELL: I don't recall the nature --

6 THE COURT: Was it as detailed as these explanations here?

7 MR. KENNEDY: No.

8 THE COURT: -- that electronic correspondence containing
9 communication between attorney and staff made for the purpose of
10 facilitating the rendition of professional services re Trospen
11 contract terms.

12 MR. KENNEDY: Right.

13 MS. SHELL: Your Honor, I --

14 THE COURT: It's fairly detailed. I mean, if it's true it
15 would be a --

16 MS. McLETCHE: Your Honor, if I recall and, I don't --
17 unfortunately, we don't have the case in front of us, but if I
18 recall, the issue that they came up with is the same issue that we
19 had here in that regardless of whether it took the form of a log or
20 a declaration, the issue was that it was just boilerplate and there
21 is the balancing act that Mr. Kennedy mentioned, but you still have
22 to provide -- and this is what the *Gibbons* Court said, you still
23 have to provide enough information so that the other side can
24 ascertain whether or not the privilege is properly being brought.

25 THE COURT: If -- if you're --

1 MS. McLETCHE: And both we and Your Honor had some confusion
2 --

3 THE COURT: If these statements are accurate, I would think
4 that the privilege is -- I mean, the privilege is validly claimed.
5 Now, if you claim that the privilege isn't accurate, then I have to
6 look at it to see if it's accurate.

7 MS. McLETCHE: We have to -- I'm sorry, go ahead, Ms. Shell.

8 MS. SHELL: It's impossible because it is when you look at
9 when they say facilitating the rendition of professional legal
10 services, that is -- we just can't tell. I mean frankly it's just
11 -- it's difficult to discern because that is taken directly from
12 the statute. That's not actually a descriptor. So that's why we
13 can't tell if the privilege is being properly asserted and that's
14 why --

15 THE COURT: Well, the only way to know is to look at the
16 document.

17 MS. SHELL: That's correct, Your Honor.

18 THE COURT: You want me to do that?

19 MS. SHELL: I believe we would, Your Honor.

20 MS. McLETCHE: We would also ask that the log also be updated
21 so that they better describe the documents so we can match up just
22 provide enough information to us to see --

23 THE COURT: The documents are copied in this Exhibit 7 aren't
24 they?

25 MS. McLETCHE: Some of them are, Your Honor. They both

1 withheld documents and they redacted documents. So there's some
2 that were provided and there are some that were withheld in their
3 entirety, but we need more of an explanation --

4 THE COURT: Well, I looked up, for example, the very first one
5 which was log number three, it's so small I can't read it.

6 MS. McLETCHE: Your Honor, we need more information --

7 THE COURT: Maybe it's my poor eyes, but I --

8 MS. SHELL: Yeah.

9 MS. McLETCHE: -- about either the nature of what was
10 redacted or the nature of the document that was withheld so that we
11 can tell at least whether or not the privilege applies.

12 THE COURT: Okay.

13 MS. SHELL: And unless Your Honor has any further questions?

14 THE COURT: Anything further?

15 MR. KENNEDY: I can answer your question about *Gibbons*.

16 THE COURT: Okay. What did they -- what were they?

17 MR. KENNEDY: In *Gibbons*, they didn't give a log. They just
18 gave a statement. This is at --

19 THE COURT: What was the statement?

20 MR. KENNEDY: -- 876 in the Pacific third cite. The State
21 informed the RGJ, the Reno Gazette Journal, that all of the
22 requested emails were confidential because they were either
23 privileged or not considered public records. The Review-Journal
24 repeated its request for a log containing a description of each
25 individual email so it could assess whether to challenge the

1 State's classification. No log in that case, so.

2 THE COURT: So they didn't have the statement that you have
3 given here?

4 MR. KENNEDY: That is correct.

5 THE COURT: Okay.

6 MR. KENNEDY: That is correct. And that was, of course, that
7 was the problem. You just --

8 THE COURT: Well, unless there's some indication that they --
9 that the City has misrepresented what these are, I think this is an
10 adequate description of the privilege.

11 MS. McLETCHIE: Your Honor, if I may, I think the whether it
12 was -- whether it's on a log and separated out by document or
13 whether it's in a declaration as it was in the *Gibbons* case, we
14 have the same problem because we don't have enough information to
15 ascertain whether or not the privilege is properly brought.

16 We're not supposed to be in a situation where we're
17 supposed to assume that they're properly bringing the privilege and
18 that we somehow have to figure out which we can't do without more
19 information.

20 THE COURT: If this is all the *Gibbons* case requires, I think
21 they've satisfied it.

22 MS. McLETCHIE: They don't just require a log, they require
23 enough information so that we can ascertain whether or not the
24 privilege is properly being brought and that's --

25 THE COURT: I think this is enough information.

1 MS. McLETCHE: Your Honor, I respectfully disagree. And if I
2 may raise just one last issue with regard to the declaratory relief
3 and the injunctive relief. I do just want to make one last pitch.
4 I've heard Your Honor's position, but my -- my view is that they
5 shouldn't -- the public's entitled to clarity.

6 There's an ordinance and there's a policy in Henderson
7 right now that is at odds with the NPRA for two reasons. Both
8 because they're applying it to allow for fees for things like
9 privilege review and because the figure, the per page number is
10 higher --

11 THE COURT: They're not arguing for any more money. They're
12 not going to -- they're not going to ask you for any money.

13 MS. McLETCHE: Then I would ask that they -- that they
14 voluntarily rescind that policy.

15 THE COURT: Well, that's -- we'll worry about it at the next
16 case. But, they're going to give you a stick -- what do you call
17 it?

18 MS. SHELL: A USB drive, Your Honor.

19 THE COURT: USB drive with the 69,000 pages on it and I'm
20 going to deny the rest of the petition.

21 MR. KENNEDY: Very good.

22 THE COURT: I need an order to that effect.

23 MR. KENNEDY: I will prepare the order and run it by counsel.

24 THE COURT: Send it by counsel.

25 MS. McLETCHE: Thank you, Your Honor.

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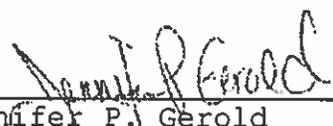
MR. KENNEDY: Surely.

THE COURT: Have a good day.

[Proceedings concluded at 9:29 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Jennifer P. Gerold
Court Recorder/Transcriber

EXHIBIT “CC”

JA0611

Research Report

Nevada Press Association, Inc.

1992-93 Statewide Survey
of Registered Voters





BARRY NEWTON
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Consumer Data Service

3601 North Lincoln Blvd. • Oklahoma City, OK 73105 • 405/524 0021

TO WHOM IT MAY CONCERN:

The data in this report was generated through an extensive market research study conducted jointly by Consumer Data Service (CDS), a market research firm, and the Journalism Research Center at the University of Oklahoma.

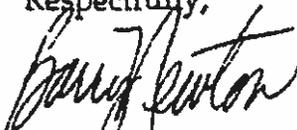
The study was commissioned by the Nevada Press Association, Inc. The purpose of the study was to determine attitudes towards government records and the publication of legal notices by registered voters in the state of Nevada.

In order to gain valid insights into citizen preferences and tendencies, a structured questionnaire was developed and tested.

The questionnaire, constructed by Dr. Ernest F. Larkin, director of the Journalism Research Center at OU, was designed to be administered via telephone interviews with a random sample of registered voters in the state of Nevada.

Consumer Data Service and the Journalism Research Center are responsible for the design and execution of the study. All data were processed by CDS and the Journalism Research Center, and the report was prepared by us. I can certify that the data in this report are, to the best of my knowledge, valid and correct.

Respectfully,



Barry Newton
CDS Director

Nevada Press Association, Inc.

1992-93 Statewide Survey of Registered Voters

Executive Summary

Nevada's registered voters are sensitive and alert to issues affecting them personally and to issues and records under the control of their state and local governments. By a substantial majority Nevada's registered voters believe most, if not all, records obtained by government agencies should be accessible by private citizens. Registered voters believe the public's right to know outweighs a public servant's or public employee's contention to privacy with matters relating to job performance, qualifications and illegal actions. Even a majority of government employees are in favor of openness with respect to personnel records.

While Nevada's voters are strongly in favor of open records, they are not insensitive to the cost to provide such records. A majority of Nevada's citizens believe individuals should pay for public records they request, however they do not believe the government should make a profit on public records provided.

A desire for openness in government was expressed by each public sector examined. No significant differences were demonstrated by respondent age group, income category, gender, or rural or metropolitan residence. The basic message received from the survey was that citizens deserve to know what actions their government takes and have a right to access records and information a government may keep and maintain.

The following summary highlights the results of questions asked to 500 registered voters in Nevada regarding their attitudes toward state government records and their usage and feelings toward the publication of legal and public notices. Comparisons by the respondents' residence or by having a government employee in the household are indicated in the text headings accompanying the specific questions asked.

Voter Access to Government Information

Registered voters to the statewide survey were asked if Nevada citizens should have access to specific types of information that were part of present day public records or information collected by public agencies. Of the 500 interviews, respondents were divided by metro and non-metro locations and by government and non-government employment status. By every measure examined, respondents were strongly in favor of openness to the following categories.

Q.	Should private citizens have access to information on . . .			
	Response (N=500)	% of total sample	Metro respondents	Non-Metro respondents
	Expenditure of taxpayer dollars			
	by gov't agencies	95.8	95.6	96.0
	Birth and death certificates	63.0	64.4	61.6
	Work experience of public employees	76.2	73.2	79.2
	Illegal actions by public employees	88.8	86.8	90.8
	Job performance data on			
	Dept of Welfare employees	75.2	74.8	75.6
	Court information on			
	hazardous products	93.4	91.6	95.2
	Payment of settlements in suits against			
	the government by private citizens	75.2	74.8	75.6
	Job performance and job qualifications information on			
	Gov't agency heads	90.0	90.0	90.0
	Gov't department heads	90.8	89.6	92.0
	Government or public			
	agency administrators	90.4	89.6	91.2
	All public employees	70.6	66.8	74.4
	Teachers in public schools			
	and colleges	77.0	78.4	75.6

	Households with public employee	Household without public employee
Expenditure of taxpayer dollars by gov't agencies	96.2	95.7
Birth and death certificates	63.2	62.4
Work experience of public employees	74.4	77.2
Illegal actions by public employees	86.5	89.9
Job performance data on Dept of Welfare employees	66.9	78.9
Court information on hazardous products	97.0	92.8
Payment of settlements in suits against the government by private citizens	73.7	76.6
Job performance and job qualifications information on Gov't agency heads	87.2	91.6
Gov't department heads	88.7	92.2
Government or public agency administrators	87.2	92.5
All public employees	64.7	73.1
Teachers in public schools and colleges	69.9	79.8

Other results from questions relating to government records and meetings revealed that...

- 94.2% believe government agencies should continue to provide agendas of open meetings free of charge to the public.
- 86.0% believe private citizens should have access to all information which government agencies may have about them.
- 58.2% believe private citizens should pay for copies of records they request from government agencies, but...
- 78.7% do not believe government should make a profit on public records they sell or provide to citizens.
- 80.2% do not believe government agencies should arbitrarily close records which presently are open to the public.

Q. *Should government agencies continue to provide agendas of open meetings free of charge to the public?*

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Response (N=500)					
Yes	94.2	94.0	94.4	96.2	93.1
No	3.2	3.6	2.8	2.3	3.8
DK/NR	2.6	2.4	2.8	1.5	3.2

Q. *Should private citizens have access to all information which government agencies may have about them?*

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Response (N=500)					
Yes	86.0	85.2	86.8	85.7	86.7
No	10.8	10.8	10.8	12.0	10.1
DK/NR	3.2	4.0	2.4	2.3	3.2

Q. *Should private citizens have to pay for copies of public records they request from government agencies?*

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Response (N=500)					
Yes	58.2	55.2	61.2	69.2	52.6
No	38.6	40.4	36.8	27.1	44.2
DK/NR	3.2	4.4	2.0	3.8	3.2

Q. *Should the government charge enough to make a profit on public records they sell to private citizens?*

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Response (N=291)					
Yes	20.3	23.2	17.6	17.4	20.3
No	78.7	75.4	81.7	82.6	78.0
DK/NR	1.0	1.4	.7	0.0	1.6

Q. *Should government agencies be able to close records to the public which are now open?*

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Response (N=500)					
Yes	12.2	10.0	14.4	9.8	11.8
No	80.2	81.2	79.2	82.0	80.9
DK/NR	7.6	8.8	6.4	8.3	7.2

EXHIBIT “DD”

JA0618

**STUDY OF NEVADA LAWS GOVERNING
PUBLIC BOOKS AND RECORDS**

BULLETIN NO. 93-9

SEPTEMBER 1992

JA0619

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SUMMARY OF RECOMMENDATIONS

Following is a summary of the recommendations approved by the Legislative Commission's Subcommittee to Study the Laws Governing Public Books and Records.

A. DEFINITIONS RELATED TO PUBLIC RECORDS AND CATEGORIZATION OF SUCH RECORDS

1. Enact legislation that provides for broad definitions of "public record" and "governmental entity." The definition should include electronic records as public records. (BDR 19-398)

2. Enact legislation that creates certain categories which, by example, lists those records that are always included as public records. (BDR 19-399)

In summary, records that are public include records regarding title to real property, contracts of government agencies, and certain job description information related to government employees.

3. Enact legislation that creates a category which lists certain information that is not to be considered a public record. (BDR 19-399)

In summary, such information includes certain working drafts for personal use, material legally owned by an individual, copy-righted material and proprietary software.

4. Enact legislation that lists certain kinds of information that falls within the definition of public records, but notwithstanding that fact, must not be disclosed. (BDR 19-399)

In summary, this list includes information where access is restricted by a Federal or State statute, certain medical records, certain personnel files, information that is privileged, and information related to certain governmental investigations.

5. Enact legislation addressing the category of non-disclosable public records which allows any record deemed non-disclosable to be disclosed if, with

respect to the particular record, the general policy in favor of open records outweighs an expectation of privacy or a public policy justification. (BDR 19-399)

6. Adopt a resolution requiring a study of all exemptions to the public records laws to determine which exemptions should be repealed, amended, or remain the same. (BDR R-395)

B. PROCEDURES FOR ACCESS TO PUBLIC RECORDS

7. Enact legislation which provides a uniform method of requesting information, procedures to provide access to or deny that information, and time frames within which responses or other actions are required. (BDR 19-397)

In summary, the following elements were recommended:

- Each agency, upon request by any person, shall make public records available for inspection and copying during regular business hours. Provide that the request may be oral or written and may be made in person, by telephone or by mail.
- Unless information is readily retrievable by the agency in the form in which it is requested, an agency is not required to prepare a compilation or summary of its records.
- Each agency shall ensure reasonable access to facilities for duplicating records and for making memoranda or abstracts from them.
- If an agency is not immediately able to fulfill a request for a governmental record, does not intend to fulfill it or denies it, the agency must inform the requester of his right to make a formal written request.
- Within a reasonable time, but no later than 3 working days after receiving a written request

for access which reasonably identifies or describes a governmental record, the agency shall:

- a. Make the record available to the requester;
 - b. Inform the requester that unusual circumstances (such as the volume of records which have been requested or the need to search for, consult with or obtain records from another office or agency) have delayed the handling of the request and specify a time and date, no later than 10 working days after the reply would otherwise be due, when the record will be available;
 - c. Inform the requester that the agency does not maintain the requested record and provide, if known, the name and location of the agency maintaining the record; or
 - d. Deny the request.
8. Enact legislation which provides that where access is denied, the complaining party may directly appeal to a court of competent jurisdiction seeking an order compelling access and giving such proceedings priority on the court's calender. Provide that court costs and attorneys' fees are awardable if the requester prevails. (BDR 19-393)
 9. Include in the final report a statement of the subcommittee's support for the concept of an intermediate appellate body that would have concurrent jurisdiction with the courts to consider appeals from the denial of a public record.
 10. Enact legislation to establish that the fact that a record contains restricted and non-restricted information is not a reason for denying access to the non-restricted information. (BDR 19-397)
 11. Enact legislation that prohibits a public body from inquiring about the intended use of requested public information or making any other inquiry of a person requesting to inspect or receive copies of public information, except to the extent necessary

to clarify the request for information. Include an exception for information requested from the Department of Motor Vehicles and Public Safety because *Nevada Revised Statutes* 482.170 requires the department to make an inquiry as to the purpose for requesting certain information. (BDR 19-397)

C. THE TREATMENT OF ELECTRONIC RECORDS

12. Urge the Department of Data Processing, in cooperation with the Nevada State Library and Archives, to create and maintain an inventory of statewide hardware, software and information.
13. Urge the Division of Archives and Records to work with other State agencies to establish retention and disposition schedules for records when information systems are designed or redesigned. Furthermore, urge all State agencies to consider record retention/disposition requirements at the point of system design.
14. Urge the Division of Archives and Records to undertake a program to educate State officials about their responsibilities for retention, care, and preservation of government records with special emphasis on electronically-stored public records.
15. Include in the final report a statement of the subcommittee's support for the concept of creating a centralized information storage facility and developing procedures for maintaining information.

(These resolutions are all drafted as BDR R-394.)

D. COSTS ASSOCIATED WITH PUBLIC RECORDS

16. Enact legislation that allows only the cost of the materials and the equipment, not labor, regarding reproduction of records. (BDR 19-396)
17. Include in the final report support for the concept of government using a cost analysis formula to calculate a per copy price. The formula should consider the average number of copies per month, the purchase price of the copying equipment, and an amortized cost per month over the anticipated life

of the equipment to achieve a total machine cost per copy.

18. Enact legislation which authorizes, but does not require, a governmental entity to fill "custom" requests (such as re-formatting information) and to charge a reasonable fee for completing such requests. (BDR 19-396)
19. Enact legislation which provides that, when a requester wants information in a format which is different from the format used to maintain or store the information, the governmental entity is not required to re-format that data. (BDR 19-396)

E. ENFORCEMENT OF PUBLIC RECORDS LAWS

20. Repeal the existing criminal penalty relative to the failure to disclose a public record. (BDR 13-393)
21. Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide for court costs and attorneys' fees if the requester prevails. (Discussed in Section C regarding procedures for access.) (BDR 19-393)
22. Enact legislation providing that governmental entities and employees are immune from suit and liability if they act in good faith in disclosing or refusing to disclose information. (BDR 13-393)

EXHIBIT “EE”

JA0630

April 12, 1993

To: Val Garner, Chairman
Assembly Government Affairs
and Members of the Committee

Re: Assembly Bills 364 - 368

Dear Chairman Garner,

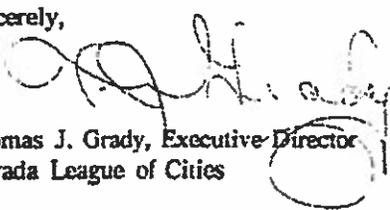
During the interim both the Nevada League of Cities and the Nevada Association of Counties participated in the discussions of the ACR 90 study of public records. Both memberships agreed for the need to clarify certain issues regarding public records. Following the introduction of Assembly Bills 364 - 368, our respective memberships reviewed these proposals and would like to provide you with our comments and suggested amendments to clarify our areas of concern.

Some of our major concerns regard proposed changes to confidential records which could be in conflict with existing federal statutes without further clarification. Many documents including sexual discrimination, disabilities and affirmative action records need to remain confidential to assure that we do not conflict with prior court decisions and state regulations.

We ask that you also consider the fiscal impact of implementing certain aspects of these proposals. It is imperative that local governments retain the right to recover costs associated with providing these services to the public. Keeping in mind that some of the searches and compilation of public records can be extremely time consuming, we are concerned that unrealistic time frames could add significantly to the cost of providing this service as staffing levels may have to be increased or additional overtime accrued to ensure that the agencies will be in compliance with any new statutes.

Attached is a copy of these and other areas of concern for which we would like to offer amended language for your consideration.

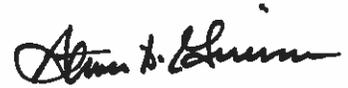
Sincerely,


Thomas J. Grady, Executive Director
Nevada League of Cities


Robert S. Hadfield, Executive Director
Nevada Association of Counties

EXHIBIT “FF”

JA0632



CLERK OF THE COURT

1 ORDR
2
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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 LAS VEGAS REVIEW JOURNAL,

8 Plaintiff/ Petitioner,

Case No.: A-14-711233-W
Department: XVII

9 v.

10 STEVEN WOLFSON, CLARK COUNTY
DISTRICT ATTORNEY

DECISION

11 Defendant/ Respondent.
12

13
14 Plaintiff Las Vegas Review Journal's Motion to Motion for Attorneys Fees came before
15 this Court on April 5, 2017 Calendar. Following review of the papers and files herein and oral
16 argument, the Court rules as follows:

17 The recovery of attorney fees as a cost of litigation is permissible by agreement, statute,
18 or rule. See *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35
19 P.3d 964, 969 (2001). LVRJ submits that because they are a "prevailing party" NRS 239.011(2)
20 allows for such fees and costs. NRS 239.011(2) states in relevant part "...[i]f the requester
21 prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the
22 proceeding from the governmental entity whose officer has custody of the book or record." NRS
23 239.011(2). NRS 239.005 (4)(a) (b) defines "government entity" as "[a]n elected or appointed
24 official of this State or of a political subdivision of this state; or an institution, board,
25 commission, burcau, council, department, division, authority or other unit of government of this
26 State or of a political subdivision."
27
28

1 Wolfson does not refute the validity of NRS 239.011(2), but rather asserts that he is
2 immune from an award of fees and costs based on his good faith actions. Wolfson seeks
3 protection pursuant to NRS 239.012 which states “Immunity for good faith disclosure or refusal
4 to disclose information. A public officer or employee who acts in good faith in disclosing or
5 refusing to disclose information and the employer of the public officer or employee are immune
6 from liability for damages, either to the requester or to the person whom the information
7 concerns.” LVRJ argues that only NRS 239.011 applies and therefore, good or bad faith on
8 behalf of Wolfson is irrelevant for an award of attorney fees and costs. LVRJ further relies on
9 *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015) and argues that
10 because LVRJ prevailed on some issues sought during the pendency of litigation, they are
11 entitled to attorney’s fees. The Court notes that in *Blackjack Bonding*, the NRS 239.012 “good
12 faith exception” was not timely raised and pursuant to NRAP 40(c) the moving parties Motion
13 for Reconsideration was denied. Therefore, *Blackjack Bonding* is not persuasive to this Court on
14 the issue of the good faith exception.
15

16
17 Therefore, the Court must decide whether NRS 239.012 applies and whether Wolfson is
18 covered under said statute. The Court notes that the Complaint in question names “Steven
19 Wolfson, Clark County District Attorney” only and not Clark County or the Clark County
20 District Attorney’s office. The COURT FINDS that Wolfson is an elected officer as defined in
21 NRS 239.005 and covered under NRS 239.012. NRS 239.012 provides immunity for a “public
22 officer” and “the employer of the public officer.”
23

24 The Court must next decide whether the term “damages” as indicated in NRS 239.012 is
25 meant to include attorneys’ fees and costs. Both parties agree that “damages” is not defined
26 within the NRS. Therefore, this Court must resolve this ambiguity by looking to the legislative
27 intent for clarification. See *State v. Lucero*, 127 Nev. 92, 95, 249 P.2d 1226, 1228
28

1 (2011)(Finding the starting point for determining legislative intent is a statutes plain meaning,
2 but when the statutory language lends itself to two or more reasonable interpretations, the statute
3 is ambiguous, the Court looks to the legislative history to construe a statute in a manner
4 consistent with reason and public policy). The Court therefore looks to the testimony and
5 minutes of the Assembly Committee on Government Affairs in order to construe the Statute in a
6 manner consistent with public policy. Assembly Bill 365 described as “Substitutes civil
7 enforcement of access to public records for criminal penalty” was the Draft Bill to the now
8 codified NRS 239.011 and NRS 239.012. In determining whether “fees” was intended to be
9 included in the legislature’s description of “costs”, the Court is swayed by testimony of May 3,
10 1993. During said testimony, the language of what is now codified NRS 239.011 and NRS
11 239.012 are discussed at length. The Court notes that both statutes are discussed one after
12 another and conversation of the “good faith” exception continually overlaps with discussion of
13 the now NRS 239.011. The Committee Notes directly link immunity with fees. Ande Englemen
14 of the Nevada Press Association stated to Assembly Committee on Government Affairs:

17 Taxpayers were also paying the fees for the agency Mr. Bennett
18 observed. The question was, should the taxpayers, in general, have
19 to cover those costs when the suit might be rather frivolous. Ms.
20 Engleman noted the bill did not grant court costs and attorneys’
21 fees if a suit was over a record everyone had though to be
22 confidential. **Court costs and attorneys’ fees were granted only
when it was a denial of what was clearly a public record [bad
faith].** Therefore, she did not think there would be frivolous
lawsuits.

23 *Assembly Committee on Government Affairs Minutes: Hearing on AB 365 Before the Assembly*
24 *Committee on Government Affairs, 1993 67th Sess. May 3, 1993 (statement of Ande Englemen,*
25 *Nevada Press Association) (emphasis added); See also Nevada State Library, Archives and*
26 *Public Records Nevada Public Records Act: A Manual for State Agencies 2014 (Interpreting and*
27

28

1 instructing Nevada State Employees that NRS 239.012 relieves a good faith refusal to disclose
2 information).

3
4 Therefore, the COURT FINDS that based on a review of the legislative minutes, fees and
5 costs were intended to be linked with the “good faith” immunity exception of what is now NRS
6 239.012. Moreover, the Court notes that in cases of public records requests, “fees” would be the
7 only likely “damages” available to a party who prevails on a wrongfully withheld disclosure of
8 public record under NRS 239.011.

9
10 The Court must next determine whether Wolfson actually acted in “good faith” during
11 the pendency of litigation. The term “good faith” is an intangible and abstract quality with no
12 technical meaning or definition and encompasses, among other things, an honest belief, the
13 absence of malice, and the absence of design to defraud. *Stoecklein v. Johnson Elec., Inc.*, 109
14 Nev. 268, 273, 849 P.2d 305, 309 (1993). The Court notes that the present case is one where both
15 parties obtained success on various Motions. Furthermore, LVRJ has made no showing of malice
16 or that Wolfson acted in bad faith. The record reflects that Wolfson produced over 1200 pages
17 prior to the commencement of litigation, an immense amount of time was spent redacting
18 documents in the inducement index, and at the end of litigation only 143 additional redacted
19 pages were ordered to be turned over. The Court further notes that as his role as District
20 Attorney, Wolfson is subject to competing interests when dealing with sensitive information
21 such as the information sought in this case. Therefore, based on the history of the litigation, this
22 Court does not find Wolfson acted in bad faith, but rather acted reasonably based on the
23 competing safety and privacy interests at play. Further, the Court Finds that both parties to one
24 extent or another prevailed on significant issues of public interest.
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Since the Court finds NRS 239.012 applicable and that Wolfson acted in good faith, Plaintiff's motion for Attorney Fees is DENIED. Counsel for Defendant Wolfson is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to this Court in briefing and be approved as to form and content by both parties.

DATED this 12th day of April, 2017.



MICHAEL P. VILLANI
DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

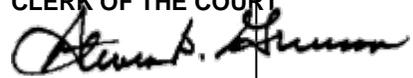
I hereby certify that on or about the date signed, a copy of this DECISION was electronically served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or mailed via the U.S. postal service as follows:

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CHERYL CARPENTER
Judicial Executive Assistant



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9 *Counsel for Petitioner*

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

9 LAS VEGAS REVIEW-JOURNAL

10 Petitioner,

11 vs.

12 CITY OF HENDERSON,

13 Respondent.

Case No.: A-16-747289-W

Dept. No.: XVIII

**REPLY TO CITY OF
HENDERSON'S OPPOSITION
TO PETITIONER LAS VEGAS
REVIEW-JOURNAL'S MOTION
FOR ATTORNEY'S FEES AND
COSTS**

14
15
16 COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"),
17 by and through its undersigned counsel, hereby submits this reply to the City of Henderson's
18 ("Henderson") opposition to its Motion for Attorney's Fees and Costs. This reply is based
19 on the following Memorandum of Points and Authorities, the papers and pleadings already
20 on file herein, and any oral argument the Court may permit at the hearing of this Motion.

21 DATED this 27th day of July, 2017.

22 /s/ Margaret A. McLetchie

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24 ALINA M. SHELL, Nevada Bar No. 11711

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case all started because, contrary to the letter and spirit of the Nevada Public Records Act (the “NPRA”), Henderson demanded thousands of dollars before even beginning to review records and respond to the Las Vegas Review-Journal’s requests for public records. Yet, woven throughout Henderson’s Opposition to the Review-Journal’s Motion for Attorney’s Fees and Costs is a recurring and ultimately inaccurate complaint: that the Review-Journal acted in bad faith in petitioning this Court pursuant to Nev. Rev. Stat. § 239.011 for the release of copies of public records. Henderson complains that the Review-Journal did not meet and confer to Henderson’s satisfaction prior to filing suit. Henderson complains that the Review-Journal did not return one phone call. Henderson complains that the Review-Journal was satisfied when it was allowed to inspect—but not have copies—of the public records it requested. Henderson complains that the Review-Journal did not meet and confer about the adequacy of its privilege logs. Henderson complains that it did not know the Review-Journal wanted copies of the requested public records until the March 30, 2017 hearing before this Court. Of course, none of these complaints are grounded in reality, and are ultimately irrelevant to the issue before this Court: the Review-Journal’s entitlement to an award of attorney’s fees and costs.

When it does finally address the issue of fees and costs, Henderson misconstrues the record and the case law. Henderson argues that the Review-Journal is not the prevailing party in this matter because Henderson voluntarily provided electronic copies of the requested records. This position whitewashes over the fact that Henderson did not produce the records until *after* the Review-Journal initiated the instant matter, and on in response to directive questioning from the Court. It argues that the written Order in this matter demonstrates that the Review-Journal lost on all of its claims, but ignores the Court’s statements at the hearing on the Review-Journal’s Amended Petition. Henderson argues that it shouldn’t have to pay attorney’s fees because it allegedly acted in good faith in withholding the requested records, but ignores that there is no “good faith” provision in Nev. Rev. Stat. §

1 239.011, the provision of the NPRA which entitles the Review-Journal to fees and costs. It
2 distorts case law to argue that attorney’s fees and damages are the same thing. And finally,
3 Henderson argues that any award of attorney’s fees should be reduced, but ignores the fact
4 that the work it says the Review-Journal should not compensated for was necessarily
5 intertwined with the one issue on which the Review-Journal did prevail.

6 Contrary to Henderson’s claims, the Review-Journal did prevail on the central,
7 substantial issue in this case: obtaining copies of public records. In order to obtain that result,
8 the Review-Journal was required to expend energy and resources on lengthy phone call with
9 Henderson attorneys, sending multiple emails requesting information about documents
10 Henderson was withholding, reviewing privilege logs, and litigating this matter. The Review-
11 Journal is entitled to compensation for all of this work its attorneys performed and failing to
12 compensate the Review-Journal would run contrary to the NPRA.

13 **II. REPLY TO HENDERSON’S STATEMENT OF FACTS**

14 As it did in its response to the Review-Journal’s Amended Petition, Henderson
15 relies on irrelevant and misstated facts to argue that the Review-Journal somehow acted in
16 bad faith in filing suit in this matter. (*Compare* March 8, 2017 Response, pp. 5:1-8:1 and
17 July 10, 2017 Opposition, pp. 4:17-6:22.) Contrary to Henderson’s assertions, the Review-
18 Journal coordinated extensively with Henderson to resolve the disputes pertinent to its public
19 records request.¹ As discussed in the Reply to Henderson’ March 8, 2017 Response, counsel
20 for the Review-Journal spoke to a deputy City Attorney regarding the Review-Journal’s
21 concerns with Henderson’s position. (March 23, 2017 Reply, pp. 6:16-7:2.) When it became
22 clear that the parties would not be able to resolve their disputes, the Review-Journal initiated
23 the instant suit, something it was plainly allowed to do pursuant to Nev. Rev. Stat. § 239.011.

24 Despite Henderson’s insinuations, there is no requirement in the Nevada Public
25 Records Act (“NPRA”) that requires requesters to endlessly meet and confer with a
26 governmental entity prior to requesting judicial intervention under Nev. Rev. Stat. § 239.011.

27 ¹ Reflecting that the Review-Journal’s fee request is reasonable, during the many calls in
28 this matter wherein the Review-Journal worked in good faith to try to resolve issues, often
only one Review-Journal attorney handled a call with two or three Henderson attorneys.

1 On the contrary, the NPRA is premised on the concept that prompt access to public records
 2 fosters democracy. The legislative interest in swift disclosure is woven throughout the
 3 NPRA. For example, Nev. Rev. Stat. § 239.0107(1) mandates that, by not later than the end
 4 of the fifth business day after receiving a records request, a governmental entity must either
 5 (1) make the records available; (2) if they entity does not have custody of the requested
 6 records, notify the requester of that fact and direct them to the appropriate government entity;
 7 (3) if the records are not available by the end of the fifth business day, provide notice of that
 8 fact and a date when the records will be available; or (4) if the records or any part of the
 9 records are confidential, provide the requester with notice of that fact and a citation to the
 10 statute or law making the records confidential. Nev. Rev. Stat. § 239.0107(1)(a)-(d).

11 In addition to this timely notification and disclosure scheme, the NPRA specifically
 12 provides for expedited court consideration of a governmental entity’s denial of a records
 13 request. See Nev. Rev. Stat. § 239.011(2) (mandating that a court give an application for
 14 public records “priority over other civil matters”).) Thus, the NPRA is designed to provide
 15 quick access to withheld public records, not to reward non-compliance, hiding of
 16 information, and delay. Thus, there was no requirement that the Review-Journal waste time
 17 and resources trying to resolve its disagreements with Henderson once it became clear that
 18 the parties were entrenched in their respective positions.

19 In any event, Henderson’s renewed complaints about the Review-Journal’s failure
 20 to return a single call is once again much ado about nothing. As indicated in the December
 21 5, 2016 Henderson City Attorney Josh Reid sent the Review-Journal after it filed suit,
 22 Henderson acknowledged there were active disputes between the parties regarding the
 23 definition and application of Nev. Rev. Stat. § 239.055’s “extraordinary use of personnel”
 24 fee provision. (Exh. D to Opposition, p. 3.) Moreover, Henderson specifically stated that it
 25 was “interested in having the courts provide clarity to the meaning and application” of Nev.
 26 Rev. Stat. § 239.055. (*Id.*)

27 Henderson also asserts—as it did in its March 8, 2017 Response—that counsel for
 28 the Review-Journal did not respond to Henderson’s request to contact them regarding the

1 *Third Log. (Compare Response, p. 7:22-28 and Opposition, p. 6:12-22.) This position is*
 2 *meritless. As the fact that there have been three versions of the log reflects, the parties*
 3 *discussed the log and the appropriateness of withholding documents in this case at great*
 4 *length. (See McLetchie Decl. in Support of Reply to March 8, 2017 Response, ¶ 22.)*

5 *Additionally, Henderson insinuates that the Review-Journal’s filing of an Amended*
 6 *Petition in this matter was evidence of bad faith or an unwillingness to resolve disputes with*
 7 *Henderson. Again, however, the facts of this case show that is not true. On January 9, 2017,*
 8 *counsel for the parties had yet another phone conference regarding the records. (See Exh. 20*
 9 *to March 23, 2017 Reply, p. 1.) Counsel’s email memorializing that conversation makes*
 10 *plain that Henderson knew the Review-Journal might amend its petition because of ongoing*
 11 *disputes:*

12 *To briefly recap our call re Trosper, you are doing the first draft of a*
 13 *stipulation on the litigation schedule after confirming with [Mr. Reid]. What*
 14 *we discussed: the RJ will have 2 weeks to either amend the petition or let*
 15 *you know that we aren’t amending. [Henderson’s] response is then due two*
 16 *weeks from that date. We can also use the two weeks to discuss possible*
 17 *settlement option.*

18 *(Id.) Thus, contrary to Henderson’s unsupported allegations, the Review-Journal was not*
 19 *acting in bad faith, as the parties specifically discussed a possible briefing schedule which*
 20 *contemplated the Review-Journal filing an Amended Petition. In any event, although the*
 21 *Review-Journal in fact did so, as noted above, there is no requirement in the NPRA that the*
 22 *Review-Journal meet and confer with Henderson prior to filing or amending a petition. As*
 23 *discussed in prior pleadings to this Court, counsel for the Review-Journal participated in*
 24 *multiple phone conferences with Henderson’s attorneys. (March 23, 2017 Declaration of*
 25 *Margaret McLetchie in Support of March 23, 2017 Reply, ¶ 20.) Additional conversation*
 26 *was neither mandated by the NPRA nor particularly efficient. Indeed, in light of the*
 27 *procedural history of this case, it appears that Henderson was playing bait-and-switch and*
 28 *attempting to delay and complicate work for the Review-Journal’s counsel. In any case, after*
it was clear no resolution would be reached, rather than continue to discuss its disputes with

1 Henderson, the Review-Journal chose to amend its Petition, just as it told Henderson it
2 would.

3 Henderson also makes much ado about nothing over the fact that—only after the
4 Review-Journal filed suit—it permitted the Review-Journal to inspect (but not copy) the
5 requested records, but the Review-Journal allegedly never requested copies of the inspected
6 documents. (Opposition, p. 6:7-11; p. 7:12-22; *see also id.*, p. 16:12-14 (alleging that
7 Henderson learned “for the first time” that the Review-Journal wanted copies of the inspected
8 documents).) Again, however, this is a distorted representation of the facts in this case.

9 First, Henderson ignores that the Review-Journal requested an electronic copy of the
10 records during its reporter’s inspection. Specifically, on December 21, 2016, counsel for the
11 Review-Journal sent Henderson an email noting that the laptop Henderson had put the
12 documents on was slow, and suggested that the reporter “could also just pick up a CD and
13 review from the [Review-Journal] offices.” (Exh. 16 to March 23, 2017 Reply, p. 1.)
14 Henderson rejected that suggestion. (*Id.*)

15 Second, as discussed at the March 30, 2017 hearing before this Court, the NPRA
16 provides for two different forms of access to public records: inspection or copying. *See, e.g.*,
17 Nev. Rev. Stat. § 239.001(1) (providing members of the public “with access to inspect and
18 copy public books and records to the extent permitted by law”); Nev. Rev. Stat. §
19 239.0107(1) (mandating that governmental entity respond within five business days to a
20 “written or oral request from a person to inspect, copy or receive a copy of the public book
21 or record); Nev. Rev. Stat. § 239.011(1) (providing that if “request for inspection, copying
22 or copies of a public book or record open to inspection and copying is denied, the requester
23 may apply to the district court in the county in which the book or record is located for an
24 order”).

25 ///
26 ///
27 ///
28 ///

1 The Review-Journal made plain at the hearing that it did not request copies because
 2 the parties had not resolved their dispute regarding Henderson’s demands for fees. As
 3 counsel for Review-Journal explained at the March 30 hearing:

4 MS. MCLETSHELL: . . . We requested copies. What Mr. Reid offered and
 5 what I accepted as an interim solution while this Court was resolving issues,
 6 was to allow an in-person inspection. Now, whether or not they would have
 7 made one or two copies available at that inspection is frankly not -- is
 8 frankly not the point, Your Honor. *The point is that we wanted copies . . .*

9 (March 30, 2017 Hearing Transcript, p. 6:8-16) (emphasis added). When the Court asked if
 10 the Review-Journal wanted copies of the requested records, counsel specifically stated “we
 11 would still like, *without the exorbitant charge*, a USB drive with the documents requested,
 12 yes, Your Honor.” (*Id.*, p. 6:19-21) (emphasis added). At the conclusion of the hearing, the
 13 Court directed Henderson to do exactly that, and then noted that it would be denying “*the*
 14 *rest of the petition.*” (*Id.*, p. 24:15-20 (emphasis added).) Thus, in the end, the Review-
 15 Journal obtained the most important object of the instant matter: getting copies of public
 16 records.

17 **III. LEGAL ARGUMENT**

18 **A. The Review-Journal is the Prevailing Party Because It Prevailed in its
 19 Request for Copies of the Documents.**

20 The Nevada Supreme Court has held that a party is the prevailing party if it
 21 “succeeds on any significant issue in litigation which achieves some of the benefit it sought
 22 in bringing suit.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)
 23 (quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.
 24 Henderson asserts that the Court denied all the Review-Journal’s claims for relief.
 25 (Opposition, p. 9:6-7.) This position is belied by the record. First, although the Review-
 26 Journal did not obtain all the information or relief it sought in this litigation, it prevailed on
 27 a significant and central issue: it obtained copies of the requested records. Henderson appears
 28 to take the position that it provided the requested records voluntarily. However, this ignores
 that the Henderson did not produce the records until *after* the Review-Journal initiated the
 instant matter, and *after* the Court directed it to do so, as set forth above. Second, Henderson’s
 interpretation of events ignores the fact that the Court specifically directed it to provide a

1 USB and then denied the Review-Journal’s remaining causes of action, stating that “they’re
 2 going to give you a . . . USB drive with the 69,000 pages on it and I’m going to deny *the rest*
 3 *of the petition.*” (March 30, 2017 Hearing Transcript, p. 24:15-20.) Obtaining copies of the
 4 requested records was the primary objective of the Review-Journal’s petition, and the other
 5 claims arose from that objective. The Review-Journal achieved that objective, and is
 6 therefore the prevailing party in this matter.

7 The cases cited by Henderson do not indicate otherwise. For example, in *Golightly*
 8 *& Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d 103 (2016), one of the
 9 cases Henderson relies on (Opposition, p. 9:18-27), the appellant filed an interpleader action
 10 regarding the priority of an attorney lien in a personal injury action. *Id.*, 373 P.3d at 104. As
 11 Henderson notes, the appellant did not prevail on that sole claim. *Id.* at 107 (“[appellant] did
 12 not prevail on its sole claim of priority, thus it did not prevail”). Here, by contrast, the
 13 Review-Journal’s central claim, and the one it eventually prevailed on, was its request for
 14 the withheld documents. Thus, *Golightly & Vannah* is of little relevance here.

15 Henderson’s reliance on *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dept.*
 16 *of Health & Human Res.*, 532 U.S. 598 (2001) is likewise unavailing given that this matter
 17 was brought under the NPRA. Pursuant to the NPRA, the “provisions of this [Act] must be
 18 construed liberally to carry out” its important purpose of fostering democratic principles by
 19 providing the public access to inspect and copy public records. Nev. Rev. Stat. § 239.001(1)
 20 and (2). Under Nev. Rev. Stat. § 239.011, a party who has been denied access to public
 21 records may apply to the district court for an order permitting inspection *or* copying of the
 22 withheld records. Nev. Rev. Stat. § 239.011(2). Once that party prevails, it may recover fees
 23 and costs associated with having to seek judicial intervention. Nev. Rev. Stat. §
 24 239.011(1)(a),(b).

25 Here, the Review-Journal had to seek judicial intervention to obtain the records
 26 Henderson was withholding. This is exactly what the NPRA created a judicial mechanism to
 27 achieve, and exactly what the attorney’s fees provision of the NPRA is designed to
 28 compensate. As discussed above, the record demonstrates that the Review-Journal repeatedly

1 requested *copies* of the withheld record, and that Henderson would only produce those
 2 records upon payment of an illegal, exorbitant, and impermissible fee.² It was only in
 3 response to directive questioning from the Court at the hearing on this matter that Henderson
 4 finally agreed to make the records available. Henderson now attempts to use its own untimely
 5 acquiescence to the NPRA to assert that the Review-Journal has not prevailed in this matter,
 6 and thus cannot recoup the fees it expended to simply get Henderson to comply with state
 7 law. Under this logic, a governmental entity could simply game the litigation to avoid paying
 8 attorney’s fees in public records cases: after a requester petitions a court pursuant to Nev.
 9 Rev. Stat. § 239.011, and after it becomes clear that the requester will prevail, the
 10 governmental entity could simply cease its illegal conduct, provide the records, and leave the
 11 requester holding the bill for the litigation he or she had to undertake to get the requested
 12 records. This sort of gamesmanship is contrary to the important purposes of the NPRA.

13 Moreover, *Buckhannon* is not nearly as absolute as Henderson indicates it is. For
 14 example, at least one court has held *Buckhannon* inapplicable in the context of actions
 15 brought pursuant to the Freedom of Information Act (FOIA). *See Wildlands CPR v. U.S.*
 16 *Forest Serv.*, 558 F. Supp. 2d 1096, 1098 (D. Mont. 2008) (“It is no longer necessary to show
 17 that the material alteration of the parties’ positions has the ‘necessary judicial imprimatur.’
 18 It is enough to point to the existence of a consent decree or to a voluntary or unilateral change
 19 in the agency’s position.”) (citation omitted). The same logic should apply to this NPRA
 20 matter. Henderson’s decision to provide records only after the Review-Journal initiated
 21 litigation and after the Court’s directive questioning does not mean that the Review-Journal
 22 is not a prevailing party because, but for the litigation, Henderson would still be demanding
 23 its exorbitant and illegal fee. Moreover, as noted above, the Court indicated at the hearing
 24 that it was granting the request for the production of the documents when it stated that

26 ² Counsel for the Review-Journal and Henderson City Attorney Josh Reid agreed to allow
 27 inspection of the requested records as an interim measure. Mr. Reid, however, refused to
 28 provide copies of the documents even in electronic form, and indicated that Henderson was
 “interested in having the courts provide clarity to the meaning and application of NRS
 239.055.” (Exh. 12 to March 23, 2017 Reply, p. 5.)

1 Henderson must produce copies of the records on a USB drive, but that it was “going to deny
 2 *the rest* of the petition.” (March 30, 2017 Hearing Transcript, p. 24:19-20.)

3 **B. The Review-Journal’s Entitlement to Attorneys’ Fees is Clear, and Not**
 4 **Premised on Disproving “Good Faith.”**

5 While public officials are immune from *damages* pursuant to Nev. Rev. Stat. §
 6 239.012 (“A public officer or employee who acts in good faith in disclosing or refusing to
 7 disclose information and the employer of the public officer or employee are immune from
 8 liability for damages, either to the requester or to the person whom the information
 9 concerns”), that does not eviscerate the provisions of the NPRA which, separately and
 10 plainly, provide for attorney’s fees. Nev. Rev. Stat. § 239.011(2) provides in part that “[i]f
 11 the requester prevails, the requester is entitled to recover his or her costs and reasonable
 12 attorney’s fees in the proceeding from the governmental entity whose officer has custody of
 13 the book or record.” Thus, “good faith” is irrelevant to the analysis regarding entitlement to
 14 fees.

15 To read a “good faith” exception from a separate section regarding damages into
 16 the provision is incorrect and inconsistent with Nev. Rev. Stat. § 239.001 (“Legislative
 17 findings and declaration”) which, first and foremost reinforces the important nature of the
 18 NPRA. Nev. Rev. Stat. § 239.001(1) (“[t]he purpose of this chapter is to foster democratic
 19 principles by providing members of the public with access to inspect and copy public books
 20 and records to the extent permitted by law”). Nev. Rev. Stat. § 239.001(2) then mandates
 21 that “[t]he provisions of this chapter must be construed liberally to carry out this important
 22 purpose.” The legislature also mandates that “[a]ny exemption, exception or balancing of
 23 interests which limits or restricts access to public books and records by members of the public
 24 must be construed narrowly.” Nev. Rev. Stat. § 239.001(3). Bootstrapping a limitation on
 25 damages from one statute in the chapter into another statute addressing fees would violate
 26 these legislative mandates (as well as basic rules of statutory interpretation).

27 Moreover, Henderson ignores that the provision regarding good faith immunity
 28 from damages specifically only refers to immunity for “[a] public officer or employee,” (*i.e.*,

1 an individual) whereas the provision on fees makes “*governmental entities*” liable for fees.
 2 Nev. Rev. Stat. § 239.005 (5) defines “governmental entity” as follows:

- 3 (a) An elected or appointed officer of this State or of a political subdivision of
 4 this State;
- 5 (b) An institution, board, commission, bureau, council, department, division,
 6 authority or other unit of government of this State, including, without limitation, an
 7 agency of the Executive Department, or of a political subdivision of this State;
- 8 (c) A university foundation, as defined in NRS 396.405; or
- 9 (d) An educational foundation, as defined in NRS 388.750, to the extent that
 10 the foundation is dedicated to the assistance of public schools.

11 Thus, while non-elected or non-appointed officers and employees have good faith immunity
 12 from damages, governmental entities such as Henderson who fall within the definition of
 13 Nev. Rev. Stat. § 239.005(5) do not.

14 Henderson also ignores the express legislative mandate *contained in the NPRA* to
 15 interpret the NPRA’s terms broadly to effectuate its purpose, and instead seeks to rely on
 16 outside “legislative history,” which of course does not carry the same weight. This is at odds
 17 with Nevada Supreme Court case law. As the Nevada Supreme Court has explained

18 When interpreting a statute, legislative intent “is the controlling factor.”
 19 *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). The
 20 starting point for determining legislative intent is the statute’s plain
 21 meaning; when a statute “is clear on its face, a court cannot go beyond the
 22 statute in determining legislative intent.” *Id.*; see also [*State v.*] *Catania*,
 23 120 Nev. [1030] at 1033, 102 P.3d [588] at 590 (“We must attribute the
 24 plain meaning to a statute that is not ambiguous.”).

25 *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011).

26 In addition, there is a broad body of case law holding that damages and fees are
 27 different. See, e.g., *Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617
 28 (7th Cir. 2013) (“an award of attorneys’ fees differs from “damages.”). For example, the
 NPRA can be contrasted with Nevada stator provisions such as Nev. Rev. Stat. § 40.655
 which expressly defines attorneys’ fees as an element of damages. See also *Albios v. Horizon
 Communities, Inc.*, 122 Nev. 409, 414, 132 P.3d 1022, 1025 (2006) (“... although NRS
 40.655 allows constructional defect claimants to recover attorney fees and costs as an

1 **element of damages**, NRS 40.655 does not preclude application of the penalty provisions of
 2 NRCP 68(f) and NRS 17.115(4).”) *See also Liu v. Christopher Homes, LLC*, 130 Nev. Adv.
 3 Op. 17, 321 P.3d 875, 878 (2014) (attorney fees may be awarded as “special damages,” but
 4 only in “limited circumstances.”)

5 Henderson also mischaracterizes the case law it cites. For example, Henderson cites
 6 *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 35 P.3d 964 (2001)
 7 for the proposition that “[a]wards for attorney fees are generally associated with bad faith or
 8 wrongful conduct.” (Opposition, p. 14:16-17.) In fact, the Court in *Sandy Valley* dedicated
 9 several paragraphs discussing the procedural differences between “attorney fees as a cost of
 10 litigation” and “attorney fees as foreseeable damages arising from tortious conduct or a
 11 breach of contract.” *Id.*, 117 Nev. at 956, 35 P.3d at 969. As the court explained:

12 Procedurally, when parties seek attorney fees as a cost of litigation,
 13 documentary evidence of the fees is presented to the trial court, generally in
 14 a post-trial motion. . . If the fees are authorized, the trial court examines the
 15 reasonableness of the fees requested and the amount of any award. Thus,
 16 when a court is requested to award attorney fees as a cost of litigation, the
 17 matter is decided based upon pleadings, affidavits and exhibits. . .

18 In contrast, when a party claims it has incurred attorney fees as foreseeable
 19 damages arising from tortious conduct or a breach of contract, such fees are
 20 considered special damages. They must be pleaded as special damages in
 21 the complaint pursuant to NRCP 9(g) and proved by competent evidence
 22 just as any other element of damages. . .

23 *Id.* Here, Nev. Rev. Stat. § 239.011 provides that a requester is entitled to recover his or her
 24 costs and reasonable attorney’s fees. There is no provision indicating that a party must
 25 request the fees as special damages, nor is there any requirement that the requester must
 26 demonstrate the governmental entity from whom it is trying to recoup its fees and costs acted
 27 in bad faith.

28 **C. The Review-Journal is Entitled to a Full Award of Fees and Costs.**

Henderson’s final salvo is an argument that any award of attorney’s fees should
 exclude “any fees incurred after December 29, 2016,” the date that the Review-Journal

1 completed its inspection of the requested records. (Opposition, p. 16:25-28.) This argument
 2 appears to be premised on the faulty assumption that permitting the Review-Journal to
 3 inspect the requested documents is tantamount to providing copies of the requested
 4 documents, and the equally faulty assumption that the Amended Petition reflected a “shift in
 5 focus.” (*Id.*, p. 17:11-25.) Henderson also argues that the issues raised in the Amended
 6 Petition regarding the inadequacies of its privilege log “is completely distinct” from the
 7 Review-Journal’s request for copies. (*Id.* p. 18:17-26.) This argument, however, ignores that
 8 the issues with demanding an exorbitant fee simply to conduct a privilege review and the
 9 production of a privilege log are factually intertwined. Thus, the Review-Journal is entitled
 10 to a full award of attorney’s fees and costs for all work performed in this matter, including
 11 work on the privilege log disputes.

12 First, as discussed above, the plain language of the NPRA contemplates two
 13 different forms of access to public records: inspection *or* copying. Throughout this litigation,
 14 the Review-Journal has made plain that it wanted *copies* of the requested records. (*See* Exh.
 15 1 to Amended Petition (requesting copies of documents in electronic format); Exh. 12 to
 16 March 23, 2017 Reply, p. 3 (letter from City Attorney Josh Reid indicating that the Review-
 17 Journal would have to pay to receive electronic copies of the requested records); Exh. 16 to
 18 March 23, 2017 Reply (asking for a CD of the requested documents); Transcript of March
 19 30, 2017 Hearing, p. 6:11-13 (“We requested copies. What Mr. Reid offered and what I
 20 accepted as an interim solution while this Court was resolving issues, was to allow an in-
 21 person inspection.”).) The inspection of the documents did not resolve any of the disputes in
 22 the Review-Journal’s original Petition; it was the product of extensive negotiation between
 23 the parties to allow for a limited inspection of the documents while the Court considered the
 24 propriety of Henderson’s Public Records Policy and Municipal Code 2.47.085, and the City’s
 25 demand for fees for conducting a privilege review. Thus, the records were still being withheld
 26 when the Review-Journal filed its Amended Petition. Indeed, Henderson withheld the
 27 records until it finally agreed to provide electronic copies at the May 30 hearing.

28 ///

1 Second, nothing in the Amended Petition indicates a “shift” in the Review-
 2 Journal’s focus. In its Petition, the Review-Journal requested this Court order Henderson to
 3 “immediately make available complete *copies* of all records requested.” (November 29, 2017
 4 Petition, p. 9:5-6) (emphasis added). In its Amended Petition, the Review-Journal requested
 5 the Court order Henderson to make available “complete *copies* of all records previously
 6 withheld and/or redacted.” (February 8, 2017 Amended Petition, p. 12:7-9) (emphasis
 7 added). Although Henderson did allow for inspection of the documents, it still would not
 8 provide the Review-Journal with what it asked for in the original Petition: *copies* of the
 9 documents. Thus, the documents at issue were the same documents, and nothing about the
 10 nature of the Review-Journal’s request was affected by Henderson’s offer for inspection
 11 only.

12 As to Henderson’s claims that any work performed by counsel for the Review-
 13 Journal regarding Henderson’s privilege log should be deducted from any award for fees and
 14 costs, Henderson ignores a large body of precedent which dictates that a prevailing party’s
 15 attorney’s fees should not be apportioned when the party has won substantial relief on its
 16 claims. As the United States Supreme Court explained in *Hensley v. Eckerhart*, 461 U.S.
 17 424, 440 (1983), “[w]here a lawsuit consists of related claims, a plaintiff who has won
 18 substantial relief should not have his attorney’s fee reduced simply because the district court
 19 did not adopt each contention raised.” *Accord Cinevision Corp. v. City of Burbank*, 745 F.2d
 20 560, 581 (9th Cir. 1984). As United States District Court Judge Phillip M. Pro explained in
 21 the context of a Lanham Act case:

22 In evaluating the results obtained, the Court should be mindful that while in
 23 some cases the claims upon which the plaintiff prevailed may be discrete
 24 from those on which the plaintiff did not prevail, “[i]n other cases the
 25 plaintiff’s claims for relief will involve a common core of facts or will be
 26 based on related legal theories.” *Hensley*, 461 U.S. at 435, 103 S.Ct. 1933.
 27 In cases where the claims for relief are related, “[m]uch of counsel’s time
 will be devoted generally to the litigation as a whole, making it difficult to
 divide the hours expended on a claim-by-claim basis.” *Id.*

28 *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 915 F. Supp. 2d 1179, 1188 (D. Nev.

1 2013), aff'd, 778 F.3d 1059 (9th Cir. 2015).

2 In the Ninth Circuit, courts apply a two-part analysis to determine whether fees can
 3 be recovered for issues on which a party was unsuccessful. *Thorne v. City of El Segundo*,
 4 802 F.2d 1131, 1141 (9th Cir.1986). “First, the court asks whether the claims upon which
 5 the [party] failed to prevail were related to the [party’s] successful claims. If unrelated, the
 6 final fee award may not include time expended on the unsuccessful claims.” *Id.* (citing
 7 *Hensley*, 461 U.S. at 434–35). If the claims are related, then the court considers the
 8 “significance of the overall relief obtained by the [party] in relation to the hours reasonably
 9 expended on the litigation.” *Id.* If the party “obtained ‘excellent results,’ full compensation
 10 may be appropriate, but if only ‘partial or limited success’ was obtained, full compensation
 11 may be excessive.” *Id.*

12 In this instance, all the Review-Journal’s claims centered on a common core of facts
 13 and law: attempting to obtain access to public records. As discussed throughout this
 14 litigation, on or around October 4, 2016, Review-Journal reporter Natalie Bruzda sent the
 15 City of Henderson (“Henderson”) a request pursuant to the Nevada Public Records Act, Nev.
 16 Rev. Stat. § 239.001 *et seq.* (“NPR”) seeking certain documents dated from January 1, 2016
 17 pertaining to Trospen Communications and its principal, Elizabeth Trospen. (Exh. 1 to
 18 Amended Petition.) In its response to this request, Henderson demanded payment of nearly
 19 \$6,000.00 just to conduct privilege review. (Exh. 2 to Amended Petition.) Henderson also
 20 stated it would not release any records until the Review-Journal paid in full. (*Id.*) After the
 21 Review-Journal filed its Petition, the parties negotiated to permit the Review-Journal to
 22 inspect the records. In advance of that inspection, the Review-Journal requested a privilege
 23 log of documents Henderson was withholding. (Exh. 15 to March 23, 2017 Reply at p. 3.)
 24 The Review-Journal reviewed that log in advance of its inspection so that it could assess the
 25 validity of Henderson’s privilege claims. (*Id.* at pp. 1-2.) In response to inquiries and requests
 26 from the Review-Journal, Henderson then revised its privilege log two times. (Exhs. 5 and 6
 27 to Amended Petition.) The work counsel performed on reviewing and assessing Henderson’s
 28 privilege log was necessarily intertwined with the Review-Journal’s request for copies of

1 public records: in response to a public records request, Henderson demanded a fee to conduct
2 a privilege review before it would produce copies of the public records. The Review-Journal
3 requested the privilege log to assess the validity of Henderson’s confidentiality claims and
4 ensure that none of the requested documents were being improperly withheld or redacted.
5 The Review-Journal therefore is entitled to a full award of fees and costs in this matter.

6 **IV. CONCLUSION**

7 Based on the foregoing, and for the reasons previously set forth in the Review-
8 Journal’s Motion for Attorney’s Fees and Costs, the Review-Journal respectfully requests
9 that this Court, award the Review-Journal all its attorneys’ fees and costs, pursuant to Nev.
10 Rev. Stat. § 239.011(2), in the total amount of \$31,834.34.

11
12 Respectfully submitted this 27th day of July, 2017.

13
14 */s/ Margaret A. McLetchie*
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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 27th day of July, 2017, I did cause a true copy of the foregoing REPLY TO CITY OF HENDERSON’S OPPOSITION TO PETITIONER LAS VEGAS REVIEW-JOURNAL’S MOTION FOR ATTORNEY’S FEES AND COSTS in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 27th day of July, 2017, I mailed a true and correct copy of the foregoing REPLY TO CITY OF HENDERSON’S OPPOSITION TO PETITIONER LAS VEGAS REVIEW-JOURNAL’S MOTION FOR ATTORNEY’S FEES AND COSTS by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, City Attorney
Brandon P. Kemble, Asst. City Attorney
Brian R. Reeve, Asst. City Attorney
CITY OF HENDERSON’S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy
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Las Vegas, NV 89148
Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Mandamus

COURT MINUTES

August 03, 2017

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

August 03, 2017 9:00 AM Motion for Attorney Fees and Costs Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs

HEARD BY: Bailus, Mark B COURTROOM: Phoenix Building Courtroom - 11th Floor

COURT CLERK: Alan Castle

RECORDER: Robin Page

REPORTER: Andrea Martin

PARTIES

PRESENT: Henderson City of Defendant
Kemble, Brandon P. Attorney
Kennedy, Dennis L. Attorney
Las Vegas Review-Journal Plaintiff
Reeve, Brian R. Attorney
Reid, Josh M. Attorney
Shell, Alina Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court continued matter for further consideration and decision.

08/10/17 9:00 a.m. Decision