

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

THE LAS VEGAS REVIEW-  
JOURNAL,

Appellant,

vs.

CITY OF HENDERSON,  
Respondent.

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Elizabeth A. Brown  
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CASE NO.: 81758

**JOINT APPENDIX – VOLUME VI**  
**[JA0961 – JA1148]**

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

Margaret A. McLetchie, Nevada Bar No. 10931  
Alina M. Shell, Nevada Bar No. 11711  
MCLECHIE LAW  
701 East Bridger Ave., Suite 520  
Las Vegas, Nevada 89101  
Telephone: (702) 728-5300; Fax: (702) 425-8220  
Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
*Counsel for The Las Vegas Review-Journal, Inc.*

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## **CERTIFICATE OF SERVICE**

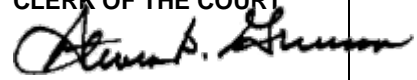
I hereby certify that the foregoing JOINT APPENDIX - VOLUME VI was filed electronically with the Nevada Supreme Court on the 14th day of January, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Nicholas G. Vaskov, Brandon P. Kemble, and Brian R. Reeve  
**CITY OF HENDERSON'S ATTORNEY OFFICE**  
240 Water Street, MSC 144  
Henderson, NV 89015

Dennis L. Kennedy, Sarah P. Harmon, and Kelly B. Stout  
**BAILEY KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148

*Counsel for Respondent City of Henderson*

/s/ Pharan Burchfield  
Employee of McLetchie Law



**OPPM (CIV)**  
NICHOLAS G. VASKOV, City Attorney  
Nevada Bar No. 8298  
BRIAN R. REEVE, Assistant City Attorney  
Nevada Bar No. 10197  
**CITY OF HENDERSON**  
240 Water Street, MSC 144  
Henderson, Nevada 89015  
Telephone: 702.267.1200  
Facsimile: 702.267.1201  
Brian.Reeve@cityofhenderson.com

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com

*Attorneys for Respondent*  
CITY OF HENDERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,  
  
Petitioner,  
  
vs.  
  
CITY OF HENDERSON,  
  
Respondent.

Case No. A-16-747289-W  
Dept. No. VIII  
  
Date of Hearing: March 19, 2020  
  
Time of Hearing: 9:00 A.M.

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

Respondent, City of Henderson (the "City"), submits its Opposition to Petitioner Las Vegas Review-Journal's ("LVRJ") Motion for Attorney's Fees and Costs. This Opposition is based on the

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Memorandum of Points and Authorities below, the exhibits attached hereto (all of which appear in the Appendix), the papers and pleadings on file with the Court and any oral argument the Court may entertain.

DATED this 27<sup>th</sup> day of February, 2020.

BAILEY❖KENNEDY

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

and

NICHOLAS G. VASKOV, City Attorney  
Nevada Bar No. 8298  
BRIAN R. REEVE, Assistant City Attorney  
Nevada Bar No. 10197  
**CITY OF HENDERSON**  
240 Water Street, MSC 144  
Henderson, NV 89015

*Attorneys for Respondent*  
CITY OF HENDERSON

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Normally, stating the obvious is unnecessary because, well, it is obvious. This case appears to be the exception. So, here goes: LVRJ *lost* this case. It did not succeed on *any* of its claims for relief. No judgment on the merits has been entered in its favor on *any* issue. The Nevada Supreme Court, sitting *en banc*, has already made this indisputable fact abundantly clear in two separate opinions, which is why LVRJ's Motion for Attorney's Fees and Costs ("Motion") is all-the-more baffling. The Court should reject LVRJ's attempt to relitigate settled issues and deny its Motion entirely.

This Court should deny LVRJ's Motion for two principal reasons. First, LVRJ is not a prevailing party. The Nevada Supreme Court has already explicitly stated that LVRJ cannot be a "prevailing party" for attorney's fees purposes where there has been no judgment entered in its favor. Yet, LVRJ's Motion asks the Court to disregard binding Supreme Court precedent (and the



1 law of this case) by awarding it an exorbitant sum (nearly \$125,000) without a judgment in its favor.

2       Second, and perhaps more astounding, is that LVRJ's Motion urges this Court to award  
3 attorney's fees based on the "catalyst theory." LVRJ acknowledges that the catalyst theory "is an  
4 alternate theory for determining the prevailing party [in public records cases] *if no relief on the*  
5 *merits is obtained.*" See Mot. at 9, n.4 (emphasis added). In other words, LVRJ is asking this Court  
6 to award fees and costs based on a theory that directly contradicts Nevada law, which requires a  
7 party to obtain relief on the merits in the form of a judgment to qualify for attorney's fees. The  
8 Nevada Supreme Court already rejected LVRJ's argument that it can be a prevailing party without  
9 obtaining a judgment on the merits. In so doing, the Supreme Court rejected the "catalyst theory"  
10 LVRJ erroneously implores this Court to adopt.

11       Notwithstanding the foregoing, even if LVRJ could be considered a prevailing party (it  
12 cannot be), the Court should significantly reduce the amount of fees awarded. Again, LVRJ did not  
13 succeed on any of its claims for relief or on any issue decided by the Court. LVRJ's public records  
14 request in 2016 yielded over 9,000 electronic files consisting of almost 70,000 pages. The instant  
15 Motion is based entirely on the City's *voluntary* disclosure of *11 files* that it had withheld under the  
16 deliberative process privilege. After three years of litigation, including two Supreme Court appeals,  
17 the City approached LVRJ with an offer to voluntarily disclose the 11 documents in order to end the  
18 protracted litigation. Based on that voluntary disclosure of 11/9,000ths of the total universe of  
19 documents LVRJ requested, LVRJ seeks all its fees and costs from the inception on this case in the  
20 amount of \$123,791.55. In other words, despite losing on every issue concerning 99.9% of the  
21 documents requested, LVRJ now seeks 100% of its fees and costs due to the City's voluntary  
22 disclosure. To the extent the Court is inclined to grant LVRJ's Motion, the award should be  
23 commensurate with the level of "success" LVRJ achieved in this case, i.e. 0.12% or \$148.55.

## 24                   **II.      FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### 25           **A.      LVRJ's Public Records Request.**

26       On October 4, 2016, the City received a public records request from LVRJ (the "Request")  
27 pursuant to the Nevada Public Records Act, NRS Chapter 239 ("NPROA"). See Declaration of Brian  
28 R. Reeve in support of City of Henderson's Response to Las Vegas Review-Journal's Amended

Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus/Application for Declaratory and Injunctive Relief attached hereto as **Exhibit A**. The City performed a search for responsive records that returned over 9,000 electronic files consisting of almost 70,000 pages of documents. *Id.* at 1. Within five business days of the Request, the City provided an initial response to LVRJ that the search generated an enormous universe of documents, which would need to be reviewed for confidentiality and privilege before they could be provided to LVRJ (“Initial Response”). *See* Order Affirming in Part, Reversing in Part, and Remanding attached hereto as **Exhibit B** and City’s Initial Response attached hereto as **Exhibit C**. The City provided LVRJ with a fee estimate to complete the Request, asked for a 50% deposit, and informed LVRJ that it would take three weeks to complete the review once the deposit was received. *See* **Exhibit C**.

The next day, October 12, 2016, LVRJ’s attorney called the City to discuss the City’s Initial Response. *See* **Exhibit A** at 2. The parties discussed the City’s ability to charge fees to complete the Request, potentially narrowing the search terms to decrease the number of email hits and whether the City would be willing to lower its fee estimate. *Id.* Counsel for both parties resolved to go back to their respective clients to work on a solution. *Id.* LVRJ’s attorney represented that she would call back on October 17, 2016, to discuss the matter further. *Id.*

LVRJ’s attorney never called the City on October 17, 2016. *Id.* After waiting a week with no contact from LVRJ’s attorney, counsel for the City called LVRJ’s attorney’s office on October 25, 2016, in an attempt to work out a resolution. *Id.* Counsel for the City learned that LVRJ’s attorney was out of town, and asked for a return call once LVRJ’s attorney returned to the office. *Id.* LVRJ’s attorney never returned the City’s phone call. *Id.* Nor did she otherwise attempt to contact the City to work on a resolution. *Id.*

**B. LVRJ Prematurely Files a Public Records Act Application.**

After more than six weeks of silence – and without any prior warning – LVRJ filed a Public Records Act Application and Petition for Writ of Mandamus (the “Petition”) claiming that the City had refused to provide LVRJ the requested records. (*Id.*; *see also* the Petition attached hereto as **Exhibit D**. This was false. *See* **Exhibit A** at 2. The City was prepared and fully expected to review and provide copies of all responsive public records as soon as LVRJ confirmed it wanted to proceed

1 with the Request. *See* **Exhibit C**. LVRJ’s Petition asked the District Court to issue a writ of  
2 mandamus and injunctive relief to compel the City to immediately give LVRJ access to the  
3 requested records, without paying any fees. *See* **Exhibit D**.

4 Surprised by the Petition in light of its attempts to work with LVRJ on a solution, the City  
5 allowed LVRJ to inspect the nonprivileged documents on a computer at City Hall free of charge.  
6 *See* **Exhibit A** at 3. LVRJ’s inspection took place over the span of several days. *Id.* Notably, LVRJ  
7 did not ask the City for a single copy of any of the documents it reviewed after completing the  
8 inspection. *Id.* The City also provided LVRJ with a privilege log describing the 91 documents it  
9 withheld from the inspection due to confidentiality or privilege. *Id.* at 4.; *see also* privilege log  
10 attached hereto as **Exhibit E**. Of the 91 documents identified on the privilege log, 78 were withheld  
11 based on the attorney-client privilege, two were withheld because they contained confidential  
12 personal health information, and 11 were withheld under the deliberative process privilege (the  
13 “DPP Documents”). *Id.*

14 **C. LVRJ Files an Amended Petition, Which the District Court Denies.**

15 On February 28, 2017, LVRJ filed an Amended Public Records Act Application and Petition  
16 for Writ of Mandamus (“Amended Petition”) attacking the adequacy of the privilege log. *See*  
17 Amended Petition (without exhibits) attached hereto as **Exhibit F**.

18 The Amended Petition requested the following: (1) that the Court decide the Amended  
19 Petition on an expedited basis; (2) that the Court issue a writ of mandamus requiring the City to  
20 immediately make available all records LVRJ had previously requested but had been withheld  
21 and/or redacted; (3) injunctive relief prohibiting the City from applying the provisions of Henderson  
22 Municipal Code § 2.47.085 (“Code”) and the City’s Public Records Policy (the “Policy”); (4)  
23 declaratory relief invalidating the Code and the Policy for conflicting with the NPRA; and (5)  
24 declaratory relief limiting the City’s ability to charge fees when responding to public records  
25 requests. *Id.*

26 On March 30, 2017, the Honorable J. Charles Thompson, the presiding judge in Department  
27 18 at the time, held a hearing on LVRJ’s Amended Petition. *See* March 30, 2017, Hearing  
28 Transcript attached hereto as **Exhibit G**. At the hearing, LVRJ argued that it’s three-day inspection

1 of the non-confidential documents at City Hall was insufficient, and that it now wanted the City to  
2 provide copies of the inspected documents. *Id.* at 4-6. The District Court probed LVRJ to see if it  
3 had asked the City for copies of the documents it inspected and LVRJ conceded that it had not:

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

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

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

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

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

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

16 THE COURT: Okay.

17 The Court then asked the City: “Are you – are you willing to give them a USB drive with all  
18 the documents?” *Id.* at 8. The City responded affirmatively. *Id.*

19 Notwithstanding the City’s willingness to provide copies of the documents on a USB drive,  
20 free of charge, LVRJ pressed the District Court to invalidate the City’s Code and Policy for being “at  
21 odds with the NPRA.” *Id.* The District Court denied LVRJ’s request for injunctive and declaratory  
22 relief. *See* Order Denying LVRJ’s Amended Petition attached hereto as **Exhibit H**. Because the  
23 City had already allowed LVRJ to inspect the requested documents free of charge, and was willing  
24 to provide electronic copies of the inspected documents on a USB drive, also free of charge, the  
25 District Court determined that LVRJ’s arguments regarding the propriety of charging fees was moot  
26 and did not decide them. *Id.*

27 The sole matter decided by the District Court pertained to LVRJ’s request for mandamus  
28 relief, i.e. whether the City should be compelled to provide LVRJ records that it deemed confidential  
in its privilege log. *Id.* The District Court ruled that the privilege log was “timely, sufficient and in  
compliance with the requirements of the NPRA,” and, therefore, denied LVRJ’s Amended Petition  
with respect to the withheld documents. *Id.* The Order concludes: “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.” *Id.*

**D. Despite Losing, LVRJ Moves for Attorney’s Fees and Costs.**

Notwithstanding the fact that the District Court denied each of LVRJ’s claims for relief – either on the merits or as moot – and the only issue the District Court decided, the adequacy of the privilege log, was decided in the City’s favor, LVRJ filed a Motion for Attorney’s Fees and Costs (“Motion for Fees”). LVRJ contended that it was a “prevailing party” and thus entitled to attorney’s fees and costs because it “succeeded” in getting access to public records after initiating the lawsuit. LVRJ requested attorney’s fees in the amount of \$30,931.50 and costs in the amount of \$902.84.

The City opposed the Motion for Fees contending that LVRJ was not a prevailing party because it did not succeed on any of its claims for relief, and the City voluntarily allowed LVRJ to inspect the documents and agreed to provide copies of the already-inspected documents to LVRJ without any mandate by the District Court. The City also argued that the Court should significantly reduce any award of fees and costs.

On August 3, 2017, the Honorable Mark B. Bailus, who had just been appointed as Judge in Department 18 (relieving Judge Thompson), held a hearing on the Motion for Fees. August 3, 2017 Hearing Transcript attached hereto as **Exhibit I**. Judge Bailus acknowledged that he had not presided over the hearing on the Amended Petition and did not issue the order denying the Amended Petition. *Id.* at 4. Judge Bailus determined that even though LVRJ did not succeed on any of the claims for relief in the Amended Petition, LVRJ was a prevailing party because it obtained copies of the records it requested after initiating this action. *See* Order granting in part LVRJ’s Fee Motion attached hereto as **Exhibit J**. In other words, Judge Bailus awarded fees based on the catalyst theory. The District Court concluded, after reviewing the Brunzell factors, that LVRJ was entitled to an award of attorney fees in the amount of \$9,010.00 and costs in the amount of \$902.84 for a total award of \$9,912.84 (the “Fee Order”). *Id.*

**E. Appellate Proceedings.**

LVRJ appealed the district court’s denial of the Amended Petition, and both parties appealed the District Court’s award of attorney’s fees. *See* Nevada Supreme Court Case No. 73287 (“Petition

1 Appeal”) and Case No. 75407 (“Fee Appeal”).

2 In the Petition Appeal, the Nevada Supreme Court, sitting *en banc*, affirmed the District  
3 Court’s order in the City’s favor in all respects, except for one. *See Exhibit B*. The Supreme Court  
4 affirmed: (1) the District Court’s determination that issues concerning the City’s fee Policy became  
5 moot once the City provided the records to LVRJ free of charge<sup>1</sup>; (2) the District Court’s  
6 determination that the City’s Initial Response timely complied with the NPRA; and (3) the District  
7 Court’s determination that the City’s privilege log complied with the NPRA with respect to the  
8 documents withheld under the attorney-client privilege. *Id.* The Supreme Court reversed the  
9 District Court and remanded to this Court to determine whether the 11 documents identified on the  
10 privilege log as being withheld under the deliberate process privilege satisfied the common-law  
11 balancing test, i.e. did the City’s interest in non-disclosure clearly outweigh the public’s interest in  
12 access to the documents. *Id.* at 8.

13 In the Fee Appeal, the Nevada Supreme Court concluded that “the district court erred in  
14 concluding that, despite failing on the claims for relief as set forth in its writ petition, the LVRJ  
15 nevertheless prevailed in its public records action and was entitled to attorney fees under the  
16 NPRA.” *See* Order of Reversal attached hereto as **Exhibit K**, at 2. Accordingly, the Supreme Court  
17 reversed the District Court’s partial award of attorney fees to the LVRJ. *Id.* The Supreme Court  
18 explained that to qualify as a prevailing party in a public records action, the action must proceed to  
19 judgment on some significant issue. *Id.* at 3.

20 The Supreme Court expressly ruled that “[h]ere, as the district court recognized in its order,  
21 *the LVRJ has not succeeded on any of the issues that it raised in filing the underlying action.*” *Id.*  
22 (emphasis added). With respect to the 11 DPP Documents, the Supreme Court ruled that “the LVRJ  
23 cannot be a ‘prevailing party’ as to that issue before the action has proceeded to a final judgment.”  
24 *Id.* at 5. The Supreme Court reiterated that it did not order the production of the DPP Documents,  
25 but simply remanded for the District Court “to conduct further analysis and determine whether, and

26 \_\_\_\_\_  
27 <sup>1</sup> The Supreme Court reiterated that “a controversy must be present through all stages of the  
28 proceeding, and even though a case may present a live controversy at its beginning, subsequent  
events may render the case moot.” *Id.* By providing access to the documents for free, LVRJ’s claims  
regarding the City’s ability to charge fees were moot.

1 to what extent, those records were properly withheld.” *Id.* The Supreme Court summarized:  
2 “Because the sole remaining issue that the LVRJ raised in its underlying action has not yet  
3 proceeded to a final judgment, we conclude that the LVRJ is not a prevailing party.” *Id.* With  
4 respect to all other issues, however, the Supreme Court emphasized that “the LVRJ did not prevail in  
5 its underlying public records action and is not entitled to attorney fees.” *Id.* at n.2. Accordingly, the  
6 Supreme Court declined to address LVRJ’s cross-appeal argument that the District Court erred in  
7 awarding a reduced amount of attorney fees and costs. *Id.*

8 **F. In an Effort to Resolve the years-long litigation, the City provides LVRJ copies**  
9 **of the DPP Documents.**

10 After nearly three years of litigation, including two separate appeals to the Nevada Supreme  
11 Court, the City notified LVRJ that it did not make sense to continue expending significant time and  
12 resources litigating about 11 documents. Accordingly, in July 2019, the City voluntarily disclosed  
13 copies of the DPP Documents to LVRJ to avoid further litigation. *See* Declaration of Margaret  
14 McLetchie attached to Petitioner Las Vegas Review-Journal’s Motion for Attorney’s Fees and Costs;  
15 *see also* Minutes of December 12, 2019 Status Check attached hereto as **Exhibit L**.

16 On February 6, 2020, over six months after the City voluntarily disclosed the DPP  
17 Documents, LVRJ filed the instant Motion seeking nearly \$125,000 in attorney’s fees and costs (its  
18 fees and costs from the beginning of the case) despite the fact that (1) it has not obtained a favorable  
19 judgment on the merits with respect to any issue or claim, including the DPP Documents; and (2) the  
20 Nevada Supreme Court already ruled that it is not entitled to attorney’s fees with respect to all the  
21 issues the Supreme Court decided. Without a judgment on the merits, LVRJ’s attempt to use the  
22 already-disavowed catalyst theory and the City’s voluntary disclosure of the DPP Documents to  
23 obtain all its fees and costs is not only mind-boggling, but a blatant disregard for the Supreme  
24 Court’s decisions.

25 **III. LEGAL ARGUMENT**

26 **A. The Court Should Deny LVRJ’s Motion Because It Is Not A Prevailing Party.**

27 The Court should deny LVRJ’s Motion because it did not prevail on any issue or claim in the  
28 case. Specifically: (1) LVRJ is not a “prevailing party” with respect to the confidentiality of the

1 DPP Documents because no judgment can or has been entered in its favor on that issue because the  
2 issue is moot; and (2) as the Nevada Supreme Court has already held, LVRJ did not succeed on any  
3 of the other issues in the case.

4 **1. LVRJ is not a prevailing party with respect to the DPP Documents.**

5 A court may not award attorney fees unless it is authorized by statute, agreement or rule.  
6 *State Dept. of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993). Under the  
7 NPRA, a requester is entitled to recover his or her costs and reasonable attorney fees in the  
8 proceeding from the governmental entity that has custody of the book or record if the requester  
9 prevails. NRS 239.011(2).

10 In *LVMPD v. Blackjack Bonding*, the Court explained that “[a] party prevails ‘if it succeeds  
11 on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.’”  
12 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015). In that case, the Court found that Blackjack was a  
13 prevailing party because it “obtained a writ compelling the production of the telephone records with  
14 CCDC’s inmates’ identifying information redacted[.]” *Id.* at 615. The court’s decision to grant  
15 mandamus relief compelling LVMPD to produce the requested records, which LVMPD had  
16 previously refused to do, resulted in a court-ordered material alteration in the parties’ legal  
17 relationship. Thus, with a writ of mandamus in its favor, the court concluded that Blackjack was  
18 entitled to recover its reasonable attorney fees and costs. *Id.*

19 The prevailing party analysis articulated in *Blackjack* is rooted in federal case law. *See*  
20 *Hornwood v. Smith’s Food King No. 1*, 105 Nev. 188, 192, 772 P.2d 1284, 1287 (1989) (quoting  
21 federal case law); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (stating that “plaintiffs may be  
22 considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on any significant issue in  
23 litigation which achieves some of the benefit the parties sought in bringing suit.”). Federal courts  
24 have since clarified that the “touchstone of the prevailing party inquiry must be the material  
25 alteration of the legal relationship of the parties[.]” *Texas State Teachers Ass’n v. Garland Indep.*  
26 *Sch. Dist.*, 489 U.S. 782, 791-93 (1989). Thus, “[a] fee-seeking party must show that (1) there has  
27 been a material alteration in the legal relationship of the parties and (2) it was judicially sanctioned.”  
28 *Wood v. Burwell*, 837 F.3d 969, 973 (9th Cir. 2016).



1 Since deciding *Blackjack*, the Nevada Supreme Court has provided additional clarification  
2 for the term “prevailing party.” In *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op.  
3 41, 373 P.3d 103, 107 (2016), the Court explained that “a prevailing party must win on at least one  
4 of its claims.” *Id.* Further, in *Dimick v. Dimick*, 112 Nev. 402, 404, 915 P.2d 254, 256 (1996), the  
5 Supreme Court held that “a party cannot be a ‘prevailing party’ where the action has not proceeded  
6 to judgment.” Relying on *Dimick* in the Fee Appeal, the Supreme Court expressly held that “LVRJ  
7 cannot be a ‘prevailing party’ as to that issue [the confidentiality of the DPP documents] before the  
8 action has proceeded to a final judgment.” See **Exhibit K** at 5.

9 Under NRCP 54(a), a “judgment” is “a decree or any order from which an appeal lies.” Rule  
10 54(d)(2) provides that a motion for attorney’s fees must “specify *the judgment and the statute, rule,*  
11 *or other grounds* entitling the movant to the award.” (Emphasis added). Thus, in order to move for  
12 attorney’s fees, (1) a judgment must be entered decreeing that a party has in fact succeeded on a  
13 significant issue in the case – *i.e.* a judicially sanctioned material alteration in the parties’ legal  
14 relationship – and (2) the party must specify both the judgment and the statute, rule or other grounds  
15 entitling it to fees in its motion for attorney’s fees and costs.

16 Here, no judgment concerning the confidentiality of the DPP documents has been entered  
17 entitling LVRJ to attorney’s fees. Indeed, LVRJ’s Motion fails to “specify the judgment” upon  
18 which its fee request is based. That is because no judgment exists. The Nevada Supreme Court  
19 remanded this case “for the district court to analyze whether requested documents were properly  
20 withheld as confidential pursuant to the deliberative process privilege.” See **Exhibit K** at 5.  
21 Importantly, the Supreme Court did not order the production of the DPP Documents. *Id.* Rather, it  
22 instructed the District Court “to conduct further analysis and determine whether, and to what extent,  
23 those records were properly withheld.” *Id.*

24 The Supreme Court emphasized that LVRJ cannot be a prevailing party as to the DPP  
25 Documents before the action has proceeded to a final judgment. *Id.* This Court has not entered a  
26 judgment in LVRJ’s favor regarding the confidentiality of the DPP Documents. Rather, in July 2019  
27 the City voluntarily agreed to provide copies of the DPP Documents to LVRJ to resolve the  
28 litigation. See **Exhibit L**. In doing so, the issue regarding the confidentiality of the DPP Documents

1 became moot.

2 “[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which  
3 can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or  
4 to declare principles of law which cannot affect the matter in issue before it.” *Nat’l Collegiate*  
5 *Athletic Ass’n v. Univ. of Nevada, Reno*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). “[A] controversy  
6 must be present through all stages of the proceeding, and even though a case may present a live  
7 controversy at its beginning, subsequent events may render the case moot.” *Personhood Nevada v.*  
8 *Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). (internal citations omitted). The City’s  
9 voluntary disclosure of the DPP Documents in July 2019 makes the confidentiality of the DPP  
10 documents moot. Because there is no live controversy for the Court to decide the only judgment that  
11 may be entered is one acknowledging the mootness of the DPP Documents issue and dismissing the  
12 case. But again, because there is no judgment materially altering the parties’ legal relationship in  
13 LVRJ’s favor with respect to the DPP Documents (or any other issue), LVRJ cannot be a prevailing  
14 party for attorney’s fees purposes and its Motion should be denied.

15 **2. The Supreme Court has already held that LVRJ did not prevail on any**  
16 **other issue in the case.**

17 LVRJ’s Motion seeks to recoup attorney’s fees from the inception of this case *for work its*  
18 *attorneys performed on separate issues that LVRJ lost*. Notwithstanding the fact that LVRJ is not a  
19 prevailing party, it attempts to justify its exorbitant fee request by arguing that the issues in this case  
20 are so intertwined that they cannot be separated and therefore the Court should award all its fees and  
21 costs. This argument not only contradicts the Supreme Court’s rulings in the Fee Appeal, but also  
22 defies common sense.

23 The Order in the Fee Appeal repeatedly emphasizes that LVRJ did not succeed on any of the  
24 issues raised in this case:

- 25 • “We conclude that the district court erred in concluding that,  
26 despite failing on the claims for relief as set forth in its writ  
27 petition, the LVRJ nevertheless prevailed in its public records  
28 action and was entitled to attorney fees under the NPRA.  
Accordingly, we reverse the district court’s partial award of  
attorney fees to the LVRJ.” **Exhibit K** at 2.

- “Here, as the district court recognized in its order, the LVRJ has not succeeded on any of the issues that it raised in filing the underlying action.” **Exhibit K** at 3.
- “Because we conclude that the LVRJ did not prevail in its underlying public records action and is not entitled to attorney fees, we need not address the LVRJ’s cross-appeal argument that the district court erred in awarding a reduced amount of attorney fees and costs.” **Exhibit K** at 5, n.2

The Order in the Fee Appeal and the Order in the Petition Appeal discuss the various and distinct issues raised in the appeals that have nothing to do with the confidentiality of the 11 DPP Documents. *See* **Exhibit B** and **Exhibit K**.

For example, LVRJ failed on its declaratory and injunctive relief claims, which sought to invalidate the City’s Code and Policy relating to charging fees for processing public records. The District Court determined that these claims were moot due to the City’s voluntary disclosure of the documents free of charge and declined to address them. The Supreme Court affirmed that decision. **Exhibit B** at 4. LVRJ also attacked the adequacy of the City’s Initial Response under the NPRA and the timeliness of the production of the City’s privilege log. Once again, the Supreme Court ruled in favor of the City on these issues. *Id.* LVRJ also argued that the City’s privilege log was insufficient with respect to its descriptions and legal bases for redacting or withholding documents under the attorney-client privilege. Again, the Supreme Court rejected this argument stating: “we disagree with LVRJ’s argument that Henderson’s proffered descriptions are overly conclusory.” *Id.* at 7.

The propriety of the City’s Policy and Code concerning public records fees, the mootness issues, the adequacy of the City’s Initial Response, the timeliness of the City’s privilege log and the contents of the privilege log with respect to documents withheld under the attorney-client privilege are completely separate from the issue of whether the DPP documents were properly withheld under the separate common law balancing test for the deliberative process privilege. They are not intertwined at all. Indeed, the Supreme Court had no problem addressing each of these issues separately in favor of the City. Accordingly, even if LVRJ were a prevailing party as to the DPP documents (it is not), it would only be entitled to fees and costs associated with other discrete issues on which the Nevada Supreme Court has already determined LVRJ did not prevail.

1           **B.     The Court Should Reject LVRJ’s “Catalyst Theory” Because It Conflicts With**  
2           **Settled Nevada Law And The Law Of The Case.**

3           LVRJ’s Motion attempts to revive its failed argument that attorney’s fees and costs may be  
4 awarded under the so-called “catalyst theory.”<sup>2</sup> See Mot. at 9-10. According to LVRJ, the catalyst  
5 theory is an “*alternate theory* for determining the prevailing party [in public records litigation] *if no*  
6 *relief on the merits is obtained.*” See Mot. at 9, n.4 (emphasis added). Under the catalyst theory, a  
7 party will be deemed to have “prevailed” for purposes of attorney’s fees and costs when a  
8 governmental entity releases previously withheld records after a lawsuit has been filed. *Id.* at 9.

9           The Court should reject the catalyst theory for at least three reasons. First, the Nevada  
10 Supreme Court already *reversed* the District Court’s decision to award LVRJ a portion of its fees  
11 and costs based on the catalyst theory. It is undisputed that LVRJ did not succeed on any of its  
12 claims for relief in the Amended Petition. See **Exhibit B** and **Exhibit K**. Nevertheless, despite  
13 failing on its claims for relief, the District Court awarded LVRJ a portion of its fees and costs based  
14 on the catalyst theory, *i.e.* “because it was able to obtain copies of the records it requested after  
15 initiating this action.” See **Exhibit J** at 4. The Nevada Supreme Court explicitly rejected the  
16 District Court’s reasoning:

17                     We conclude that the district court erred in concluding that, despite  
18                     failing on the claims for relief as set forth in its writ petition, the LVRJ  
19                     nevertheless prevailed in its public records action and was entitled to  
                        attorney fees under the NPRA. Accordingly, we reverse the district  
                        court’s partial award of attorney fees to the LVRJ.

20 See **Exhibit K** at 2. LVRJ’s request that this Court award attorney’s fees and costs based on the  
21 same failed theory that the Nevada Supreme Court already rejected is shocking.

22           Second, the catalyst theory conflicts with the law of the case. In the Fee Appeal, the  
23 Supreme Court explained that to qualify as a prevailing party in a public records action, the requester  
24

---

25 <sup>2</sup> Like Nevada, other jurisdictions have also rejected the catalyst theory. See e.g., *Nehls v.*  
26 *Hartman Newspapers, LP*, 522 S.W.3d 23, 32–33 (Tex. App. 2017) (holding that a requester is not  
27 entitled to attorney’s fees where the requester does not receive “judicially sanctioned relief on the  
28 merits” because of the respondents’ voluntary disclosure of documents before trial); *Clapper v.*  
*Oregon State Police*, 228 Or. App. 172, 178–79, 206 P.3d 1135, 1138–39 (2009) (explaining that  
“Oregon courts have not adopted the catalyst theory” and entering judgment in favor of the  
government where the plaintiff had received the records he had requested by the time of trial.).

1 must succeed on any significant issue in litigation which achieves some of the benefit it sought in  
2 bringing suit *and* that the action must proceed to judgment as to that issue. *See Exhibit K* at 3-5. In  
3 other words, consistent with federal case law, there must be a judicially sanctioned material  
4 alteration in the parties' relationship with respect to a significant issue in the litigation in order to  
5 qualify as a prevailing party. If a party does not proceed to judgment regarding a significant issue in  
6 the case, then it is not a prevailing party. Conversely, the entire premise of the catalyst theory is that  
7 a party may still be deemed a prevailing party even though it has not obtained any relief on the  
8 merits.

9 Third, the law of the case articulated above is supported by Nevada Supreme Court  
10 precedent. For example, in *Works v. Kuhn*, the parties agreed to a settlement prior to trial and the  
11 respondents voluntarily dismissed their counterclaim based on the settlement. 103 Nev. 65, 68, 732  
12 P.2d 1373, 1375-76 (1987), disapproved on other grounds by *Sandy Valley Assocs. v. Sky Ranch*  
13 *Estates Owners Ass'n*, 117 Nev. 948, 35 P.3d 964 (2001). Notwithstanding the settlement, the  
14 petitioner sought an award of attorney's fees in the action. Citing the rule that a party cannot be  
15 considered a prevailing party where the action has not proceeded to judgment, the Supreme Court  
16 found that "[u]nder these circumstances, we conclude that appellant cannot be considered as having  
17 prevailed in this action." *Id.*

18 In *Dimick v. Dimick*, the Supreme Court explained the sound rationale for the rule requiring  
19 that a party proceed to judgment to qualify as a prevailing party:

20 Contract [and statutory] provisions for the payment of attorney's fees  
21 by the losing party provide an incentive to settle and reduce litigation.  
22 This incentive would be lost if this court holds that a party cannot  
23 abandon a claim without being subject to paying attorney's fees. A  
party would be penalized for settling cases or abandoning claims, with  
the result that the very purpose of fee-paying provides would be  
frustrated.

24 112 Nev. 402, 405, 915 P.2d 254, 256 (1996). This rationale makes sense. As a policy  
25 matter, the catalyst theory leads to undesirable consequences because it incentivizes requesters to  
26 rush to court without any attempt to meet and confer (like they are required to do for discovery  
27 disputes) knowing that any post-lawsuit resolution will entitle them to attorney's fees. Rather than  
28 trying to resolve issues on their own, parties will avoid making out-of-court agreements once an

1 action has been initiated because doing so would result in the requester claiming prevailing party  
2 status. This would result in less compromise and more unnecessary litigation and would frustrate the  
3 dispute resolution process. Parties (including requesters) should be *encouraged* to reach out-of-court  
4 compromises throughout the litigation process, not disincentivized from doing so by the prospect of  
5 having to pay attorney’s fees.

6 C. **To The Extent The Court Determines LVRJ Is Entitled To Attorney’s Fees And**  
7 **Costs, It Should Only Award An Amount Commensurate With LVRJ’s**  
8 **“Success” Regarding The DPP Documents.**

9 “In Nevada, ‘the method upon which a reasonable fee is determined is subject to the  
10 discretion of the court,’ which ‘is tempered only by reason and fairness.’” *Shuette v. Beazer Homes*  
11 *Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). “[I]n determining the amount of  
12 fees to award, the court is not limited to one specific approach; its analysis may begin with any  
13 method rationally designed to calculate a reasonable amount, including those based on a ‘lodestar’  
14 amount or a contingency fee.” *Id.* at 549. “[W]hichever method is chosen as a starting point,  
15 however, the court must continue its analysis by considering the requested amount in light of the  
16 factors enumerated by this court in *Brunzell v. Golden Gate National Bank*, namely, the advocate’s  
17 professional qualities, the nature of the litigation, the work performed, and the result.” *Id.*

18 Express findings on each *Brunzell* factor “are not necessary for a district court to properly  
19 exercise its discretion.” *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1143 (2015). “Instead,  
20 the district court need only demonstrate that it considered the required factors, and the award must  
21 be supported by substantial evidence.” *Id.* “Substantial evidence is evidence that a reasonable mind  
22 might accept as adequate to support a conclusion.” *Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d  
23 743, 748 (2012).

24 The United States Supreme Court has directed courts to exclude time expended on  
25 unsuccessful claims from fee awards. *See Hensley v. Eckerhart*, 461 U.S. 424, 434–35 (1983) (“In  
26 some cases a plaintiff may present in one lawsuit distinctly different claims for relief that are based  
27 on different facts and legal theories. In such a suit, even where the claims are brought against the  
28 same defendants . . . counsel’s work on one claim will be unrelated to his work on another claim.  
Accordingly, work on an unsuccessful claim cannot be deemed to have been “expended in pursuit of

1 the ultimate result achieved.”). Further, the overall success in a case is one of the most critical  
2 factors in awarding attorney’s fees. *See Id.* at 436 (where a “plaintiff has achieved only partial or  
3 limited success, the product of hours reasonably expended on the litigation as a whole times a  
4 reasonable hourly rate may be an excessive amount. This will be true even where the plaintiff’s  
5 claims were interrelated, nonfrivolous, and raised in good faith.”).

6 Here, LVRJ did not obtain a judgment in its favor on any claim or issue and therefore should  
7 not be entitled to attorney fees. But to the extent the Court is inclined to award fees based on the  
8 City’s voluntary disclosure of the DPP documents, the award should be commensurate with LVRJ’s  
9 extremely limited “success” in obtaining copies of the 11 DPP Documents.

10 LVRJ’s public records request in 2016 yielded over 9,000 electronic files consisting of  
11 almost 70,000 pages. LVRJ’s Motion is founded entirely on the City’s voluntary disclosure of 11  
12 files that it had withheld under the deliberative process privilege. After years of litigation and two  
13 separate appeals, the City voluntarily disclosed the 11 documents in order to end further litigation.  
14 Based on that voluntary disclosure of 11 out of 9,000 total files requested, LVRJ seeks all its fees  
15 and costs from the beginning of this case in the amount of \$123,791.55. Stated differently, despite  
16 losing on every issue concerning 99.9% of the documents requested, LVRJ now seeks 100% of its  
17 fees and costs in connection with the City’s voluntary disclosure of the 11 DPP Documents. By any  
18 measure, LVRJ’s “success” on that small, discrete issue must be significantly discounted in terms of  
19 fees and costs. To the extent the Court is inclined to grant LVRJ’s Motion, the award should be  
20 commensurate with the level of “success” LVRJ achieved in this case. Using the total number of  
21 files requested as a baseline (over 9,000), LVRJ’s acquisition of the 11 DPP files constitutes 0.12%  
22 of the total files. Because LVRJ only “succeeded” with respect to 0.12% of the total number of  
23 documents requested, it should only be awarded 0.12% of its fees and costs, *i.e.* 0.12% x  
24 \$123,791.55 = \$148.55.

#### 25 IV. CONCLUSION

26 Based on the foregoing, the Court should deny LVRJ’s Motion for Attorney’s Fees and Costs

27 ///

28 ///

1 in its entirety. Alternatively, the Court should award LVRJ a portion of its fees and costs  
2 commensurate with its level of success in this case, *i.e.* \$148.55.

3  
4 DATED this 27<sup>th</sup> day of February, 2020.

BAILEY❖KENNEDY

5  
6  
7 By: /s/ Dennis L. Kennedy  
DENNIS L. KENNEDY

8 and

9 NICHOLAS G. VASKOV, City Attorney  
10 Nevada Bar No. 8298  
BRIAN R. REEVE, Assistant City Attorney  
11 Nevada Bar No. 10197  
**CITY OF HENDERSON**  
12 240 Water Street, MSC 144  
Henderson, NV 89015

13 *Attorneys for Respondent*  
14 CITY OF HENDERSON  
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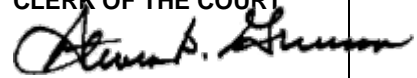
**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 27<sup>th</sup> day of February, 2020, service of the foregoing **CITY OF HENDERSON'S RESPONSE TO PETITIONER LAS VEGAS REVIEW-JOURNAL'S MOTION FOR ATTORNEY'S FEES AND COSTS** 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. MCLETCHE  
ALINA M. SHELL  
**MCLETCHE LAW**  
701 East Bridger Avenue, Suite 520  
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com  
Maggie@nvlitigation.com  
  
*Attorneys for Petitioner*  
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY



**APEN (CIV)**  
NICHOLAS G. VASKOV, City Attorney  
Nevada Bar No. 8298  
BRIAN R. REEVE, Assistant City Attorney  
Nevada Bar No. 10197  
**CITY OF HENDERSON**  
240 Water Street, MSC 144  
Henderson, Nevada 89015  
Telephone: 702.267.1200  
Facsimile: 702.267.1201  
Brian.Reeve@cityofhenderson.com

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com

*Attorneys for Respondent*  
CITY OF HENDERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,  
  
Petitioner,  
  
vs.  
  
CITY OF HENDERSON,  
  
Respondent.

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

**APPENDIX OF EXHIBITS TO CITY OF HENDERSON'S OPPOSITION TO PETITIONER  
LAS VEGAS REVIEW-JOURNAL'S MOTION FOR ATTORNEY'S FEES AND COSTS**

Pursuant to EDCR 2.27(b), Respondent, City of Henderson (the "City"), files this Appendix of Exhibits to its Opposition to Petitioner Las Vegas Review-Journal's Motion For Attorney's Fees and Costs.

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<u>Exhibit</u>	<u>Document Description</u>	<u>Page Nos.</u>
A	Declaration of Brian R. Reeve in Support of City of Henderson' Response to Las Vegas Review Journal's Amended Public Records Act Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus/Application for Declaratory and Injunctive Relief	1-5
B	Order Affirming in Part, Reversing in Part, and Remanding	6-14
C	Email from Brian Reeve to Ms. Bruzda and Mr. Spousta dated 10/11/16	7
D	Public Records Act Application Pursuant to NRS § 239.001 / Petition for Writ of Mandamus	8-29
E	COH Privilege Log	30-35
F	Amended Public Records Act Application Pursuant to NRS § 239.001 / Petition for Writ of Mandamus / Application for Declaratory and Injunctive Relief	36-49
G	Transcript of Proceedings Re: Petition for Writ of Mandamus (Thursday, March 30, 2017)	50-74
H	Order (05/12/2017)	75-77
I	Reporter's Transcript of Proceedings Before the Honorable Mark B. Bailus (Thursday, August 3, 2017)	78-103
J	Order (02/15/18)	104-108
K	Order of Reversal (Oct 17, 2019)	109-114
L	Minutes re: Status Check 12/12/19	115

DATED this 27<sup>th</sup> day of February, 2020.

BAILEY ♦ KENNEDY

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

and

NICHOLAS G. VASKOV, City Attorney  
Nevada Bar No. 8298  
BRIAN R. REEVE, Assistant City Attorney  
Nevada Bar No. 10197  
**CITY OF HENDERSON**  
240 Water Street, MSC 144  
Henderson, NV 89015

*Attorneys for Respondent*  
**CITY OF HENDERSON**

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 27<sup>th</sup> day of February, 2020, service of the foregoing **APPENDIX OF EXHIBITS TO CITY OF HENDERSON'S OPPOSITION TO PETITIONER LAS VEGAS REVIEW-JOURNAL'S MOTION FOR ATTORNEY'S FEES AND COSTS** 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  
ALINA M. SHELL  
**MCLETCHIE LAW**  
701 East Bridger Avenue, Suite 520  
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com  
Maggie@nvlitigation.com  
  
*Attorneys for Petitioner*  
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

**EXHIBIT A**

**EXHIBIT A**

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  
(the "Response").

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

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

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

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

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

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

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

10 11. During the call, Ms. McLetchie and I discussed potentially narrowing the search  
11 terms to decrease the number of email hits and whether the City would be willing to lower its  
12 fee estimate. Ms. McLetchie and I both resolved to go back to our respective clients to work  
13 on a solution. Ms. McLetchie represented that she would call back on October 17, 2016, to  
14 discuss the matter further.  
15

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

17 13. After waiting a week with no contact from Ms. McLetchie, I called Ms. McLetchie's  
18 office on October 25, 2016, to further our October 12th discussion in an attempt to work out  
19 a resolution. I was informed by Ms. McLetchie's office that Ms. McLetchie was out of town  
20 until November 4, 2016. I asked for a return call once Ms. McLetchie returned to the office.  
21

22 14. Ms. McLetchie never returned the City's phone call and did not otherwise attempt to  
23 contact the City to work on a resolution. Instead, after more than six weeks had passed since  
24 communicating with the City and without any prior warning, LVRJ filed suit against the City  
25 on November 29, 2016, claiming that the City had refused to provide LVRJ with the  
26 requested records. This is not true. The City never refused or denied LVRJ's request.  
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 25. Ms. McLetchie was not satisfied with the Second Withholding Log because it did not  
7 list the actual names of attorneys and paralegals or other staff members sending or receiving  
8 correspondence and requested another revised log.  
9

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

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

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

5 DATED this 7 day of March, 2017.  
6

7  
8 By 

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

**EXHIBIT B**

**EXHIBIT B**

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS REVIEW-JOURNAL,  
Appellant,  
vs.  
CITY OF HENDERSON,  
Respondent.

No. 73287

**FILED**

MAY 24 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

*ORDER AFFIRMING IN PART,  
REVERSING IN PART, AND REMANDING*

This is an appeal from a district court judgment denying a petition for a writ of mandamus and an application for injunctive and declaratory relief in a public records request matter. Eighth Judicial District Court, Clark County; Robert E. Estes, Judge.

Appellant Las Vegas Review-Journal (LVRJ) made a public records request to respondent City of Henderson pursuant to the Nevada Public Records Act (NPRA). Henderson performed a search that returned over 9,000 electronic files consisting of almost 70,000 pages of documents. Within five business days of the request, Henderson provided an initial response to LVRJ that the search generated a large universe of documents and that a review for privilege and confidentiality would be required before Henderson would provide LVRJ with copies. Henderson requested \$5,787.89 in fees to conduct the privilege review and stated that a deposit of \$2,893.94 (50% of the fee) would be due before the privilege review would begin.

LVRJ filed a petition for a writ of mandamus and an application for declaratory and injunctive relief, asking that Henderson be ordered to provide LVRJ access to the records without paying the privilege review fee. After LVRJ filed its petition, Henderson conducted the privilege review and

permitted LVRJ to inspect the nonprivileged records on a Henderson computer free of charge while they litigated whether the NPRA permitted Henderson to charge LVRJ for the privilege review. Henderson also provided a privilege log to LVRJ. After the inspection and at the hearing on LVRJ's writ petition, Henderson agreed to provide copies of the records, except for the items listed in the privilege log, to LVRJ free of charge. The district court thereafter denied LVRJ's writ petition because Henderson provided the documents without charging for the privilege review. The district court also found the privilege log was timely provided and sufficient under the NPRA. This appeal by LVRJ followed. Reviewing the district court's decision to deny the writ petition for an abuse of discretion and questions of law de novo, *Reno Newspapers, Inc. v. Haley*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010), we affirm in part, reverse in part, and remand.

LVRJ argues that the district court erred in concluding that LVRJ's claims that Henderson's charging policy was impermissible are moot. We disagree. The issue of Henderson's fee became moot once Henderson provided the records to LVRJ free of charge because "a controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (internal citations omitted). "[I]n exceptional situations," this court will decline to treat as moot an issue that is "capable of repetition, yet will evade review." *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 161, 87 P.3d 521, 524 (2004) (internal quotation omitted). This exception requires that the issue "evade review because of the nature of its timing." *Id.* The exception's application turns on whether the issue cannot be litigated before it becomes moot. *See, e.g., Globe*

*Newspaper Co. v. Superior Court*, 457 U.S. 596, 602-03 (1982) (explaining that an order excluding the public from attending a criminal rape trial during a victim's testimony that expired at the conclusion of the trial is capable of repetition, yet evading review); *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 546-47 (1976) (describing how an order prohibiting the press from broadcasting prejudicial confessions before trial that expires once the jury is empaneled is capable of repetition, yet evading review); *In re Guardianship*, 120 Nev. at 161-62, 87 P.3d at 524 (discussing types of issues that are both likely to expire prior to full litigation and are thus capable of repetition, yet evading review).

This is a fundamental requirement of the exception that LVRJ ignores. Indeed, so long as the records in a public records request are not produced, the controversy remains ongoing and can be litigated. In response to future public records requests, should Henderson maintain that it is entitled to an "extraordinary use" fee in the context of a privilege review, NRS 239.055, then the matter will be ripe for this court's consideration. Further, because NRS 239.011 already provides for expedited review of public records request denials, LVRJ's claim need not rely on such a rarely used exception. See *Personhood Nev.*, 126 Nev. at 603, 245 P.3d at 575 (observing that a statute expediting challenges to ballot initiatives generally provides for judicial review before a case becomes moot). Accordingly, we conclude that the district court did not err in concluding that LVRJ's claims regarding the ability to charge such fees and costs are moot.<sup>1</sup>

---

<sup>1</sup>Because LVRJ seeks declaratory and injunctive relief only as to issues rendered moot, we decline to consider whether LVRJ's request for

LVRJ also argues that Henderson failed to timely respond to its records request with a privilege log and thus waived its right to assert claims or privileges pursuant to NRS 239.0107(1)(d). Again, we disagree. “The ultimate goal of interpreting statutes is to effectuate the Legislature’s intent.” *In re CityCenter Constr. & Lien Master Litig.*, 129 Nev. 669, 673, 310 P.3d 574, 578 (2013). The starting point for determining legislative intent is the statute’s plain language. *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). If the language is clear and unambiguous, this court does not look beyond it. *Id.*

Under NRS 239.0107(1), a governmental entity must do one of four things within five business days of receiving a public records request; as pertinent here, a governmental entity must provide notice that it will be unable to make the record available by the end of the fifth business day and provide “[a] date and time after which the public book or record will be available” to inspect or copy, NRS 239.0107(1)(c), or provide notice that it must deny the request because the record, or a part of the record, is confidential, and provide “[a] citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential,” NRS 239.0107(1)(d).

We conclude that Henderson’s initial response complied with the plain language of NRS 239.0107(1)(c) because it gave notice within five business days that it would be unable to produce the records by the fifth business day as it needed to conduct a privilege review, demanded the fee amount, and gave a date the request would be completed once a deposit was received. Henderson estimated that the records would be available three

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declaratory and injunctive relief exceeds the scope of permissible relief under NRS 239.011.

weeks after LVRJ paid the amount required to commence the review, which gave LVRJ a specific date upon which they could rely to follow up pursuant to NRS 239.0107(1)(c). Further, it would be implausible to provide a privilege log for such requests that capture a large number of documents within five business days. Moreover, NRS 239.0107(1)(d) is not relevant because Henderson did not deny LVRJ's request; rather, it stated that it needed more time to determine which portions of LVRJ's request it might need to deny in the future. Put simply, a governmental entity cannot tell a requestor what is privileged, and thus what records will be denied pursuant to NRS 239.0107(1)(d), until it has had time to conduct the review. NRS 239.0107(1)(c) provides the notice mechanism when the governmental entity needs more time to act in response to the request.<sup>2</sup> Accordingly, we conclude the district court did not err in finding that the privilege log was not untimely; Henderson did not waive its right to assert privileges in the records LVRJ requested by not providing a completed privilege log within five business days of LVRJ's request.

Finally, LVRJ argues that Henderson's privilege log was insufficient and noncompliant with the NPRA. More concretely, LVRJ argues that the factual descriptions and legal bases for redaction or withholding in the privilege log were too vague and boilerplate to determine if the attorney-client, work-product, and deliberative process privileges actually applied to the records in question. Additionally, LVRJ argues that some of the factual descriptions provided fall outside of the privilege asserted for that record.

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<sup>2</sup>Further, to the extent LVRJ asserts waiver is the appropriate remedy for noncompliance with the statute, we need not reach that issue because we conclude Henderson complied with NRS 239.0107(1)(c).



The starting point for NPRA requests is that “all public books and public records of governmental entities must remain open to the public, unless otherwise declared by law to be confidential.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877, 880, 266 P.3d 623, 626, 628 (2011) (internal quotation marks omitted). Any limitations or restrictions on the public's right of access must be construed narrowly. *Id.* at 878, 266 P.3d at 626. In light of this mandate, when a governmental entity withholds or redacts a requested record because it is confidential, the governmental entity “bears the burden of proving, by a preponderance of the evidence, that the records are confidential.” *Id.* (discussing NRS 239.0113). This court has opined that for the governmental entity to overcome its burden, “[t]he state entity may either show that a statutory provision declares the record confidential, or, in the absence of such a provision, ‘that its interest in nondisclosure clearly outweighs the public's interest in access.’” *Pub. Emps.’ Ret. Sys. of Nev. v. Reno Newspapers, Inc. (PERS)*, 129 Nev. 833, 837, 313 P.3d 221, 224 (2013) (quoting *Gibbons*, 127 Nev. at 880, 266 P.3d at 628). In *Gibbons*, we held that a privilege log is usually how the governmental entity makes a showing that records should not be disclosed because they are confidential. 127 Nev. at 882-83, 266 P.3d at 629. While we declined to “spell out an exhaustive list of what such a log must contain or the precise form that this log must take,” “in most cases, in order to preserve a fair adversarial environment, this log should contain, at a minimum, a general factual description of each record withheld and a specific explanation for nondisclosure.” *Id.* at 883, 266 P.3d at 629. We additionally cautioned that “in this log, the state entity withholding the records need not specify its objections in such detail as to compromise the secrecy of the information.” *Id.* at 883 n.3, 266 P.3d at 629 n.3 (internal quotation omitted).

As the attorney-client privilege protects certain records by statute, *see* NRS 49.095, the district court was not obligated to conduct a balancing test for those records withheld or redacted pursuant that privilege.<sup>3</sup> *See PERS*, 129 Nev. at 837, 313 P.3d at 224; *see also* NRS 239.010(1). Instead, the district court was merely obligated to determine whether Henderson established that NRS 49.095 “declares the [withheld or redacted] record[s] confidential.” *PERS*, 129 Nev. at 837, 313 P.3d at 224. Below, the district court found that Henderson met this burden. The district court determined that the privilege log followed the guidelines articulated in *Gibbons*, and these guidelines are generally sufficient for the governmental entity to meet its burden in proving confidentiality. 127 Nev. at 883, 266 P.3d at 629. A review of the privilege log shows that Henderson considered individually each document withheld or redacted, described each in turn, and provided that the attorney-client privilege and the work-product privilege was its basis for withholding or redacting that document. As we cautioned in *Gibbons*, “in this log, the state entity withholding the records need not specify its objections in such detail as to compromise the secrecy of the information.” 127 Nev. at 883 n.3, 266 P.3d at 629 n.3 (internal quotation omitted). With this in mind, we disagree with LVRJ’s argument that Henderson’s proffered descriptions are overly conclusory. Accordingly, we conclude that the district court did not abuse its discretion in finding that these factual descriptions and explanations were sufficient


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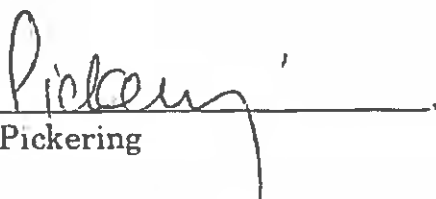
<sup>3</sup>Henderson organized its privilege log by grouping the attorney-client privilege and work-product privilege as one classification. Because LVRJ does not argue that the work-product privilege should be considered separately from attorney-client privilege or contest the designation as to any specific instances, we do not separate the two.

under *Gibbons* with respect to those documents withheld or redacted pursuant to the attorney-client privilege and work-product privilege.

However, we agree with LVRJ's argument in relation to those documents withheld or redacted pursuant to the deliberative process privilege. In Nevada, the deliberative process privilege is not statute based; instead, it is a creature of common law. *See DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 622, 6 P.3d 465, 469 (2000). Therefore, the district court was required to consider whether Henderson proved by a preponderance of the evidence "that its interest in nondisclosure clearly outweighs the public's interest in access." *PERS*, 129 Nev. at 837, 313 P.3d at 224 (internal quotation omitted). Below, the district court did not make this consideration, or consider the difference between documents redacted or withheld pursuant to the statute-based attorney-client privilege and those redacted or withheld pursuant to the common-law-based deliberative process privilege. Accordingly, we conclude that the district court abused its discretion in failing to consider the balancing test for these documents, and we reverse and remand for the district court to do so. Therefore, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 C.J.  
Gibbons

 J.  
Pickering

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

Cadish, J.  
Cadish

Silver, J.  
Silver

cc: Chief Judge, The Eighth Judicial District Court  
Hon. Robert E. Estes, Senior Judge  
Jay Young, Settlement Judge  
McLetchie Shell LLC  
Henderson City Attorney  
Bailey Kennedy  
Eighth District Court Clerk

**EXHIBIT C**

**EXHIBIT C**

## 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 Troser 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 Troser and Troser 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**

**EXHIBIT D**

  
CLERK OF THE COURT

PET  
MARGARET A. MCLEITCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
MCLEITCHIE SHELL LLC  
701 East Bridger Avenue, Suite. 520  
Las Vegas, NV 89101  
Telephone: (702)-728-5300  
Email: alina@nvlitigation.com  
Counsel for Petitioner

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,  
Petitioner,

vs.

CITY OF HENDERSON,  
Respondent.

Case No.: A-16-747289-W

Dept. No.: I

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

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

COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through its undersigned counsel, and hereby brings this Petition for Writ of Mandamus for declaratory and injunctive relief, ordering the City of Henderson to provide Petitioner access to public records. Petitioner also requests an award for all fees and costs associated with its efforts to obtain withheld and/or improperly redacted public records as provided for by Nev. Rev. Stat. § 239.011(2). The Review-Journal also respectfully asks that this matter be expedited pursuant to Nev. Rev. Stat. § 239.011(2).

Petitioner hereby alleges as follows:

**NATURE OF ACTION**

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



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

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

10                               **PARTIES**

11           4.       Petitioner, the Review-Journal, a daily newspaper, is the largest  
12 newspaper in Nevada. It is based at 1111 W. Bonanza Road, Las Vegas, Nevada 89125.

13           5.       Respondent City of Henderson ("Henderson") is an incorporated  
14 city in the County of Clark, Nevada. Henderson is subject to the Nevada State Public  
15 Records Act pursuant to Nev. Rev. Stat. § 239.005(b).

16                               **JURISDICTION AND VENUE**

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

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

22                               **STANDING**

23           8.       Petitioner has standing to pursue this expedited action pursuant to  
24 Nev. Rev. Stat. § 239.010 because public records it has requested from Henderson have  
25 been unjustifiably withheld and Henderson is improperly attempting to charge fees for the  
26 collection and review of potentially responsive documents, which is not permitted by law.

27       ///

28       ///

FACTS

9. On or around October 4, 2016, the Las Vegas Review-Journal sent Henderson a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking certain documents dated from January 1, 2016 pertaining to Trosper Communications and its principal, Elizabeth Trosper (the “Request”). A true and correct copy of the Request is attached as Exhibit 1. The request was directed to Henderson’s Chief Information Officer and the Director of Intergovernmental Relations. (*See* Exh. 1.)

10. Trosper Communications is a communications firm that has a contract with the City of Henderson and also has assisted with the campaigns of elected officials in Henderson.

11. On October 11, 2016, Henderson provided a partial response (“Response”), a true and correct copy of which is attached as Exhibit 2.

12. This Response fails to provide timely notice regarding any specific confidentiality or privilege claim that would limit Henderson in producing (or otherwise making available) all responsive documents.

13. Instead, in its Response, Henderson indicated that it was “in process of searching for and gathering responsive e-mails and other documents,” but that “[d]ue 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.” (Ex. 2.)

14. In addition to stating that it would need additional time, Henderson demanded payment of almost \$6,000.00 to continue its review. It explained the basis of the demand as follows:

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

1 (\$77.99) and multiplying that rate by the total number of hours it is  
2 estimated it will take to review the emails and other documents  
3 (approximately 5,566 emails divided by 75 emails per hour equals 74.21  
4 hours).

4 (Exh. 2 (emphasis added.))

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

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

13 (Id.)

14 16. A copy of Henderson's Public Records Policy, available online  
15 through Henderson's official city website, is attached as Exhibit 3. Part V of that policy,  
16 Henderson charges fees for any time spent in excess of thirty minutes "by City staff or any  
17 City contractor" to review the requested records "in order to determine whether any  
18 requested records are exempt from disclosure, to segregate exempt records, to supervise the  
19 requestor's inspection of original documents, to copy records, to certify records as true  
20 copies and to send records by special or overnight methods such as express mail or overnight  
21 delivery." (Ex. 3 at p. 3.)

22 17. Henderson informed the Review-Journal that it would not release  
23 any records until the total final fee was paid. The Response also states:

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

27 (Id.)

18. Even if the NPRA allowed for fees in this case, which it does not, the fee calculation used by Henderson is inconsistent with the statute on which it relies, which caps fees at fifty (50) cents a page. *See Nev. Rev. Stat. § 239.055(1).*

19. The Review-Journal is in an untenable position. Henderson has demanded a huge sum just to meaningfully respond to the Request, and has made clear that it may not even provide the Review-Journal with the documents it was seeking. Thus, Henderson has demanded Review-Journal to pay for review of documents it may never receive, without even knowing the extent to which Henderson would fulfill its request and actually comply with the NPRA.

20. Henderson's practice of charging impermissible fees deters NPRA requests from Review-Journal reporters.

#### LEGAL AUTHORITY

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

22. The Supreme Court of Nevada has repeatedly held that a court considering a claim of confidentiality regarding a public records request starts from "...the presumption that all government-generated records are open to disclosure." *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Reno Newspapers, Inc. v. Haley*, 126 Nev. 211, 234 P.3d 922 (2010); *DR Partners v. Board of County Comm'rs*, 116 Nev. 616, 6 P.3d 465 (2000). The Supreme Court of Nevada has further held that when refusing access to public records on the basis of claimed confidentiality, a government entity bears the burden of proving "...that its interest in

1 nondisclosure clearly outweighs the public's interest in access," and that the "...state entity  
2 cannot meet this burden with a non-particularized showing, or by expressing a hypothetical  
3 concern." *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880 266 P.3d 623, 628.

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

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

13 24. The NPRA does not allow for fees to be charged for a governmental  
14 entity's privilege review.

15 25. The only fees permitted are set forth in Nev. Rev. Stat. § 239.052  
16 and Nev. Rev. Stat. § 239.055(1).

17 26. Nev. Rev. Stat. § 239.052(1) provides that "a governmental entity  
18 may charge a fee for providing a copy of a public record." (Emphasis added.)

19 27. Nev. Rev. Stat. § 239.055(1), the provision Henderson is relying on  
20 for its demand for fees, allows for fees for "extraordinary use." It provides that "... if a  
21 request for a copy of a public record would require a governmental entity to make  
22 extraordinary use of its personnel or technological resources, the governmental entity may,  
23 in addition to any other fee authorized pursuant to this chapter, charge a fee not to exceed  
24 50 cents per page for such extraordinary use...."

25 28. Interpreting Nev. Rev. Stat. § 239.055 to limit public access by  
26 requiring requesters to pay public entities for undertaking a review for responsive  
27 documents and confidentiality would be inconsistent with the plain terms of the statute and  
28 with the mandate to interpret the NPRA broadly.

///

31. Henderson Municipal Code 2.47.085 indicates that if a public records request requires "extraordinary use of personnel or technology," Henderson charges \$19.38 to \$83.15 per hour (charged at the actual hourly rate of the position(s) required to conduct research. *See* HMC § 2.47.085. This conflicts with the NPRA's provision that a governmental entity may only "charge a fee not to exceed 50 cents per page" for "extraordinary use of its personnel or technological resources." Nev. Rev. Stat. § 239.055(1).

36. Respondent has violated the letter and the spirit of Nev. Rev. Stat. § 239.010 by refusing to even determine whether responsive documents exist and whether they are confidential unless the Las Vegas Review-Journal tenders an exorbitant sum.

1           37.     The NPRA does not permit the fees Henderson is demanding.

2           38.     The NPRA permits governmental entities to charge a fee of up to  
3 50 cents per page for “extraordinary use” of personnel or technology to produce copies of  
4 records responsive to a public records request. Nev. Rev. Stat. § 239.055(1). Henderson’s  
5 Public Records Policy, however, requires requesters to pay a fee of up to \$83.15 per hour  
6 just to find responsive records and review them for privilege.

7           39.     Henderson either does not understand its obligations to comply  
8 with the law or it is intentionally disregarding the plain terms of the NPRA to discourage  
9 reporters from accessing public records.

10          40.     Henderson is legally obligated to undertake a search and review of  
11 responsive —free of charge—when it receives an NPRA request. It also has the burden of  
12 establishing confidentiality, and is required to provide specific notice of any confidentiality  
13 claims within five days. Yet it has demanded payment for staff time and attempted to  
14 condition its compliance with NPRA on payment of an exorbitant sum.

15          41.     Henderson is demanding payment not for providing copies, but  
16 simply for locating documents responsive to a request—and then for having its attorneys  
17 determine whether documents should be withheld. Not only is this interpretation belied by  
18 the plain terms of the NPRA<sup>1</sup>, requiring a requester to pay a public entity’s attorneys to  
19 withhold documents would be an absurd result. See *S. Nevada Homebuilders Ass’n v. Clark*  
20 *Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (noting that courts must “interpret  
21 provisions within a common statutory scheme harmoniously with one another in accordance  
22 with the general purpose of those statutes and to avoid unreasonable or absurd results,  
23 thereby giving effect to the Legislature’s intent”) (quotation omitted); see also *Cal.*  
24 *Commercial Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003)  
25 (“When a statute is not ambiguous, this court has consistently held that we are not  
26 empowered to construe the statute beyond its plain meaning, unless the law as stated would

27 <sup>1</sup> See *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876 (2014) (“It is a fundamental canon of  
28 statutory construction” that, “unless otherwise defined, words will be interpreted as taking  
their ordinary, contemporary, common meaning.”) (quotation omitted).

1 yield an absurd result.”)

2 WHEREFORE, the Petitioner prays for the following relief:

- 3 1. That the court handle this matter on an expedited basis as mandated  
4 by NRS 239.011;
- 5 2. Injunctive relief ordering Defendant City of Henderson to  
6 immediately make available complete copies of all records requested;
- 7 3. Reasonable costs and attorney’s fees; and
- 8 4. Any further relief the Court deems appropriate.
- 9

10 DATED this the 29<sup>th</sup> day of November, 2016.

11 Respectfully submitted,

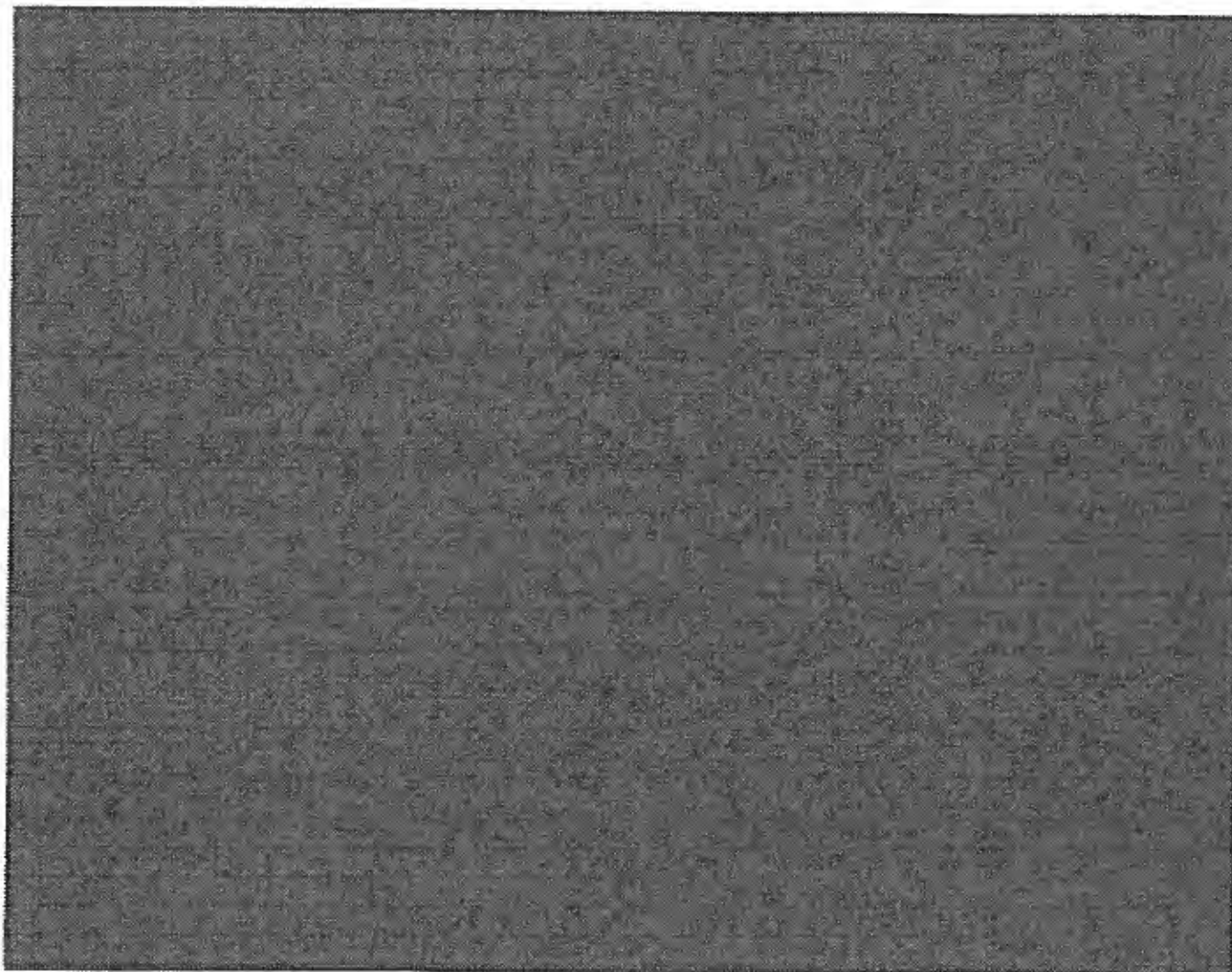
12  
13  
14 By: 

15 Margaret A. McLetchie, Nevada Bar No. 10931  
16 Alina M. Shell, Nevada Bar No. 11711  
17 MCLEATCHIE SHELL LLC  
18 701 East Bridger Ave., Suite 520  
19 Las Vegas, Nevada 89101  
20 (702) 728-5300  
21 maggie@nvlitigation.com  
22 Counsel for Petitioners  
23  
24  
25  
26  
27  
28

**MCLEATCHIE**  
ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702) 728-5300 (T) / (702) 423-8220 (F)  
WWW.NVLITIGATION.COM



# EXHIBIT 1



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

From: Natalie Bruzda <[nbuzda@reviewjournal.com](mailto:nbuzda@reviewjournal.com)>

Date: Tue, Oct 4, 2016 at 11:06 AM

Subject: Communications Department public records request

To: Laura Fucci <[Laura.Fucci@cityofhenderson.com](mailto:Laura.Fucci@cityofhenderson.com)>, [javier.Trujillo@cityofhenderson.com](mailto:javier.Trujillo@cityofhenderson.com)

Dear Ms. Fucci and Mr. Trujillo,

Attached to this email is a public records request. I also submitted the request through the Contact Henderson feature on the city's website.

Thank you.

Sincerely,

--

Natalie Bruzda  
Las Vegas Review-Journal  
[702-477-3897](tel:702-477-3897)  
[nataliebruzda](mailto:nataliebruzda)

—  
Natalie Bruzda  
Las Vegas Review-Journal  
702-477-3897  
@nataliebruzda

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](mailto: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](mailto: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.

///  
///  
///

**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 [nbruzda@reviewjournal.com](mailto:nbruzda@reviewjournal.com) and [tspousta@reviewjournal.com](mailto: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 2



Natalie Bruzda &lt;nbruzda@reviewjournal.com&gt;

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**Public Records Request regarding Trosper Communications**

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Brian Reeve &lt;Brian.Reeve@cityofhenderson.com&gt;

Tue, Oct 11, 2016 at 5 10 PM

To: "nbruzda@reviewjournal.com" &lt;nbruzda@reviewjournal.com&gt;, "tspousta@reviewjournal.com" &lt;tspousta@reviewjournal.com&gt;

Cc: Javier Trujillo &lt;Javier.Trujillo@cityofhenderson.com&gt;, David Cherry &lt;David.Cherry@cityofhenderson.com&gt;, Kristina Gilmore &lt;Kristina.Gilmore@cityofhenderson.com&gt;

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 Trosper and Trosper 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 3





## City of Henderson Public Records Policy

### I. Purpose.

The City of Henderson recognizes that Nevada Public Records Law (NRS 239.010-239.055) gives members of the public and media the right to inspect and copy certain public records maintained by the City.<sup>1</sup> The City also recognizes that certain records maintained by the City are exempt from public disclosure, or that disclosure may require balancing the right of the public to access the records against individual privacy rights, governmental interests, confidentiality issues and attorney/client privilege. Additionally, when the City receives a request to inspect or copy public records, costs are incurred by the City in responding to the request. The purpose of this Public Records Policy is (a) to establish an orderly and consistent procedure for receiving and responding to public records requests from the public and media; (b) to establish the basis for a fee schedule designed to reimburse the City for the actual costs incurred in responding to public records requests; and (c) to inform citizens and members of the media of the procedures and guidelines that apply to public records requests.

<sup>1</sup> The City is required to respond to public requests by Nevada Public Records Law. The Federal "Freedom of Information Act" (FOIA) does not apply to requests for the City's public records. FOIA only applies to requests for public records maintained by the federal government.

### II. Definitions.

Nevada Public Records law defines a public record as:

"A record of a local governmental entity that is created, received or kept in the performance of a duty and paid for with public money." (NAC 239.091)

A record may be handwritten, typed, photocopied, printed, or microfilmed, and exist in an electronic form such as e-mail or a word processing document, or other types of electronic recordings.

### III. Policy.

It is the policy of the City to respond in an orderly, consistent and reasonable manner in accordance with the Nevada Public Records Law to requests to inspect or receive copies of public records maintained by the City. The City must respond to the request within five (5) business days. This response must be one of the following: (a) providing the record for inspection or copying; (b) provide in writing the name and address of the government entity, if known, should the City not have legal custody of the record; (c) the date at which time the record will be available for inspection or copying; or (d) reason for denial of the request. Factors that may delay production of records include: the size and complexity of the request, available staff time and resources, and whether legal counsel needs to be consulted prior to disclosing the requested records.

Some public records requests are requests for information that would actually require the creation of a new public record. Public bodies are not obligated under Nevada's Public Records Law to create new public records where none exists in order to respond to requests for information. Although a public body may, if it chooses, create a new record to provide information, the public body does not have to create a new record and only has a duty to allow the inspection and copying of an existing public record.

A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of the City who has legal custody or control of a public record shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

#### IV. Procedure.

With the exception of records listed in section VI, the following procedures must be followed in submitting and responding to requests to inspect or receive copies of public records maintained by the City:

- A. Records Requests by general public. Public records requests may be made via Contact Henderson. Click on Contact Henderson via the City of Henderson webpage ([www.cityofhenderson.com](http://www.cityofhenderson.com)) then select "Records Requests" and the appropriate category; then click "Next". Follow the subsequent steps to submit your case. If you are unsure which category to select, please choose "Other." Submitting your request in writing helps to reduce confusion about the information being requested and effectively communicating your request will help ensure a timely response. Requests should identify as specifically as possible the type of record(s), subject matter, approximate date(s), and the desired method of delivery (email, hardcopies, etc.). Additionally, public records requests may be made by calling the City Clerk's Office at (702) 267-1419, or by writing or visiting the City Clerk's Office at City Hall, 240 Water St., Henderson, Nevada.

Records Requests by media. Public records requests from members of the media may be made via Contact Henderson. Click on Contact Henderson via the City of Henderson webpage ([www.cityofhenderson.com](http://www.cityofhenderson.com)) then select "Records Requests" and click on the "Media" category; then click "Next". Follow the subsequent steps to submit your case. Submitting your request in writing helps to reduce confusion about the information being requested and effectively communicating your request will help ensure a timely response. Requests should identify as specifically as possible the type of record(s), subject matter, approximate date(s), and the desired method of delivery (email, hardcopies, etc.). Additionally, public records requests may be made by calling the office of Communications and Council Support at (702) 267-2020.

- B. Processing a Public Records Request. Upon receipt of a public records request:
- a. Staff shall determine resources required to provide all requested records and prepare an estimate of fees if applicable. Staff shall contact the requestor through the Contact Henderson system prior to five (5) business days. If applicable, the estimate of fees must be provided to the requestor at this time. Depending on the scope and magnitude of the records request, a 50 percent deposit of fees prior to the start of research may be required. If a deposit is required or an estimate of fees is provided, staff shall wait for

requestor approval of the fee estimate prior to continuing work. The remainder of fees must be paid before records are delivered. Throughout the process of completing the request and prior to resolving the case, staff shall note all relevant communications with the requestor in the Contact Henderson case.

- b. If staff are unable to provide the records within five days, staff shall provide the requestor with notice of one of the following:
  - i. If the department does not have legal custody or control of the requested record, staff shall communicate to the requestor the name and address of the governmental entity that has legal custody or control of the record, if known.
  - ii. If the record has been destroyed, staff shall communicate so to the requestor and cite approved records retention schedule.
  - iii. If the department is unable to make the record available by the end of the fifth business day after receiving the request, staff shall specify to the requestor a date and time the record will be available.
  - iv. If the record is confidential, and access is denied, staff shall communicate this to the requestor and cite the specific statute or other legal authority that declares the record to be confidential.

V. Fees (HMC 2.47.0825).

The fees for responding to a public records request will be those established in the fee schedule adopted by the City which is in effect at the time the request is submitted. The fees will be reasonably calculated to reimburse the City for its actual costs in making the records available and may include:

- A. Charges for the time spent, in excess of thirty (30) minutes, by City staff or any City contractor to locate the requested public records, to review the records in order to determine whether any requested records are exempt from disclosure, to segregate exempt records, to supervise the requestor's inspection of original documents, to copy records, to certify records as true copies and to send records by special or overnight methods such as express mail or overnight delivery.
- B. A per page charge for photocopies of requested records.
- C. A per item charge for providing CDs, audiotapes, or other electronic copies of requested records.

The current fee schedule is located on the City's website at <http://www.cityofhenderson.com/docs/default-source/city-clerk-docs/city-wide-public-records-and-document-services-general-fee-table08-14.pdf?sfvrsn=2>

Staff will prepare an estimate of the charges that will be incurred to respond to a public records request. Prepayment of the estimated charges or a 50 percent deposit may be required. Unless otherwise prohibited by law, the City may, at the City's discretion, furnish copies of requested records without charge or at a reduced fee if the City determines that the waiver or reduction of fees is in the public interest.

VI. Public Records Exempt from Disclosure.

There are types of public records that are exempt from disclosure. A few specific exemptions worth special notice are as follows:

- A. **Personal Identifying Information – NRS 239B.030(5a).** Each governmental agency shall ensure that any personal information contained in a document that has been recorded, filed or otherwise submitted to the governmental agency, which the governmental agency continues to hold, is maintained in a confidential manner if the personal information is required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant.
- B. **Bids and Proposals under Negotiation or Evaluation – NRS 332.061(2).** Bids which contain a provision that requires negotiation or evaluation may not be disclosed until the bid is recommended for award of a contract. Upon award of the contract, all of the bids, successful or not, with the exception of proprietary/confidential information, are public record and copies shall be made available upon request.
- C. **Bids and Proposals Containing Proprietary Information – NRS 332.061(1).** Proprietary information does not constitute public information and is confidential.
- D. **Recreation Program Registration – NRS 239.0105.** Records of recreational facility/activity registration where the name, address, and telephone number of the applicant are collected are confidential.
- E. **Emergency Action Plans and Infrastructure Records – NRS 239C.210(2).** Records detailing the City's Emergency Response Plans and critical infrastructure are confidential.
- F. **Employee Personnel and Medical Records –HIPAA 45 CFR Part 160 and Part 164.** All employee personnel and medical records are confidential.
- G. **Databases Containing Electronic Mail Addresses or Telephone Numbers – NRS 239B.040.** Electronic mail addresses and/or telephone numbers collected for the purpose of or in the course of communicating with the city may be maintained in a database. This database is confidential in its entirety, is not public record, and it must not be disclosed in its entirety as a single unit; however, the individual electronic mail address or telephone number of a person is not confidential and may be disclosed individually.
- H. **Medical Records – Health Insurance Portability and Accountability Act (HIPAA 45 CFR Part 160 and Part 164).** Medical records collected during medical transports may only be disclosed to the patient or as authorized by the patient.
- I. **Attorney/Client Privileged Records –RPC 1.6.** A lawyer shall not reveal information relating to representation of a client.
- J. **Restricted Documents – NRS 239C.220.** Blueprints or plans of schools, places of worship, airports other than an international airport, gaming establishments, governmental buildings or any other building or facility which is likely to be targeted for a terrorist attack are considered

"Restricted Documents." The City also classifies Civil Improvement Plans as restricted documents. These plans can only be inspected after supplying: (a) name; (b) a copy of a driver's license or other photographic identification that is issued by a governmental entity; (c) the name of employer, if any; (d) citizenship; and (e) a statement of the purpose for the inspection.

Individuals must meet one of the following criteria to receive a copy of a restricted document: upon the lawful order of a court of competent jurisdiction; as is reasonably necessary in the case of an act of terrorism or other related emergency; to protect the rights and obligations of a governmental entity or the public; upon the request of a reporter or editorial employee who is employed by or affiliated with a newspaper, press association or commercially operated and federally licensed radio or television station and who uses the restricted document in the course of such employment or affiliation; or upon the request of a registered architect, licensed contractor or a designated employee of any such architect or contractor who uses the restricted document in his or her professional capacity.

- K. **Records Detailing Investigations or Relating to Litigation or Potential Litigation –Donrey v. Bradshaw.** Records involving criminal investigations, litigation or potential litigation are considered confidential.
- L. **Local Ethics Committee Opinions – NRS 281A.350.** Each request for an opinion submitted to a specialized or local ethics committee, each hearing held to obtain information on which to base an opinion, all deliberations relating to an opinion, each opinion rendered by a committee and any motion relating to the opinion are confidential unless:
  - a. The public officer or employee acts in contravention of the opinion; or
  - b. The requester discloses the content of the opinion.
- M. **Economic Development Initial Contact and Research Records (NRS 268.910)** An organization for economic development formed by one or more cities shall, at the request of a client, keep confidential any record or other document in its possession concerning the initial contact with and research and planning for that client. If such a request is made, the executive head of the organization shall attach to the file containing the record or document a certificate signed by the executive head stating that a request for confidentiality was made by the client and showing the date of the request.

Except as otherwise provided in NRS 239.0115, records and documents that are confidential pursuant to the above 1 remain confidential until the client:

  - a. Initiates any process regarding the location of his or her business in a city that formed the organization for economic development which is within the jurisdiction of a governmental entity other than the organization for economic development; or
  - b. Decides to locate his or her business in a city that formed the organization for economic development.

VII. **Copyrighted Material.**

If the City maintains public records containing copyrighted material, the City will permit the person making the request to inspect the copyrighted material, and may allow limited copying of such material if allowed under Federal copyright law. The City may require written consent from the copyright holder or an opinion from the person's legal counsel before allowing copying of such materials.

**EXHIBIT E**

**EXHIBIT E**

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 49.095	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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
193		Draft Trosper contract 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	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	

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 Trosper 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 Trosper 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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
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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 Trosper 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 Trosper 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 Trosper contract terms	Attorney Client Privilege/Work Product Doctrine	NRS 49.095	
647		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
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 Mumane (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. 616 (2000)	
1363	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (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. 616 (2000)	
1364	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (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. 616 (2000)	
1365	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (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. 616 (2000)	
1366	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (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. 616 (2000)	
1367	David Cherry (PIO) Liz Trosper (agent), Robert Mumane (City Manager, Javler 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. 616 (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 49.095	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 49.095	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 49.095	Redaction
2485	Josh Reid (attorney) and Geri 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 49.095	Redaction
2487	Josh Reid (attorney) and Geri 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 49.095	Redaction
2491	Josh Reid (attorney) and Geri 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 49.095	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
3862	David Cherry (PIO) Liz Trosper (agent), Robert Murnane (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. 616 (2000)	
3864	David Cherry (PIO) Liz Trosper (agent), Robert Murnane (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. 616 (2000)	
3866	David Cherry (PIO) Liz Trosper (agent), Robert Murnane (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. 616 (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 49.095	
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 49.095	
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 49.095	
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 49.095	
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 49.095	
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 49.095	
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 49.095	

Doc #	Email senders and recipients	Description	Basis 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	
4944	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
4954	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
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	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	
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	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 Trosper 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 Trospen 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 Trospen 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 Trospen 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 Trospen 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 Trospen 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	
7496	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 Trospen 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	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	
7678		Correspondence between employee and supervisor relating to personal medical information of employee	Confidential personal medical information	Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990)	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 Shearin (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's of Clark County, 116 Nev. 616 (2000)	

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 Com'rs of Clark County, 116 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	
12328	Sally Galali (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), Shari 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), Shari 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 F**

**EXHIBIT F**

  
CLERK OF THE COURT

PET  
MARGARET A. MCLEITCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
MCLEITCHIE SHELL LLC  
701 East Bridger Avenue, Suite. 520  
Las Vegas, NV 89101  
Telephone: (702)-728-5300  
Email: alina@nvlitigation.com  
*Counsel for Petitioner*

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,  
Petitioner,  
vs.

CITY OF HENDERSON,  
Respondent.

Case No.: A-16-747289-W

Dept. No.: XVIII

**AMENDED PUBLIC RECORDS  
ACT APPLICATION PURSUANT  
TO NRS § 239.001/ PETITION FOR  
WRIT OF MANDAMUS/  
APPLICATION FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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

COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"),  
by and through its undersigned counsel, and hereby brings this Amended Application  
Pursuant to Nev. Rev. Stat. § 239.011, Petition for Writ of Mandamus, and Application for  
Declaratory and Injunctive Relief ("Amended Petition"), ordering the City of Henderson to  
provide Petitioner access to public records, and providing for declaratory and injunctive  
relief. Petitioner also requests an award for all fees and costs associated with its efforts to  
obtain withheld and/or improperly redacted public records as provided for by Nev. Rev.  
Stat. § 239.011(2). Further, the Review-Journal respectfully asks that this matter be  
expedited pursuant to Nev. Rev. Stat. § 239.011(2).

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**Petitioner hereby alleges as follows:**

### NATURE OF ACTION

1. Petitioner brings this application for relief with regards to Henderson's failure to comply with Nevada's Public Records Act pursuant to Nev. Rev. Stat. § 239.011. *See also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630, n.4 (2011).

2. Petitioner also brings this application for declaratory relief pursuant to Nev. Rev. Stat. § 30.30, § 30.070, and § 30.100.

3. Petitioner also requests injunctive relief pursuant to Nev. Rev. Stat. § 33.010.

4. The Review Journal's application to this court is the proper means to secure Henderson's compliance with the Nevada Public Records Act. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630 n.4 (2011); *see also DR Partners v. Bd. Of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)) (a writ of mandamus is the appropriate procedural mechanism through which to compel compliance with a request issued pursuant to the NPRA); *see also* Nev. Rev. Stat. § 34.160, § 34.170.

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

## PARTIES

6. Petitioner, the Review-Journal, a daily newspaper, is the largest newspaper in Nevada. It is based at 1111 W. Bonanza Road, Las Vegas, Nevada 89125.

7. Respondent City of Henderson ("Henderson") is an incorporated city in the County of Clark, Nevada. Henderson is subject to the Nevada State Public Records Act pursuant to Nev. Rev. Stat. § 239.005(b).

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## JURISDICTION AND VENUE

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

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

10. This court also has jurisdiction and the power to issue declaratory relief pursuant to Nev. Rev. Stat. § 30.030, which provides in pertinent part that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed...”

## STANDING

11. Petitioner has standing to pursue this expedited action pursuant to Nev. Rev. Stat. § 239.010 because public records it has requested from Henderson have been unjustifiably withheld and Henderson is improperly attempting to charge fees for the collection and review of potentially responsive documents, which is not permitted by law.

## FACTS

12. On or around October 4, 2016, the Las Vegas Review-Journal sent Henderson a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking certain documents dated from January 1, 2016 pertaining to Trospen Communications and its principal, Elizabeth Trospen (the “Request”). A true and correct copy of the Request is attached as Exhibit 1. The request was directed to Henderson’s Chief Information Officer and the Director of Intergovernmental Relations. (*See* Exh. 1.)

13. Trospen Communications is a communications firm that has a contract with the City of Henderson and also has assisted with the campaigns of elected officials in Henderson.

14. On October 11, 2016, Henderson provided a partial response (“Response”), a true and correct copy of which is attached as Exhibit 2.

15. This Response fails to provide timely notice regarding any specific



1 confidentiality or privilege claim that would limit Henderson in producing (or otherwise  
2 making available) all responsive documents.

3 16. Instead, in its Response, Henderson indicated that it was "in  
4 process of searching for and gathering responsive e-mails and other documents," but that  
5 "[d]ue to the high number of potentially responsive documents that meet your search criteria  
6 (we have approximately 5,566 emails alone) and the time required to review them for  
7 privilege and confidentiality, we estimate that your request will be completed in three weeks  
8 from the date we commence our review." (Exh. 2.)

9 17. In addition to stating that it would need additional time, Henderson  
10 demanded payment of almost \$6,000.00 to continue its review. It explained the basis of the  
11 demand as follows:

12 The documents you have requested will require extraordinary research and  
13 use of City personnel. Accordingly, pursuant to NRS 239.052, NRS  
14 239.055, and Henderson Municipal Code 2.47.085, **we estimate that the**  
15 **total fee to complete your request will be \$5,787.89.** This is calculated  
16 by averaging the actual hourly rate of the two Assistant City Attorneys  
17 who will be undertaking the review of potentially responsive documents  
18 (\$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).

19 (Exh. 2 (emphasis added).)

20 18. Thus, Henderson has improperly demanded that the Review-  
21 Journal pay its assistant city attorneys to review documents to determine whether they could  
22 even be released. The Response made clear that Henderson would not continue searching  
23 for responsive documents and reviewing them for privilege without payment, and demanded  
24 a "deposit" of \$2,893.94, explaining that this was its policy:

25 Under the City's Public Records Policy, a fifty percent deposit of fees is  
26 required before we can start our review. Therefore, please submit a check  
27 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.**

28 (*Id.* (emphasis added).)

1           19. A copy of Henderson's Public Records Policy (the "Policy"),  
2 available online through Henderson's official city website, is attached as Exhibit 3. Part V  
3 of that policy, Henderson charges fees for any time spent in excess of thirty minutes "by  
4 City staff or any City contractor" to review the requested records "in order to determine  
5 whether any requested records are exempt from disclosure, to segregate exempt records, to  
6 supervise the requestor's inspection of original documents, to copy records, to certify  
7 records as true copies and to send records by special or overnight methods such as express  
8 mail or overnight delivery." (Exh. 3 at p. 3.)

9           20. Henderson informed the Review-Journal that it would not release  
10 any records until the total final fee was paid. The Response also states:

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

14 (*Id.*)

15           21. Even if the NPRA allowed for fees in this case, which it does not,  
16 the fee calculation used by Henderson is inconsistent with the statute on which it relies, which  
17 caps fees at fifty (50) cents a page. *See* Nev. Rev. Stat. § 239.055(1).

18           22. The Review-Journal is in an untenable position. Henderson has  
19 demanded a huge sum just to meaningfully respond to the Request, and has made clear that  
20 it may not even provide the Review-Journal with the documents it was seeking. Thus,  
21 Henderson has demanded Review-Journal to pay for review of documents it may never  
22 receive, without even knowing the extent to which Henderson would fulfill its request and  
23 actually comply with the NPRA.

24           23. Henderson's practice of charging impermissible fees deters NPRA  
25 requests from Review-Journal reporters.

26           24. On November 29, 2016, after an informal effort to resolve this  
27 dispute with Henderson failed, the Review-Journal initiated this action and filed a Petition  
28 for Writ of Mandamus with this Court.

1                   25. Subsequently, counsel for the Review-Journal and attorneys from  
2 the City Attorneys' Office conferred extensively regarding the Review-Journal's NPRA  
3 request.

4                   26. On December 20, 2016, Henderson provided the Review-Journal  
5 with an initial log of documents it was redacting or withholding. (A true and correct copy  
6 attached as Exh. 4.)

7                   27. Henderson also agreed to make the requested documents available  
8 for inspection free of charge. The subsequent inspection by Review-Journal reporter Natalie  
9 Bruzda took place on over the course of several days.

10                  28. After requests from the undersigned, Henderson provided an  
11 additional privilege log on January 9, 2017. (A true and correct copy attached as Exh. 5) In  
12 that log, Henderson provided a description of the documents being withheld or redacted,  
13 and the putative basis authority for withholding or redaction. (*Id.*) The log also indicated  
14 who sent and received the emails responsive to the NPRA request, but in instances where  
15 the sender or recipient was a city attorney or legal staff, the log did not identify the attorney  
16 or staff person. (*Id.*)

17                  29. Undersigned counsel for the Review-Journal, after reviewing the  
18 privilege log provided on January 9, 2017, asked Henderson to revise its log to include the  
19 names of the attorneys and legal staff, and to also include the identities of all recipients of  
20 the communications.

21                  30. On January 10, 2017, Henderson provided the Review-Journal with  
22 a revised privilege log (the "Revised Log", a true and correct copy attached as Exh. 6), as  
23 well as a number of redacted documents corresponding to the log (True and correct copies  
24 attached as Exh. 7). In the Revised Log, Henderson included a description of the senders  
25 and recipients of withheld or redacted documents. As discussed below, however,  
26 Henderson's stated reasons for withholding or redacting the documents requested by the  
27 Review-Journal are insufficient or inappropriate.

28 ///

## LEGAL AUTHORITY

### General

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

### Fees

32. The NPRA does not allow for fees to be charged for a governmental entity's privilege review.

33. The only fees permitted are set forth in Nev. Rev. Stat. § 239.052 and Nev. Rev. Stat. § 239.055(1).

34. Nev. Rev. Stat. § 239.052(1) provides that "a governmental entity may charge a fee for providing a copy of a public record." (Emphasis added.)

35. Nev. Rev. Stat. § 239.055(1), the provision Henderson is relying on for its demand for fees, does allow for fees for "extraordinary use, but it limits its application to extraordinary circumstances and caps fees at 50 cents per page." It provides that "... if a request for a copy of a public record would require a governmental entity to make extraordinary use of its personnel or technological resources, the governmental entity may, in addition to any other fee authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such extraordinary use...."

36. Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring requesters to pay public entities for undertaking a review for responsive documents and confidentiality would be inconsistent with the plain terms of the statute and with the mandate to interpret the NPRA broadly.

1                   37. Further, allowing a public entity to charge a requester for legal fees  
2 associated with reviewing for confidentiality is impermissible because “[t]he public official  
3 or agency bears the burden of establishing the existence of privilege based upon  
4 confidentiality.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 621, 6  
5 P.3d 465, 468 (2000).

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

9                   39. Henderson Municipal Code 2.47.085 indicates that if a public  
10 records request requires “extraordinary use of personnel or technology,” Henderson charges  
11 \$19.38 to \$83.15 per hour (charged at the actual hourly rate of the position(s) required to  
12 conduct research. *See* HMC § 2.47.085. This conflicts with the NPRA’s provision that a  
13 governmental entity may only “charge a fee not to exceed 50 cents per page” for  
14 “extraordinary use of its personnel or technological resources.” Nev. Rev. Stat. §  
15 239.055(1)).

16 **Claims of Confidentiality; Burden to Establish Confidentiality**

17                   40. The Supreme Court of Nevada has repeatedly held that a court  
18 considering a claim of confidentiality regarding a public records request starts from “...the  
19 presumption that all government-generated records are open to disclosure.” *Reno*  
20 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Reno*  
21 *Newspapers, Inc. v. Haley*, 126 Nev. 211, 234 P.3d 922 (2010); *DR Partners v. Board of*  
22 *County Comm’rs*, 116 Nev. 616, 6 P.3d 465 (2000). The Supreme Court of Nevada has  
23 further held that when refusing access to public records on the basis of claimed  
24 confidentiality, a government entity bears the burden of proving “...that its interest in  
25 nondisclosure clearly outweighs the public’s interest in access,” and that the “...state entity  
26 cannot meet this burden with a non-particularized showing, or by expressing a hypothetical  
27 concern.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880 266 P.3d 623, 628.

28                   41. The NPRA provides that a governmental entity must provide timely

1 and specific notice if it is denying a request because the entity determines the documents  
2 sought are confidential. Nev. Rev. Stat. § 239.0107(1)(d) states that, within five (5) business  
3 days of receiving a request,

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

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

22 **CLAIM FOR RELIEF: DECLARATORY AND INJUNCTIVE RELIEF**

23 43. Petitioner re-alleges and incorporates by reference each and every  
24 allegation contained in paragraphs 1-42 with the same force and effect as if fully set forth  
25 herein.

26 44. Respondent has violated the letter and the spirit of Nev. Rev. Stat.  
27 § 239.010 by refusing to even determine whether responsive documents exist and whether  
28 they are confidential unless the Las Vegas Review-Journal tenders an exorbitant sum.

1 45. The NPRA does not permit the fees Henderson is demanding.

2 46. The NPRA permits governmental entities to charge a fee of up to  
3 50 cents per page for “extraordinary use” of personnel or technology to produce copies of  
4 records responsive to a public records request. Nev. Rev. Stat. § 239.055(1). Henderson’s  
5 Public Records Policy, however, requires requesters to pay a fee of up to \$83.15 per hour  
6 just to find responsive records and review them for privilege.

7 47. Henderson either does not understand its obligations to comply  
8 with the law or it is intentionally disregarding the plain terms of the NPRA to discourage  
9 reporters from accessing public records.

10 48. Henderson is legally obligated to undertake a search and review of  
11 responsive —free of charge—when it receives an NPRA request. It also has the burden of  
12 establishing confidentiality, and is required to provide specific notice of any confidentiality  
13 claims within five days. Yet it has demanded payment for staff time and attempted to  
14 condition its compliance with NPRA on payment of an exorbitant sum.

15 49. Henderson demands payment not for providing copies, but simply  
16 for locating documents responsive to a request—*and then for having its attorneys determine*  
17 *whether documents should be withheld.* Not only is this interpretation belied by the plain  
18 terms of the NPRA<sup>1</sup>, requiring a requester to pay a public entity’s attorneys to withhold  
19 documents would be an absurd result. *See S. Nevada Homebuilders Ass’n v. Clark Cty.*, 121  
20 Nev. 446, 449, 117 P.3d 171, 173 (2005) (noting that courts must “interpret provisions  
21 within a common statutory scheme harmoniously with one another in accordance with the  
22 general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving  
23 effect to the Legislature’s intent”) (quotation omitted); *see also Cal. Commercial Enters. v.*  
24 *Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003) (“When a statute is not  
25 ambiguous, this court has consistently held that we are not empowered to construe the  
26 statute beyond its plain meaning, unless the law as stated would yield an absurd result.”)

27 <sup>1</sup> *See Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876 (2014) (“It is a fundamental canon of  
28 statutory construction” that, “unless otherwise defined, words will be interpreted as taking  
their ordinary, contemporary, common meaning.”) (quotation omitted).

1           50. Declaratory relief is appropriate to address, *inter alia*, the rights of  
2 the parties and the validity of Henderson Municipal Code 2.47.085 and the Policy. Nev.  
3 Rev. Stat. § 30.030.; *see also* Nev. Rev. Stat. § 30.040; Nev. Rev. Stat. § 30.070, and Nev.  
4 Rev. Stat. § 30.100.

5           51. Nev. Rev. Stat. § 33.010 also authorizes this Court to grant  
6 injunctive relief under the following circumstances, which are present in this case:

7           When it shall appear by the complaint that the plaintiff is entitled to the  
8 relief demanded, and such relief or any part thereof consists in restraining  
9 the commission or continuance of the act complained of, either for a  
10 limited period or perpetually; 2. When it shall appear by the complaint or  
11 affidavit that the commission or continuance of some act, during the  
12 litigation, would produce great or irreparable injury to the plaintiff, and 3.  
13 When it shall appear, during the litigation, that the defendant is doing or  
14 threatens, or is about to do, or is procuring or suffering to be done, some  
15 act in violation of the plaintiff's rights respecting the subject of the action,  
16 and tending to render the judgment ineffectual.

#### 17           CLAIM FOR RELIEF: WRIT OF MANDAMUS

18           52. Petitioner re-alleges and incorporates by reference each and every  
19 allegation contained in paragraphs 1-51 with the same force and effect as if fully set forth  
20 herein.

21           53. A writ of mandamus is necessary to compel Respondent's  
22 compliance with the NPRA. Henderson is continuing to refuse to make documents available  
23 for either inspection or copying without having met its burden under the NPRA. The  
24 Review-Journal should be provided with the records it has requested regarding Trospen  
25 Communications pursuant to the NPRA. The records sought are subject to disclosure, and  
26 Respondent has not met its burden of establishing otherwise. The Revised Log does not  
27 satisfy Respondent's burden

28           54. Thus, a writ of mandate should issue requiring Henderson to make  
the documents available in their entirety and without redactions (other than documents  
which have been redacted to protect personal information, which the Review-Journal does  
not object to). *See Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)) (a



writ of mandamus is the appropriate procedural remedy to compel compliance with the NPRA); *see also* Nev. Rev. Stat. § 34.160, § 34.170.

WHEREFORE, the Petitioner prays for the following relief:

1. That the court handle this matter on an expedited basis as mandated by NRS 239.011;

2. That this court issue a writ of mandamus requiring that Defendant City of Henderson immediately make available complete copies of all records requested but previously withheld and/or redacted (other than documents that were redacted to protect personal identifiers);

3. Injunctive relief prohibiting Defendant City of Henderson from applying the provisions contained in Henderson Municipal Code 2.47.085 and the Policy to demand or charge fees in excess of those permitted by the NPRA;

4. Declaratory relief stating that Henderson Municipal Code 2.47.085 and the Policy are invalid to the extent they provide for fees in excess of those permitted by the NPRA;

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5. Declaratory relief limiting Henderson to charging fees for  
“extraordinary fees, in those circumstances that permit it, to fifty cents per page and limiting  
Henderson from demanding fees for attorney review.

6. Reasonable costs and attorney’s fees; and

7. Any further relief the Court deems appropriate.

DATED this the 8<sup>th</sup> day of February, 2017.

Respectfully submitted,

By: 

Margaret A. McLetchie, Nevada Bar No. 10931  
Alina M. Shell, Nevada Bar No. 11711  
MCLETCHE SHELL LLC  
701 East Bridger Ave., Suite 520  
Las Vegas, Nevada 89101  
(702) 728-5300  
maggie@nvlitigation.com  
*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 8<sup>th</sup> day of February, 2017, I did cause a true copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS/ APPLICATION FOR DECLARATORY AND INJUNCTIVE RELIEF EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 in *Las Vegas Review-Journal. v. City of Henderson.*, Clark County District Court Case No. A-16-747289-W, to be served electronically using the Wiznet Electronic Service system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 8<sup>th</sup> day of February, 2017, I mailed a true and correct copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS/ APPLICATION FOR DECLARATORY AND INJUNCTIVE RELIEF EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 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  
*Counsel for Respondent, City of Henderson*

  
An Employee of MCLEITCH SHELL LLC

**EXHIBIT G**

**EXHIBIT G**



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Plaintiff,

vs.

CITY OF HENDERSON,

Defendant.

CASE NO. A-16-747289-W

DEPT. XVIII

BEFORE THE HONORABLE J. CHARLES THOMPSON, DISTRICT COURT JUDGE

THURSDAY, MARCH 30, 2017

**TRANSCRIPT OF PROCEEDINGS RE:**

**PETITION FOR WRIT OF MANDAMUS**

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

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

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. McLEITCHIE: Well, Your Honor, the usual practice --

3 THE COURT: Do you want that?

4 MS. McLEITCHIE: 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. McLEITCHIE: -- 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. McLEITCHIE: 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. McLEITCHIE: 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. McLEITCHIE: It's a -- it's a --

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

24 MS. McLEITCHIE: -- 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. McLEITCHIE: Correct, Your Honor.

5 THE COURT: Okay.

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

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

8 MS. SHELL: Yeah.

9 MS. McLEITCHIE: -- 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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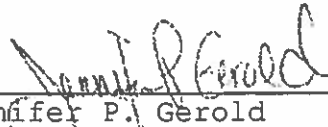
MR. KENNEDY: Surely.

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.

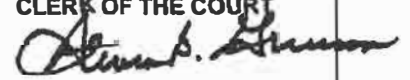
  
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Jennifer P. Gerold  
Court Recorder/Transcriber

**EXHIBIT H**

**EXHIBIT H**

ORIGINAL

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Steven D. Grierson  
CLERK OF THE COURT



1 **ORDR**  
2 JOSH M. REID, City Attorney  
3 Nevada Bar No. 7497  
4 **CITY OF HENDERSON**  
5 240 Water Street, MSC 144  
6 Henderson, Nevada 89015  
7 Telephone: 702.267.1200  
8 Facsimile: 702.267.1201  
9 Josh.Reid@cityofhenderson.com

6 DENNIS L. KENNEDY  
7 Nevada Bar No. 1462  
8 **BAILEY ♦ KENNEDY**  
9 8984 Spanish Ridge Avenue  
10 Las Vegas, Nevada 89148-1302  
11 Telephone: 702.562.8820  
12 Facsimile: 702.562.8821  
13 DKennedy@BaileyKennedy.com

10 *Attorneys for Respondent*  
11 **CITY OF HENDERSON**

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **LAS VEGAS REVIEW-JOURNAL,**

15 **Petitioner,**

16 **vs.**

17 **CITY OF HENDERSON,**

18 **Respondent.**

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

**ORDER**

20  
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**  
8984 SPANISH RIDGE AVENUE  
LAS VEGAS, NEVADA 89148-1302  
702.562.8820

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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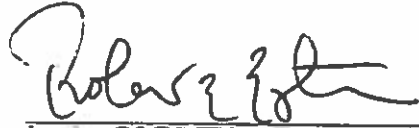
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BAILEY ♦ KENNEDY  
8984 SPANISH RIDGE AVENUE  
LAS VEGAS, NEVADA 89148-1102  
702.562.8820

1  
2 5. CONCLUSION. Based on the foregoing, LVRJ's request for a writ of mandamus,  
3 injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition  
4 is hereby DENIED.

5 DATED this \_\_\_\_ day of April, 2017.



9 Submitted by:

10 BAILEY ♦ KENNEDY

Approved as to Form and Content:

MCLETCHIE SHELL LLC

12 By: 

13 DENNIS L. KENNEDY

By: \_\_\_\_\_

ALINA SHELL  
MARGARET A. MCLETCHIE

14 and

15 JOSH M. REID, City Attorney  
16 CITY OF HENDERSON

*Attorneys for Petitioner*  
LAS VEGAS REVIEW JOURNAL

17 *Attorneys for Respondent*  
18 CITY OF HENDERSON  
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**EXHIBIT I**

**EXHIBIT I**

DISTRICT COURT

CIVIL DIVISION

LAS VEGAS REVIEW-JOURNAL,

Plaintiff,

vs.

CITY OF HENDERSON,

Defendant.

)

)

) CASE NO: A-16-747289-W

) DEPT NO: 18

)

) Motion for Attorneys Fees

) and Costs

)

)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARK B. BAILUS

Thursday, August 3, 2017  
10:01 a.m.

Job No. 409053

Reported by: Andrea Martin, CSR, RPR, NV CCR 887  
Certified Realtime Reporter (NCRA)

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DISTRICT COURT  
CIVIL DIVISION

LAS VEGAS REVIEW-JOURNAL,

Plaintiff,

vs.

CITY OF HENDERSON,

Defendant.

)  
)  
) CASE NO: A-16-747289-W  
) DEPT NO: 18  
)  
) Motion for Attorneys Fees  
) and Costs  
)  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HELD BEFORE THE HONORABLE MARK B. BAILUS, in the  
Civil Division of the District Court, Department 18,  
Phoenix Building, Courtroom 110, 330 South  
Third Street, Las Vegas, Nevada, beginning at  
10:01 a.m., and ending at 10:27 a.m., on Thursday,  
August 3, 2017, before Andrea N. Martin, Certified  
Realtime Reporter, Nevada Certified Shorthand  
Reporter No. 887.

Job No. 409053  
Reported by: Andrea Martin, CSR, RPR, NV CCR 887  
Certified Realtime Reporter (NCRA)

1 APPEARANCES:

2

For Plaintiff, Las Vegas Review-Journal:

3

McLEITCHIE SHELL, LLC  
BY: ALINA M. SHELL, ESQ.  
701 East Bridger Avenue, Suite 520  
Las Vegas, Nevada 89101  
TEL: (702) 728-5300  
FAX: (702) 425-8220  
E-mail: alina@nvlitigation.com

7

8 For Defendant, City of Henderson:

9

BAILEY KENNEDY, LLP  
BY: DENNIS L. KENNEDY, ESQ.  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
TEL: (702) 562-8820  
FAX: (702) 562-8821  
E-mail: DKennedy@baileykennedy.com

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CITY OF HENDERSON  
CITY ATTORNEY'S OFFICE  
BY: BRIAN R. REEVE, ESQ.  
BY: JOSH M. REID, ESQ.  
ASSISTANT CITY ATTORNEY  
240 Water Street  
Post Office Box 95050 MSC 144  
Henderson, Nevada 89009-5050  
TEL: (702) 267-1231  
FAX: (702) 267-1201  
E-mail: Brian.Reeve@cityofhenderson.com:

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1 Las Vegas, Nevada; Thursday, August 3, 2017

2 10:01 a.m.

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4 THE COURT: Las Vegas Review-Journal vs.  
5 City of Henderson, Case No. A-16-747289-W.

6 Counsel, state your appearances for the  
7 record.

8 MS. SHELL: Good morning, Your Honor.  
9 Alina Shell on behalf of the Review-Journal.

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

13 THE COURT: Thank you, Counsel.

14 I would advise counsel, since I was not  
15 the presiding judge over the hearing in this matter,  
16 nor did I render the order that is the subject of  
17 your motion, I did pull the original petition, the  
18 amended petition, and I reviewed the order. I,  
19 further, reviewed all the exhibits submitted to me  
20 in this case, and I've read the transcripts of the  
21 hearing.

22 I will tell you, reading a cold record,  
23 Judge Thompson must have mellowed in his old age,  
24 because it seemed so much like he was conducting a  
25 kumbaya session; can't we just all get along.

1 I will also advise counsel I reviewed  
2 NRS 18.010, and various cases cited the annotation.

3 Is counsel ready to proceed?

4 MS. SHELL: I am, Your Honor.

5 THE COURT: Explain to me, Counsel, why  
6 you are the prevailing party. I would note in your  
7 briefing, I believe, you cited to the Valley  
8 Electric Association case.

9 MS. SHELL: That's right.

10 THE COURT: And in that case, it does  
11 state the party can prevail under NRS 18.010, quote,  
12 if it succeeds on any significant issue in  
13 litigation which achieves some of the benefit as  
14 sought in bringing suit.

15 There is a later case, Golightly &  
16 Vannah v. TJ Allen, which somewhat says the same  
17 thing but slightly different. It says a prevailing  
18 party must -- let me read the first sentence.

19 It states, in dictum, "This decision turns  
20 on the definition of 'prevailing party' as used in  
21 NRS 18.020(3) and NRS 18.050. A prevailing party  
22 must win on at least one of its claims. In Close,  
23 this court held that a party prevailed when it won  
24 on the mechanic's lien claim but had its damages  
25 reduced significantly by the adverse party's

1 counterclaim. Although Isbell received net damages  
2 significantly less than the award on its successful  
3 claim, it nonetheless prevailed."

4 So there seems to be some terminology  
5 differences in the case when the case talks about  
6 prevailing on a claim, which obviously is usually  
7 interpreted as a cause of action. Where the earlier  
8 case, Valley Electric, does say "a significant  
9 issue," the operative word being "significant."

10 So, again, Counsel, I'll ask my question:  
11 Why are you the prevailing party? It does not  
12 appear that you prevailed on any claim, and what you  
13 did prevail on appears to be a result of some type  
14 of agreement brokered by Judge Thompson.

15 MS. SHELL: Your Honor, respectfully,  
16 while 18.011 is instructive, we're here under the  
17 Nevada Public Records Act, and I think that's really  
18 the starting point for this Court's analysis, is  
19 that, under NRS 239.011, a party is entitled to  
20 compensation for the costs of litigation brought to  
21 seek compliance with the NPRA, the Nevada Public  
22 Records Act. And that's exactly what happened here.

23 The R-J requested copies of documents.  
24 The City of Henderson refused to produce those  
25 copies absent a rather exorbitant fee just for



1 conducting a privilege review to determine if they'd  
2 even give us the documents without redaction or to  
3 the extent that redactions would exist.

4 The only reason we ever got copies of the  
5 records is because we had to bring suit.

6 I appreciate your analysis of the kumbaya  
7 moment we had in the last hearing back in March in  
8 this case, but what happened is we had requested  
9 copies of these documents again, and they said, "No,  
10 not without paying this fee."

11 After we had filed suit and after the City  
12 attorney, Mr. Reeve, actually said, "Well, we really  
13 welcome the Court to address these issues that  
14 you're raising," we brokered an agreement where we  
15 would be entitled to just inspect the records in the  
16 interim, while the Court was sorting out the issues  
17 about the propriety of the fee demand that Henderson  
18 had put forth; but even then the ultimate goal of  
19 the Review-Journal has always been, and always was,  
20 to get copies of the records that we had requested.

21 And when we finally -- so we did this --  
22 we made the initial records request in October, and  
23 we get all the way into March 30th, when finally  
24 Judge Thompson said, "Well, will you give them  
25 copies of the records," when they had previously

1 denied them to us and said, "Yeah, we can give them  
2 to them on a USB drive," and that's what happened.

3 THE COURT: He knew about the USB drive.  
4 He sat as an old judge for --

5 MS. SHELL: It required a little bit of  
6 explanation, but we got there eventually with Judge  
7 Thompson, an understanding of what that was.

8 THE COURT: I shouldn't say that. I  
9 presumed he would know.

10 MS. SHELL: That was a significant part of  
11 the transcript, was explaining that.

12 But the nub of the dispute was we wanted  
13 copies of these records, and as I point out in my  
14 briefing, what Judge Thompson said was, "Well, we'll  
15 get the copies, and I'm denying the rest of the  
16 petition."

17 And while that didn't get captured in the  
18 end order that was entered by the Court, the bottom  
19 line is the significant issue in this case, the nub  
20 of the dispute was we wanted copies, and we  
21 ultimately prevailed and got the copies that we had  
22 wanted since October.

23 THE COURT: Actually, Counsel, your  
24 argument, though -- it didn't seem like you were  
25 happy just getting copies of -- you know, earlier,

1 Judge Thompson said, "When you sent your reporter  
2 out there, did you ask for any copies?"

3           Apparently, you didn't ask for any copies.  
4 That's how the UBS issue came up, and that's how  
5 Judge Thompson was asking would you be satisfied if  
6 you just got the copies; and, quite frankly, the way  
7 the cold record reads is you weren't that happy  
8 about the judge not deciding the rest of the issues,  
9 and, you know, Judge Thompson's response was,  
10 "That's for another case."

11           MS. SHELL: Yes, your Honor.

12           THE COURT: So, again, you know, did you  
13 prevail on a significant issue? That's what I'm --  
14 you know, I'm looking at. I mean, I'm giving you  
15 the benefit of the doubt. Doesn't have to be a  
16 claim, even though the later case talks about a  
17 claim, but did you prevail on a significant issue.  
18 That's really what I'm focusing on, and then if you  
19 did prevail on a significant issue, then I have to  
20 do -- used to call them Beattie factors, but now I  
21 guess they're called Brunzell factors.

22           Again, I have to determine the  
23 reasonableness, and I think you referenced the  
24 Lonestar, things of that nature. But before I even  
25 get there, I have to make a determination if you're

1 the prevailing party.

2 MS. SHELL: Yes, your Honor.

3 And just as a minor correction to the  
4 record, and it is something I pointed out in my  
5 reply brief, once we had brokered this sort of  
6 interim agreement for inspection, while the Court  
7 was sorting out the fees request issue,  
8 Ms. McLetchie e-mailed -- and I don't recall off the  
9 top of my head, Your Honor. If you'll give me just  
10 a moment.

11 She e-mailed on December 21st of 2016 to  
12 one of the City -- one of the many City attorneys, I  
13 should say, who have been working on this case, to  
14 say, you know, "This laptop is slow. Can we just  
15 get the copies on a CD so we can review the copies  
16 back at Review-Journal offices?" And again  
17 Henderson said "No."

18 So I have to admit I was a little  
19 surprised and, I think, irked that their position in  
20 their opposition to our motion for attorneys' fees  
21 was, "Well, we never knew they wanted copies," when,  
22 indeed, the whole dispute was about copies of the  
23 records.

24 And, Your Honor, to address your other  
25 question, the issues pertaining to Henderson's

1 public records policy and also to the fee dispute  
2 are important issues, but they really all sprang --  
3 they are all spokes on a hub, and the hub is the  
4 NPRA in getting public records. And so in that  
5 sense, yes, we are -- we did prevail on a  
6 significant issue because we got what we wanted in  
7 the end.

8 THE COURT: How much, I wonder -- I  
9 remember it was around \$5,000 that they wanted to  
10 charge you for the -- I believe one of the parties  
11 referred to it as paralegals reviewing and  
12 redacting, making sure there wasn't any, I assume,  
13 privileged information in any of the documents.  
14 That's what they wanted to charge you for?

15 MS. SHELL: Yes, your Honor: It was just  
16 shy of \$6,000.

17 As I pointed out in my brief, in our  
18 motion for attorneys' fees, they amended -- demanded  
19 an initial deposit of just 20 -- just over -- I  
20 should say just under \$2,900, and then \$2,900 at the  
21 end; so you are look at about \$5,800, which was, in  
22 our view, in excess of what was permitted under the  
23 NPRA, and we also thought that their policy was at  
24 odds with the grander scheme of the NPRA and its  
25 purpose of getting easy, swift, and, you know,

1 inexpensive access to public records.

2 THE COURT: Anything further, Counsel?

3 MS. SHELL: Your Honor, I think that it's  
4 important because the City brought this up to  
5 address their claim that the Review-Journal has to  
6 prove bad faith on the part of the City of Henderson  
7 in order to obtain an award of attorneys' fees, and  
8 I won't belabor what I put -- already put forth in  
9 our briefing, but the bottom line is despite what  
10 Henderson may want you to believe, there is a  
11 distinction between attorneys' fees and compensation  
12 for the costs of litigation and damages as  
13 punitive -- you know, damages to say, "City, don't  
14 violate the NPRA anymore."

15 And what 239.011 contemplates is only that  
16 you get compensated for the costs of bringing the  
17 litigation. There's no requirement in this, the  
18 statute, that you have to demonstrate bad faith.  
19 The only time that you have to demonstrate bad faith  
20 is if you are bringing -- or you are seeking damages  
21 against a public officer or an employer of a public  
22 officer, and that's not what happened here.

23 I would have -- my firm and the  
24 Review-Journal wasn't suing Mr. Reeve. We weren't  
25 suing any of the other City attorneys that weren't

1 complying with the NPRA. We were suing a  
2 governmental entity. We brought suit under 239.011,  
3 and so we're entitled to the costs that we incurred  
4 in having to bring the litigation.

5 And that's my final point, Your Honor.

6 THE COURT: Thank you, Counsel.

7 MS. SHELL: Thank you.

8 THE COURT: Counsel, my question to you  
9 is: Why aren't they the prevailing party? They  
10 were able to prevail on a significant issue, and  
11 they didn't have to pay you \$5,800. I mean, they  
12 got it for free, and ultimately isn't that a  
13 significant issue that they prevailed on?

14 MR. KENNEDY: The answer to that is no.  
15 The issues that were decided by the Court -- the  
16 Court said, "Look, the costs and fee issue is moot,"  
17 because what happened is the demand for the public  
18 records was made. There were 69,900 pages, and the  
19 City said, "Do you really want to deal with almost  
20 70,000 pages here? Why don't you come to the City  
21 and look at the records, because we know that the  
22 vast majority of these you're not going to want to  
23 see, are going to be of no interest to you, because  
24 the search terms you gave us are way too broad."

25 Now, we said, "If you do want all of

1 those, there is a cost associated with it, and --  
2 but why don't you come look before we go any  
3 further.

4 And that's what the R-J did. Its reporter  
5 came out there and spent all or parts of three days  
6 looking through the documents, and then said, "We  
7 don't want any copies of them."

8 And we said, "Okay. That's fine. You  
9 don't have to pay us any money; you don't want any  
10 copies."

11 Then they pursue the petition for a writ  
12 of mandamus under the public records act, and so  
13 when we come to court in front of Judge Thompson,  
14 what we said was, you know, "They're here, saying,  
15 'We demand these records,' and we said, 'Well,  
16 you've already seen them. You looked through them  
17 at the City, and you didn't ask for any copies.'"

18 And Judge Thompson, as you know from the  
19 transcript, said to them, "You didn't ask for any  
20 copies."

21 "No, but we're here, by God, demanding  
22 that they produce these records under the public  
23 records act."

24 And I think what Judge Thompson did --  
25 it's fair to say that he said, "They already did,"



1 and he asked four times, "Do you want copies of  
2 these now? Because they've been produced, and you  
3 didn't ask for anything."

4 And finally the R-J said, "Yeah, we'd like  
5 copies."

6 And he said to me, "Will you give them  
7 copies on a thumb drive?"

8 We said, "Sure, we will."

9 And he said, "Well, then isn't that it for  
10 this case?"

11 They said, "Well, we want to deal with the  
12 issues of costs for reviewing everything."

13 And the City said, "Look, you didn't ask  
14 for anything in the first instance. Now you say,  
15 'Give us a thumb drive.' Here you go, and there are  
16 no costs and there are no fees associated with  
17 that."

18 And then there was an argument over the  
19 documents withheld for privilege, and Judge Thompson  
20 said, "Look, the privilege log is adequate and  
21 sufficient, and I'm not going to give you" -- "I'm  
22 not going to go behind that."

23 So when you look at the order that was  
24 entered by Judge Thompson, the Review-Journal lost  
25 on every issue that was decided. The judge said,

1 "There are a couple that I'm not going to decide  
2 because they're moot," and that's the fees-and-cost  
3 issue. They didn't prevail on that. In fact, the  
4 City never sent them a bill for that.

5 THE COURT: But isn't the standard,  
6 Counsel -- and this seems to be the Plaintiff's  
7 argument, is "We didn't have to win on all claims.  
8 All we have to show, at least under NRS 18.010,"  
9 even though I understand the issue is also making  
10 the argument on the other statute -- but "All we  
11 have to show is that we prevailed on a significant  
12 issue."

13 Wasn't this a significant issue, that she  
14 got these records with -- and there was -- I mean,  
15 her argument seems to be the fact that you wanted to  
16 charge the \$2,900 and an additional \$2,900 for -- I  
17 assume it's like paralegal work to go through and  
18 redact everything and this and that.

19 MR. KENNEDY: That's fair, yes.

20 THE COURT: And that was unacceptable to  
21 her, and the fact that you agreed to it -- and I  
22 haven't researched this in a long time, but I -- and  
23 the case doesn't really address it, but the fact --  
24 you're right. The order itself is -- would seem to  
25 indicate otherwise, but her argument is: "At the

1 end of the day, we prevailed on a significant issue;  
2 we got the records, and we didn't have to pay for  
3 them."

4 MR. KENNEDY: Well, that's the argument.  
5 But they got the records because, if you look at  
6 Judge Thompson's order, Judge Thompson says the City  
7 complied with its obligations under the statute, and  
8 that's how they got them. They asked for them, and  
9 we said, "Please come and inspect them and just tell  
10 us what you want."

11 THE COURT: They didn't ask for an  
12 inspection. They asked for the records. They said,  
13 "We want the records."

14 The way I read the statute, they could  
15 either ask for an inspection or they could ask for  
16 copies. They asked for copies. The City wanted to  
17 charge them some fees to do this because -- and  
18 rightfully so. The same concern about certain  
19 privileges, confidential information, things of that  
20 nature, and they wanted the fees to be paid by the  
21 Review-Journal. And counsel's argument is: "But  
22 for us filing this petition, we wouldn't have got  
23 them without having to pay the fees; if we hadn't  
24 have filed this petition, we still would have got  
25 them, but impermissibly in that we would have had to

1 pay the fees."

2 MR. KENNEDY: But that's not what  
3 happened. I know that's the argument. That's the  
4 argument they made, and they lost that argument when  
5 they made it the first time, because what happened  
6 is they filed -- they filed a petition, and what the  
7 City said -- first off, the City responded within  
8 five days and said, "We're putting together the  
9 records but," you know, "we have go through them.  
10 There's almost 70,000 pages."

11 The Review-Journal then files the petition  
12 and said, "You're wrongfully withholding them."

13 Well, that wasn't the case. The City had  
14 the right to respond and say, we have to review  
15 them, and that's the reason that Judge Thompson said  
16 there was compliance with the law, because what the  
17 City said after it assembled the records, was, "Why  
18 don't you come look at them?" Okay? They looked at  
19 them and said, "We don't want any copies."

20 Judge Thompson, looking at that, said,  
21 "Well, the City complied with the law. You didn't  
22 have to file the action to get access to the  
23 records." The City, within five days, said, "Let us  
24 put them together and review them for privilege, and  
25 then you can look at them."

1 And what happened? The R-J comes out to  
2 the City, looks at the records, and says, "We don't  
3 want any of them."

4 So did they have to file the action to do  
5 that? No, they didn't. And that's why they lost.  
6 That's just Judge Thompson's order says, "Based on  
7 the events that transpired, the City complied with  
8 the law," and the argument here is, "Well, we had to  
9 sue them to get access to the records."

10 The answer to that is: No, you didn't.  
11 You got access to them, regardless of whether you  
12 filed the action or not, and the judge said the City  
13 acted properly, complied with the law, and produced  
14 the records, and what happened was the City didn't  
15 withhold them and say, "We" -- "you're not going to  
16 get them unless you make these payments." The City  
17 said, "Come out here and look, because we're quite  
18 sure you're not going to" -- "you're not going to  
19 want all of these." In fact, they asked for zero.

20 And in the kumbaya moment, after the judge  
21 said to them four times, "Do you really want copies  
22 of these," they finally said, "Well, yeah. Give  
23 them to us on a thumb drive."

24 And we said, "We're happy to do that," and  
25 that was that.

1 And the judge said, "Look, the City's  
2 complied with the law." And looking at the order,  
3 it is very clear the R-J prevailed on nothing. The  
4 petition for the writ of mandamus -- dismissed in  
5 its entirety. They're not the prevailing party.

6 THE COURT: I did have a question in the  
7 briefing. I thought the briefing was excellent. I  
8 mean, obviously, you both are excellent attorneys in  
9 making argument. You're making my decision tougher,  
10 I will tell you.

11 But it seems, in the briefing, the City  
12 seems to acknowledge that if I were to determine  
13 that the Review-Journal was the prevailing party, I  
14 have the discretion to -- as to the amount. In  
15 other words, they're asking for \$30,000. I think  
16 you went down from, like, around \$8,900, and then  
17 you went down to around \$1,200 or \$1,500.

18 MR. KENNEDY: \$1,500, I think.

19 THE COURT: Something like that. So it  
20 looked like there was a sliding scale; is that  
21 correct?

22 MR. KENNEDY: Yeah, that's what we  
23 assumed. We said, "If you find that they're the  
24 prevailing party, which they're not -- okay? -- but  
25 if you were to find that they were, you don't get

1 what you ask for. You get the reasonable fees. And  
2 in this case I think we said they were \$1,500 max,  
3 but we don't think they get anything.

4 THE COURT: Counsel, rebuttal?

5 MS. SHELL: Your Honor, just a couple of  
6 points, and obviously just to address Mr. Kennedy's  
7 last point, we don't believe that any reduction is  
8 appropriate.

9 I will note that in one of the footnotes  
10 to their opposition, Henderson took issue with the  
11 fact we had charged attorneys' fees for sending a  
12 public records request, trying to find out the  
13 amount of public moneys that were spent paying  
14 Bailey Kennedy to defend this case.

15 We're willing, in the spirit of  
16 compromise, to waive those fees, and although I  
17 think it's appropriate, particularly given, you  
18 know, that we knew this fees dispute was going to  
19 come up eventually, so we were entitled to know what  
20 Mr. Kennedy's firm was being paid in order to  
21 calculate our own reasonable attorney fee in this  
22 case.

23 I believe we're entitled to compensation  
24 for that, but I'm willing to give that up. I'm also  
25 willing to give up the 2.4 hours that our law clerk

1 spent conducting review of their privilege log and  
2 the case law relevant to the privileges that they  
3 asserted. It's a difference about five -- I did the  
4 math this morning. And forgive me; there's a reason  
5 I'm a lawyer. The -- they're disputing about \$530  
6 in fees relative to that, and I'd be willing to  
7 knock that off of my bill.

8 THE COURT: And just so you know, I did  
9 review your bill. I went through it and, again, I  
10 will note what you're waiving.

11 MS. SHELL: Thank you, Your Honor.

12 To address the more important issues,  
13 though, I feel as though opposing counsel may also  
14 be reading a cold record and coming at this from a  
15 view that -- I feel like perhaps we weren't in the  
16 same case.

17 I think that it's very important to keep  
18 in mind one of the principal canons of statutory  
19 construction, and that is that each word in the  
20 statute is to be given meaning, and if you don't  
21 give meaning to one word, you're undermining the  
22 structure of the statute itself. And as Your Honor  
23 pointed out, throughout the NPRA there's a  
24 distinction between inspection and copying the  
25 records.



1 We've always wanted copies of the records.

2 That was the first request.

3 THE COURT: I think the point Mr. Kennedy  
4 was making, and it's actually well taken because  
5 it's reflected in the transcripts, is when your  
6 reporter did go out there and had the opportunity to  
7 request copies, none were requested, so you had an  
8 opportunity -- if I'm understanding his argument,  
9 you had your opportunity to get the copies without  
10 paying for it, and you didn't make your request, so  
11 his argument is you wouldn't have got them anyway.  
12 You would then have to proceed forward on the  
13 litigation.

14 MR. KENNEDY: That's right.

15 MS. SHELL: Thank you, Counsel.

16 Your Honor, quite frankly, that's not -- I  
17 just disagree with his interpretation of the record.  
18 The reason that we did not request copies is because  
19 of the existence of this ongoing dispute.

20 I really -- I don't think that Henderson  
21 should be allowed to do a bait-and-switch in  
22 negotiations. And, quite frankly, part of the  
23 reasons that the costs did run so high is because,  
24 in spite of the fact that the NPRA has no  
25 meet-and-confer requirement in it, Ms. McLetchie had

1 multiple phone calls with multiple attorneys from  
2 the City attorneys' office to try and resolve this  
3 dispute, and when that didn't work, that's when we  
4 filed the litigation.

5 But, again, the reason we didn't request  
6 for copies at the time of the inspection is because  
7 the inspection was an interim step. There was still  
8 this live issue that was going on.

9 And, Your Honor, I have no further points,  
10 unless you have further questions.

11 THE COURT: No, I don't.

12 Counsel, any surrebuttal?

13 MR. KENNEDY: Submit it, Your Honor.

14 THE COURT: You made my decision-making  
15 hard -- you both did an excellent job -- so I am  
16 going to take it under advisement. Is a week -- you  
17 don't all have to come back. I'm just going to make  
18 a decision, not doing further argument.

19 Can you come back in a week, or is two  
20 weeks more convenient?

21 MR. KENNEDY: Whatever the Court needs,  
22 we'll be here.

23 MS. SHELL: Your Honor, if I may just look  
24 at my calendar real briefly?

25 THE COURT: Sure.

1 MS. SHELL: I can't remember if I have a  
2 hearing in a week.

3 Your Honor, we can come back in a week,  
4 yes.

5 THE COURT: Counsel?

6 MR. KENNEDY: Fine.

7 THE COURT: I'll continue this matter one  
8 week. I'll take it under submission and render my  
9 decision at that time.

10 THE CLERK: August 10th, 9 a.m.

11 THE COURT: Thank you, Counsel.

12 (Proceedings concluded at 10:27 a.m.)

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1 STATE OF NEVADA )  
2 COUNTY OF CLARK )

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4 CERTIFICATE OF REPORTER

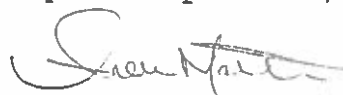
5 I, Andrea N. Martin, a Certified Shorthand  
6 Reporter of the State of Nevada, do hereby certify:

7 That the foregoing proceedings were taken  
8 before me at the time and place herein set forth;  
9 that any witnesses, prior to testifying, were duly  
10 administered an oath; that a record of the  
11 proceedings was made by me using machine shorthand  
12 which was thereafter transcribed under my direction;  
13 that the foregoing transcript is a complete, true,  
14 and accurate transcription of said shorthand notes;

15 I further certify that I am neither  
16 financially interested in the action nor a relative  
17 or employee of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand  
19 in my office in the County of Clark, State of  
20 Nevada, this 11th day of September, 2018.

21



22

ANDREA N. MARTIN, CRR, CCR NO. 887

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**EXHIBIT J**

**EXHIBIT J**

*Steven D. Grierson*

**ORDR**

JOSH M. REID, City Attorney  
Nevada Bar No. 7497  
**CITY OF HENDERSON**  
240 Water Street, MSC 144  
Henderson, Nevada 89015  
Telephone: 702.267.1200  
Facsimile: 702.267.1201  
Josh.Reid@cityofhenderson.com

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com

*Attorneys for Respondent*  
**CITY OF HENDERSON**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,  
  
Petitioner,  
  
vs.  
  
CITY OF HENDERSON,  
  
Respondent.

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

**ORDER**

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1           1.       On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs  
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in  
3 attorney's fees, and \$902.84 in costs.

4           2.       In its Motion and supporting exhibits the Review-Journal requested compensation at  
5 the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	38.20	\$450.00	\$16,434.00
Alina M. Shell	37.60	\$300.00	\$11,280.00
Gabriel Czop	15.70	\$125.00	\$1,962.50
Pharan Burchfield	5.80	\$100.00	\$580.00

11  
12           3.       Henderson filed an Opposition to the Review-Journal's Motion on July 10, 2017,  
13 and the Review-Journal filed a Reply on July 27, 2017.

14           4.       In its Opposition, Henderson asserted the Review-Journal was not the prevailing  
15 party in this matter, and even if it was, requested this Court reduce any award of fees and costs to  
16 compensate the Review-Journal for only the work its attorneys performed on the original NPRS  
17 petition. Henderson also disputed various line items contained in the Review-Journal's attorneys'  
18 bills. Henderson did not, however, dispute the billing rates for the Review-Journal's attorneys or  
19 their support staff.

20           5.       Henderson also asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of  
21 the NPRA which provides immunity from damages for public officials who act in good faith in  
22 disclosing or refusing to disclose information—the Review-Journal had to establish Henderson  
23 acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

24           6.       This Court conducted a hearing on the Review-Journal's Motion for Attorney's Fees  
25 and Costs on August 3, 2017. After hearing argument from counsel, the Court took the matter under  
26 consideration, and conducted an additional hearing on August 10, 2017.

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ORDER

7. Recovery of attorney's fees as a cost of litigation is permissible by agreement, statute, or rule. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001).

8. Recovery of attorney's fees is authorized by the NPRA, which provides in pertinent part that "...[i]f the requester prevails [on a petition for public records], the requester is 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." Nev. Rev. Stat. § 239.011(2).

9. The Nevada Supreme Court has explained that "...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

10. A party "prevails" for the purposes of Nev. Rev. Stat. § 239.011(2) if "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

12. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada



1 Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

2 Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of  
3 attorneys' services:

4 (1) the qualities of the advocate: his ability, his training, education, experience,  
5 professional standing and skill; (2) the character of the work to be done: its difficulty,  
6 its intricacy, its importance, time and skill required, the responsibility imposed and the  
7 prominence and character of the parties 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.

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

10 14. Although the Review-Journal did not prevail on the claims for relief set forth in its  
11 Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it  
12 was able to obtain copies of the records it requested after initiating this action.

13 15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as  
14 to its request for the records and therefore is entitled to attorney's fees and costs.

15 16. Having reviewed the papers and pleadings filed herein, including the documentation  
16 provided by the Review-Journal regarding the work performed by its counsel and support staff, and  
17 having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of  
18 attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for  
19 Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, <sup>2018</sup>~~2017~~.

  
HONORABLE MARK B. BAILUS  
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

**CITY OF HENDERSON'S ATTORNEY OFFICE**

*Counsel for Respondent, City of Henderson*

**EXHIBIT K**

**EXHIBIT K**

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON,  
Appellant/Cross-Respondent,  
vs.  
LAS VEGAS REVIEW-JOURNAL,  
Respondent/Cross-Appellant.

No. 75407

**FILED**

OCT 17 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

**ORDER OF REVERSAL**

This is an appeal and cross-appeal from a district court order awarding attorney fees in an action to compel the production of records pursuant to the Nevada Public Records Act. Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.

The Las Vegas Review-Journal (LVRJ) submitted a public records request to the City of Henderson (City) pursuant to the Nevada Public Records Act (NPRA). After estimating that the request implicated approximately 70,000 documents, the City informed the LVRJ that it needed several weeks to review the documents and redact any confidential or privileged information contained therein. The City also informed the LVRJ that it would be responsible for paying certain costs that the City would incur in reviewing and redacting the requested documents. The LVRJ subsequently filed a petition in district court to compel the City to produce the requested records. The district court denied the petition and the LVRJ appealed. This court, in an unpublished order, affirmed in part and reversed in part the district court's order, instructing the district court to conduct further analysis on remand. *Las Vegas Review-Journal v. City*

of Henderson, Docket No. 73287 (Order Affirming in Part, Reversing in Part, and Remanding, May 24, 2019).

Before the NPRA action was addressed by this court, the LVRJ moved for attorney fees, which the district court granted in part, concluding that the LVRJ had prevailed in its action to obtain access to records from the City but awarding less than the amount LVRJ requested. The City timely appealed, arguing that the LVRJ did not prevail in its public records action, and the LVRJ cross-appealed, arguing that the district court's partial award of attorney fees was an abuse of discretion.

We conclude that the district court erred in concluding that, despite failing on the claims for relief as set forth in its writ petition, the LVRJ nevertheless prevailed in its public records action and was entitled to attorney fees under the NPRA. Accordingly, we reverse the district court's partial award of attorney fees to the LVRJ.

While we generally review an award of attorney fees for an abuse of discretion, "when a party's eligibility for a fee award is a matter of statutory interpretation, . . . a question of law is presented" warranting de novo review. *In re Estate and Living Tr. of Miller*, 125 Nev. 550, 552-53, 216 P.3d 239, 241 (2009). The district court based its conclusion that the LVRJ was eligible for attorney fees on its interpretation of the NPRA, specifically whether the LVRJ was eligible for attorney fees as a prevailing party for purposes of NRS 239.011(2).<sup>1</sup> The district court based its

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<sup>1</sup>The Legislature recently amended NRS 239.011. The effective date for those amendments is October 1, 2019, and thus they do not apply to the disposition here. S.B. 287, 80th Leg. (Nev. 2019).

conclusion on the NPRA's statutory language and this court's caselaw interpreting the NPRA. Accordingly, "we review the district court's interpretation of caselaw and statutory language de novo." *Las Vegas Metro. Police Dept. v. Blackjack Bonding, Inc.*, 131 Nev. 80, 85 343 P.3d 608, 612 (2015).

When a party requests access to a public record pursuant to the NPRA and the governmental entity denies the request, the requester may seek a court order permitting the requester to inspect or requiring the governmental entity to provide a copy of the public record. NRS 239.011(1). "If the requester prevails, the requester is 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 [public record]." NRS 239.011(2). To qualify as a prevailing party in a public records action, the requester must "succeed[ ] on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)). While a records requester "need not succeed on every issue" to prevail, *id.* at 90, 343 P.3d at 615, this court has "consistently held that a party cannot be a 'prevailing party' where the action has not proceeded to judgment." *Dimick v. Dimick*, 112 Nev. 402, 404, 915 P.2d 254, 256 (1996).

Here, as the district court recognized in its order, the LVRJ has not succeeded on any of the issues that it raised in filing the underlying action. The LVRJ's amended petition, filed after the City permitted the LVRJ to inspect responsive records over the course of several days at no

charge to the LVRJ, sought the following: (1) complete copies of all records that the City withheld and/or redacted as privileged, (2) injunctive relief prohibiting the City from enforcing its public records fee policies, (3) declaratory relief invalidating those municipal policies, and (4) declaratory relief limiting any fees for public records to no more than 50 cents per page. As discussed further below, the LVRJ has failed on each of these objectives, with the exception of one, which, according to the record before us, has not yet proceeded to judgment.

First, as to the LVRJ's request for copies of records that the City withheld based on attorney-client privilege and work-product privilege, the district court summarily denied the LVRJ's request for relief, finding that the privilege log provided to the LVRJ was timely, sufficient, and compliant with the NPRA. We affirmed the district court's order as to records identified in the City's privilege log as confidential and protected by attorney-client privilege and work-product privilege. *Las Vegas Review-Journal v. City of Henderson*, Docket. No. 73287 (Order Affirming in Part, Reversing in Part, and Remanding, May 24, 2019).

The LVRJ also failed on its declaratory and injunctive relief claims, which the LVRJ asserted in an attempt to invalidate the City's policies relating to the fees it assessed for processing records requests. The district court determined that the LVRJ's claims seeking invalidation of the City's fee policies were moot, and explicitly declined to decide those issues as raised in the LVRJ's amended petition. On appeal, we affirmed the district court's conclusion, holding that "[t]he issue of [the City's] fee became moot once [the City] provided the records to LVRJ free of charge," and rejecting the LVRJ's argument that the City's fee policy represented a harm

that is “capable of repetition, yet evading review.” *Id.*

While we agreed with the LVRJ’s argument that the district court failed to “consider the difference between documents redacted or withheld pursuant to . . . attorney-client privilege and those redacted or withheld pursuant to . . . deliberative process privilege,” *id.*, the LVRJ cannot be a “prevailing party” as to that issue before the action has proceeded to a final judgment. *Dimick*, 112 Nev. at 404, 915 P.2d at 256. We reversed and remanded for the district court to analyze whether requested documents were properly withheld as confidential pursuant to the deliberative process privilege. We did not order the production of those records or copies of those records, as the LVRJ requested in its petition. We instructed the district court to conduct further analysis and determine whether, and to what extent, those records were properly withheld. The ultimate determination of the district court on that issue is not in the record before us. Because the sole remaining issue that the LVRJ raised in its underlying action has not yet proceeded to a final judgment, we conclude that the LVRJ is not a prevailing party. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (“[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except for post-judgment issues such as attorney’s fees and costs.”).<sup>2</sup>

---

<sup>2</sup>Because we conclude that the LVRJ did not prevail in its underlying public records action and is not entitled to attorney fees, we need not address the LVRJ’s cross-appeal argument that the district court erred in awarding a reduced amount of attorney fees and costs.

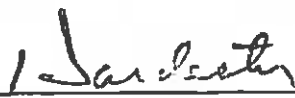



Accordingly, we


ORDER the judgment of the district court REVERSED.


 C.J.  
Gibbons

 J.  
Pickering

 J.  
Hardesty

 J.  
Parraguirre

 J.  
Stiglich

 J.  
Cadish

 J.  
Silver

cc: Hon. Mark B. Bailus, District Judge  
Israel Kunin, Settlement Judge  
Henderson City Attorney  
Bailey Kennedy  
McLetchie Law  
Eighth District Court Clerk

**EXHIBIT L**

**EXHIBIT L**

## REGISTER OF ACTIONS

**CASE No. A-16-747289-W**

**Las Vegas Review-Journal, Plaintiff(s) vs. Henderson City of, Defendant(s)**

מחיר

**Case Type:** Writ of Mandamus

Date Filed: 11/29/2016

Location: Department 8

**Cross-Reference Case** A747289

**Number:**

Supreme Court No.: 73287

75407

### PARTY INFORMATION

Defendant Henderson City of

**Lead Attorneys**  
**Brian R. Reeve**  
*Retained*  
702-784-5219(W)

**Plaintiff**      **Las Vegas Review-Journal**

**Margaret A. McLetchie**  
Retained  
702-728-5300(W)

## EVENTS & ORDERS OF THE COURT

12/12/2019 | **Status Check (9:00 AM) (Judicial Officer Atkin, Trevor)**  
*Order Setting Further Proceedings RE: Supreme Court Order*

## Minutes

12/12/2019 9:00 AM

- COURT NOTED, this matter has been remanded back to District Court. Ms. Shell stated the Supreme Court had sent this matter back to the District Court to reconsider the deliberative process issue with regard to some of the withheld documents. Since the Supreme Court issued the remittitur, the City of Henderson has provided us with the documents they had withheld pursuant to the deliberative process privilege. Ms. Shell stated she has spoken with Mr. Kennedy and they would like to have a scheduled set on Attorney's Fees. Ms. Shell further stated there were two Appeals going on which one was the substantive case and the one pertaining to the award of Fees. The Supreme Court reversed the Order granting Plaintiff Fees stating that Plaintiffs hadn't prevailed, now that Plaintiffs have received the process privilege documents Plaintiff are a prevailing party and entitled to do briefing on Attorney Fees. Mr. Kennedy stated Plaintiffs are not a prevailing party. Further, out of 70,000 pages the City of Henderson prevailed on almost all of them except for a small number of documents that had been withheld on deliberative privilege. Mr. Kennedy further stated Defendants will be filing a Motion for Summary Judgment because there are no issues left. COURT ORDERED, Parties are to put together Proposed Briefing Schedule and send over to Chambers, will sign it and will insert a date for hearing.

### Parties Present

[Return to Register of Actions](#)

JA1117



1 **NEO**  
2 **NICHOLAS G. VASKOV**  
3 City Attorney  
4 Nevada Bar No. 8298  
5 **BRIAN R. REEVE**  
6 Assistant City Attorney  
7 Nevada Bar No. 10197  
8 240 Water Street, MSC 144  
9 Henderson, NV 89015  
10 (702) 267-1231  
11 (702) 267-1201 Facsimile  
12 brian.reeve@cityofhenderson.com

13 *Attorneys for Respondent*  
14 **CITY OF HENDERSON**

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

17 **LAS VEGAS REVIEW-JOURNAL,**  
18 **Petitioner,**  
19 **vs.**  
20 **CITY OF HENDERSON,**  
21 **Respondent.**

22 Case No. A-16-747289-W  
23 Dept. No. VIII

24 **NOTICE OF ENTRY OF ORDER**

25 On April 27, 2020, a Stipulation and Order Setting Briefing Schedule was entered. A true  
26 and correct copy is attached.

27 **CITY OF HENDERSON**

28 /s/ Brian R. Reeve  
BRIAN R. REEVE  
Assistant City Attorney  
Nevada Bar No. 10197  
240 Water Street, MSC 144  
Henderson, Nevada 89015

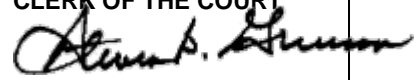
*Attorneys for Respondent*  
*City of Henderson*

**CERTIFICATE OF SERVICE**

On April 27, 2020, the above and foregoing, Notice of Entry of Order was served through the court's electronic filing system (Odyssey) as follows:

Margaret A. McLetchie (maggie@nvlitigation.com)  
Alina M. Shell (alina@nvlitigation.com)  
McLetchie Shell LLC  
701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101

Attorneys for Petitioner  
*Las Vegas Review-Journal*



1 **SAO**  
2 **NICHOLAS G. VASKOV**

3 City Attorney  
4 Nevada Bar No. 8298

5 **BRIAN R. REEVE**

6 Assistant City Attorney  
7 Nevada Bar No. 10197  
8 240 Water Street, MSC 144  
9 Henderson, NV 89015  
10 (702) 267-1231  
11 (702) 267-1201 Facsimile  
12 brian.reeve@cityofhenderson.com

13 DENNIS L. KENNEDY  
14 Nevada Bar No. 1462  
15 **BAILEY ♦ KENNEDY**  
16 8984 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148-1302  
18 Telephone: 702.562.8820  
19 Facsimile: 702.562.8821  
20 DKennedy@BaileyKennedy.com

21 *Attorneys for Respondent*  
22 CITY OF HENDERSON

23 DISTRICT COURT  
24 CLARK COUNTY, NEVADA

25 LAS VEGAS REVIEW-JOURNAL,

26 Petitioner,

27 vs.

28 CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W

Dept. No. VIII

Dates Entered in Odyssey  
II

**AMENDED STIPUATION AND ORDER REGARDING BRIEFING SCHEDULE FOR**  
**MOTION FOR ATTORNEY'S FEES**

Respondent City of Henderson (the "City") and Petitioner Las Vegas Review Journal ("LVRJ") hereby stipulate and agree to the following amended briefing and hearing schedule in this matter:

1. On January 10, 2020, the Court entered a Stipulation and Order Regarding Briefing Schedule for Motion for Attorney's Fees ("Original SAO"). Under the Original SAO, LVRJ's Motion

1 for Attorney's Fees was due on February 6, 2020, the City's response to LVRJ's motion was due on  
2 February 27, 2020, and LVRJ's reply was due on March 12, 2020. The Court set a hearing on the  
3 motion for March 19, 2020.

4           2.       On February 6, 2020, LVRJ filed its Motion for Attorney's Fees and Costs.

5           3.       On February 27, 2020, the City filed its Response to LVRJ's motion.

6           4.       On March 11, 2020, the parties entered into a Stipulation and Order to Extend the  
7 Deadline to File the Reply to Opposition to Motion for Attorney's Fees and Costs pursuant to which  
8 the City agreed to give LVRJ an additional two weeks to file a reply in support of its Motion for  
9 Attorney's Fees and Costs. The Court approved the stipulation, which made LVRJ's reply brief due  
10 on March 26, 2020.

11           5.       On March 23, 2020, the parties entered into a second Stipulation and Order to Extend  
12 the Deadline to File the Reply to Opposition to Motion for Attorney's Fees and Costs pursuant to  
13 which the City agreed to give LVRJ an additional thirty (30) days to file its reply brief. The Court  
14 approved the stipulation making LVRJ's reply brief due on April 27, 2020 and changing the hearing  
15 date to April 30, 2020.

16           6.       On April 2, 2020, the Nevada Supreme Court issued an opinion in *Las Vegas*  
17 *Metropolitan Police Dept. v. The Center for Investigative Reporting, Inc.*, 136 Nev. Adv. Op. 15, in  
18 which it adopted a potential theory for recovering attorney's fees in public records cases known as the  
19 "catalyst theory."  
20

21           7.       In light of the Nevada Supreme Court's *Center for Investigative Reporting* decision,  
22 the parties desire to establish a new briefing schedule that will allow them both to address the *Center*  
23 *for Investigative Reporting* case and its application, if any, to this matter.

24           8.       Accordingly, LVRJ hereby withdraws its pending Motion for Attorney's Fees and Cost  
25 filed on February 6, 2020 and the City hereby withdraws its response to the motion filed on February  
26  
27  
28

27, 2020. Instead of those filings, LVRJ will file a new Motion for Attorney's Fees and Costs, and the City will file a new response to the motion.

9. LVRJ will file its new Motion for Attorney's Fees and Costs on or before May 11, 2020.

10. The City will file its response to the motion on or before June 1, 2020.

11. LVRJ will file its reply in support of the motion on or before June 15, 2020.

12. The parties respectfully request that the Court set a hearing on the Motion for Attorney's Fees and Costs at its earliest convenience after June 15, 2020.

DATED this 20<sup>th</sup> day of April, 2020.

DATED this 20<sup>th</sup> day of April, 2020.

CITY OF HENDERSON

MCLETCHIE LAW

/s/ Brian R. Reeve  
BRIAN R. REEVE  
Nevada Bar No. 10197  
Assistant City Attorney  
240 Water St., MSC 144  
Henderson, NV 89015

/s/ Alina M. Shell  
MARGARET A. McLETCHIE  
Nevada Bar No. 10931  
ALINA M. SHELL  
Nevada Bar No. 11711  
701 E. Bridger, Suite 520  
Las Vegas, NV 89101

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com

Attorneys for Plaintiff  
*Las Vegas Review-Journal*

Attorneys for Respondent  
*City of Henderson*



**ORDER**

IT IS SO ORDERED this 22nd day of April, 2020.

IT IS FURTHER ORDERED that the hearing on the Motion for Attorney's Fees and Costs currently set for April 30, 2020, shall be vacated and rescheduled to the 18th day of June, 2020, at 9:00 a.m./~~p.m~~ in the above-captioned courtroom.



DISTRICT COURT JUDGE  
Trevor L. Atkin

Date: April 22, 2020

Prepared and submitted by:

CITY OF HENDERSON

/s/ Brian R. Reeve

BRIAN R. REEVE

Assistant City Attorney

Nevada Bar No. 10197

240 Water Street, MSC 144

Henderson, Nevada 89015

DENNIS L. KENNEDY

Nevada Bar No. 1462

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

Attorneys for Respondent

*City of Henderson*

**From:** [Alina](#)  
**To:** [Brian Reeve](#); [Maggie](#)  
**Cc:** [Brandon Kemble](#); [Cheryl Boyd](#); [Pharan](#); [Lacey](#); [Maggie](#)  
**Subject:** RE: Stip and Order re\_ Revised Briefing Schedule - April 14, 2020(1071718.2) [COHCAO-LEGAL.FID55938]  
**Date:** Monday, April 20, 2020 10:48:40 AM  
**Attachments:** [image001.png](#)

---

EXTERNAL

---

Hi Brian:

Yes, you have my permission to use my e-signature to submit the stipulation as edited.

Thanks!

Alina

**Alina M. Shell**



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

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---

**From:** Brian Reeve <Brian.Reeve@cityofhenderson.com>  
**Sent:** Monday, April 20, 2020 10:38 AM  
**To:** Alina <Alina@nvlitigation.com>; Maggie <maggie@nvlitigation.com>  
**Cc:** Brandon Kemble <Brandon.Kemble@cityofhenderson.com>; Cheryl Boyd <Cheryl.Boyd@cityofhenderson.com>; Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Maggie <maggie@nvlitigation.com>  
**Subject:** RE: Stip and Order re\_ Revised Briefing Schedule - April 14, 2020(1071718.2) [COHCAO-LEGAL.FID55938]

Good morning – yes, the redline you sent me last week works for us. Under one of the recent Admin

JA1124

Orders from the court, we are allowed to submit SAOs electronically using electronic signatures. Will you please confirm that I have permission to affix your electronic signature to the SAO, which includes your changes?

Thank you,

**Brian R. Reeve**

Assistant City Attorney

240 Water Street, PO Box 95050, MSC 144, Henderson NV 89009-5050

702-267-1385 | Fax: 702-267-1201 | [Brian.Reeve@cityofhenderson.com](mailto:Brian.Reeve@cityofhenderson.com)

Assistant: 702-267-1231 or Cheryl Boyd at [Cheryl.Boyd@cityofhenderson.com](mailto:Cheryl.Boyd@cityofhenderson.com)

Office Hours: Monday - Thursday 7:30a.m. to 5:30p.m.

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**From:** Alina <[Alina@nvlitigation.com](mailto:Alina@nvlitigation.com)>

**Sent:** Monday, April 20, 2020 9:33 AM

**To:** Brian Reeve <[Brian.Reeve@cityofhenderson.com](mailto:Brian.Reeve@cityofhenderson.com)>; Maggie <[maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)>

**Cc:** Brandon Kemble <[Brandon.Kemble@cityofhenderson.com](mailto:Brandon.Kemble@cityofhenderson.com)>; Cheryl Boyd <[Cheryl.Boyd@cityofhenderson.com](mailto:Cheryl.Boyd@cityofhenderson.com)>; Pharan <[pharan@nvlitigation.com](mailto:pharan@nvlitigation.com)>; Lacey <[lacey@NVLITIGATION.COM](mailto:lacey@NVLITIGATION.COM)>; Maggie <[maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)>

**Subject:** RE: Stip and Order re\_ Revised Briefing Schedule - April 14, 2020(1071718.2) [COHCAO-LEGAL.FID55938]

EXTERNAL

Good morning Brian:

Just following up on the redline I sent you last week. Hope all is well with you.

Thanks,

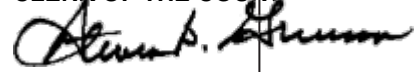
Alina

**Alina M. Shell**



701 East Bridger Ave., Suite 520

JA1125



1 **MAFC**  
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931  
3 ALINA M. SHELL, Nevada Bar No. 11711  
4 **MCLEATCHIE LAW**  
5 701 E. Bridger Avenue, Suite 520  
6 Las Vegas, NV 89101  
7 Telephone: (702) 728-5300; Fax: (702) 425-8220  
8 Email: maggie@nvlitigation.com  
9 *Attorneys for Petitioner Las Vegas Review-Journal*

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

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

10 Petitioner,

Dept. No.: VIII

11 vs.

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

12 CITY OF HENDERSON,

13 Respondent.

**Hearing Date: June 18, 2020**

**Hearing Time: 9:00 a.m.**

15 Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through  
16 its counsel of record, hereby moves this Court pursuant to Nev. Rev. Stat. § 239.011(2), for  
17 an award of reasonable attorney's fees in the amount of \$125,327.50, and costs in the amount  
18 of \$1,336.55. This amount represents the fees and costs the Review-Journal incurred in this  
19 public records proceeding.

20 This Motion is based on the attached memorandum of points and authorities, any  
21 attached exhibits, the attached Declaration of Attorney Margaret A. McLetchie, the papers  
22 and pleading on file in this matter, and any oral argument the Court may permit at the hearing  
23 of this Motion.

24 DATED this 11<sup>th</sup> day of May, 2020.

25 /s/ Margaret A. McLetchie

26 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

27 ALINA M. SHELL, Nevada Bar No. 11711

28 **MCLEATCHIE LAW**

*Attorneys for Petitioner Las Vegas Review-Journal*

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

The Review-Journal first asked the City of Henderson (“Henderson”) for the records at issue in this case on October 4, 2016, and after all these years this case is before the court to determine how much the Review-Journal is entitled to under the Nevada Public Records Act (“NPRA”) for fees and costs. Under the NPRA, a prevailing requester is entitled to fees and costs. Nev. Rev. Stat. § 239.011(2). The Supreme Court has long held that a party need not prevail on all issues in a case in order to be the “prevailing” party entitled to fees, but rather need only prevail on “any significant issue.” In this case, the Review-Journal did not just prevail on “any” significant issue, but on the most significant issue of all: obtaining the bulk of the records it sought.

Henderson has attempted to dodge its obligation to pay the Review-Journal’s fees and costs by delaying the provision of the records it was required to produce until the court was on verge of ordering their production, then producing them “voluntarily”. However, the Nevada Supreme Court recently explained that a governmental entity cannot avoid paying fees and costs by playing such a game. *See Las Vegas Metropolitan Police Dep’t v. Center for Investigative Reporting, Inc.*, 136 Nev. Adv. Op. 15 (2020). In *Center for Investigative Reporting*, the Nevada Supreme Court adopted the catalyst theory, holding a requester “prevails” for the purposes of the NPRA, Nev. Rev. Stat. § 239.011(2), “when the requester can demonstrate ‘a causal nexus between the litigation and the voluntary disclosure or change in position by the Government.’” *Id.* at \*4.<sup>1</sup>

This case started because Henderson denied the Review-Journal’s request for public records regarding the extent of the business relationship between Henderson and a political consultant that got many Henderson leaders elected. Instead of allowing for transparency, Henderson threw up a roadblock by demanding exorbitant fees just to conduct a privilege review to determine whether it would even disclose the requested records.

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<sup>1</sup> Quoting *First Amendment Coalition v. United States Department of Justice*, 878 F.3d 1119, 1128 (9th Cir. 2017).

1 Because of Henderson’s denial of its public records request, the Review-Journal had to file  
2 a Petition for Writ of Mandamus to obtain the records, prepare briefing, engage in further  
3 attempts to resolve the matter, then prepare for and attend a hearing on its right to the records.  
4 As a result, the litigation caused Henderson to produce a large swath of the requested records  
5 at the hearing and to avoid the entry by the Court of an order on the merits of the Review-  
6 Journal’s Petition. Subsequently, following two appeals and a limited order of remand from  
7 the Nevada Supreme Court, Henderson produced additional records it had withheld from the  
8 Review-Journal.

9 Under the plain language of the NPRA, the Review-Journal has “prevailed” in this  
10 litigation because although it did not obtain *all* the relief it requested, it succeeded in the most  
11 important aspect of the litigation: obtaining public records. Thus, the Review-Journal is  
12 entitled to an award of its costs and reasonable attorney’s fees, including the attorney’s fees  
13 it incurred on appeal.

## 14 II. RELEVANT FACTS AND PROCEDURAL HISTORY

### 15 A. Henderson Denies Access to Public Records.

16 On October 4, 2016, the Review-Journal submitted a public records request to the  
17 City of Henderson pursuant to the NPRA seeking certain documents pertaining to the public  
18 relations/communications firm Trosper Communications and its principal, Elizabeth  
19 Trosper. (Exh. 1 to November 29, 2016, Petition (“Petition”), on file with this Court.) Trosper  
20 Communications had a contract with Henderson, and Trosper assisted with the campaigns of  
21 elected officials. (*Id.*)

22 Henderson did not provide records in response to the request. Instead, on October  
23 11, 2016, Henderson indicated it required additional time to search for responsive documents  
24 but that, due to the time required to review the documents for privilege and confidentiality,  
25 it intended to charge the Review-Journal \$5,787.89 for “extraordinary use” of Henderson  
26 personnel, citing Nev. Rev. Stat. § 239.055, Henderson Municipal Code 2.47.085 (the  
27 “Code”), and Henderson’s public records policy (the “Policy”). (Exh. 2 to Petition (October  
28 11, 2016, email); *see also* Exh. 3 to Petition (Henderson Public Records Policy).) Henderson

1 demanded a deposit of \$2,893.94 just to continue its search for documents. (Exh. 2 to  
2 Petition.)

3 **B. The Review-Journal Petitions the District Court.**

4 After nearly two months of attempting to negotiate access to the requested records  
5 proved unfruitful, the Review-Journal was forced to initiate legal action to obtain the records.  
6 In its Petition, filed on November 29, 2016, the Review-Journal demanded access to the  
7 public records Henderson wrongfully withheld. The Review-Journal also sought declaratory  
8 and injunctive relief to address the rights of the parties and the applicability of Henderson's  
9 Code and Policy. (*See generally* Petition.)

10 On December 20, 2016, Henderson produced a log of withheld records (Exh. 4 to  
11 February 8, 2017, Amended Petition, on file with this Court), and subsequently produced  
12 revised versions of the privilege log after the Review-Journal requested additional  
13 information. (Exhs. 5 and 6 to Amended Petition.) The Review-Journal then amended its  
14 Petition to address the privilege log, contending Henderson failed to provide sufficient bases  
15 for withholding and redacting. (*See generally* Amended Petition.) In the Amended Petition,  
16 the Review-Journal again asked the district court to order Henderson to "immediately make  
17 available complete copies of all records requested." (Amended Petition, p. 12:7-10.)

18 **C. The Review-Journal Requested Copies of the Records After Henderson**  
19 **Allowed for Inspection.**

20 After the Review-Journal filed suit, counsel for the Review-Journal met and  
21 conferred with Henderson City Attorneys and obtained an interim agreement to allow a  
22 Review-Journal reporter to inspect the records while litigation was pending. (Exh. E to  
23 Henderson's (December 14, 2016, email from Review-Journal counsel summarizing meet  
24 and confer discussion).) Counsel for the Review-Journal asked for electronic copies of the  
25 records reviewed after the in-person inspection was conducted. (*See* Exh. 16 to Review-  
26 Journal's March 23, 2017, Reply in support of its Amended Petition.) Henderson declined  
27 this request. (*Id.*)

28 ///

**D. Henderson Finally Provides the Requested Copies Records Only at the Hearing on the Amended Petition, and Only After Being Directed to Do So by the Court**

The district court conducted a hearing on the Review-Journal's Amended Petition on March 30, 2017. (*See* minutes and transcript of March 30, 2017, hearing, on file with this Court.) During the hearing, which was four months after the Review-Journal filed its Petition and nearly six months after the Review-Journal requested the records, counsel for Henderson finally agree to the Review-Journal's demand for access to the requested documents. (March 30, 2017, hearing transcript, p. 8:8-10.) At the conclusion of the hearing, the district court directed Henderson to provide the Review-Journal with a "USB drive with [the requested documents] on it." (*Id.*, p. 24:15-22.) Subsequently, on May 15, 2017, the district court entered an order denying the Amended Petition as moot even though the Court had ordered the most significant relief sought—access to the records. (*See* May 15, 2017, Notice of Entry of Order, on file with this Court.)

**E. The Review-Journal Sought Attorney's Fees.**

Because it obtained access to the records as a result of the litigation it initiated, the Review-Journal filed a motion on June 1, 2017, pursuant to Nev. Rev. Stat. § 239.011(2) seeking an award of \$30,931.50 in attorney's fees and \$902.84 in costs. (*See* June 1, 2017, Motion for Attorney's Fees and Costs, on file with this Court.)

The district court conducted an initial hearing on that motion on August 3, 2017, at the end of which the court asked the parties to return a week later for its decision. (*See* minutes and transcript of August 3, 2017, hearing, on file with this Court, pp. 24:14-25:10.) At the subsequent August 10, 2017, hearing, the district court found that the Review-Journal was a prevailing party because it had obtained the requested records. (*See* transcript of August 10, 2017, hearing (on file with this Court), p. 5:21-25.) The district court stated it had considered the *Brunzell*<sup>2</sup> factors and arguments Henderson had made regarding a reduced award for the work performed by Review-Journal counsel and had determined the Review-

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<sup>2</sup> *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).



Journal was entitled all its costs, but only \$9,010.00 of the \$30,931.50 requested attorney’s fees. (*Id.*, pp. 6:23-7:2.)

### F. Appellate Proceedings

The Review-Journal appealed the district court’s denial of the Amended Petition, and each party appealed the district court’s award of attorney’s fees. (*See Nevada Supreme Court Case No. 73287 (“Petition Appeal”) and Case No. 75407 (“Fees Appeal”).*)

In the Petition Appeal, on May 24, 2019, the Supreme Court issued an unpublished disposition affirming in part and reversing in part the district court’s denial of the Review-Journal’s Amended Petition. *See Las Vegas Review-Journal v. City of Henderson*, 441 P.3d 546, 2019 WL 2252868 (Nev. 2019) (unpublished). Relevant here, the Supreme Court agreed with the Review-Journal’s assertion that the district court had failed to consider whether Henderson had proved by a preponderance of evidence that several documents it had declined to disclose were properly withheld pursuant to the deliberative process privilege and thus “that its interest in nondisclosure clearly outweighs the public’s interest in access,” and the Supreme Court therefore reversed and remanded the matter to this Court to conduct that inquiry. *Henderson*, 2019 WL 2252868 at \*4 (quotation omitted).

In the Fees Appeal, the Supreme Court entered another unpublished decision reversing the district court’s partial award of attorney’s fees to the Review-Journal on October 17, 2019. *See City of Henderson v. Las Vegas Review-Journal*, 450 P.3d 387, 2019 WL 5290874 (Nev. 2019) (unpublished) (*Henderson II*). Central to that reversal was the Supreme Court’s finding in the Petition Appeal that the district court had abused its discretion in failing to conduct the appropriate analysis regarding the documents Henderson had withheld pursuant to the deliberative process privilege. *Henderson II*, 2019 WL 5290874 at \*2. Because the Supreme Court had reversed the district court’s order on that ground, the Supreme Court concluded the Review-Journal “cannot be a ‘prevailing party’ as to that issue before the action has proceeded to a final judgment.” *Id.*; *see also id.* (“Because the sole remaining issue that the LVRJ raised in its underlying action has not yet proceeded to a final judgment, we conclude that the LVRJ is not a prevailing party.”) (citations omitted).

**G. Post-Appeal, Henderson Discloses Records Previously Withheld Pursuant to the Deliberative Process Privilege.**

On July 24, 2019, two months after the Supreme Court issued its opinion in the Petition Appeal, Henderson provided the documents that were withheld pursuant to the deliberative process privilege. (Declaration of Margaret A. McLetchie (“McLetchie Decl.”), ¶ 5.) Thus, the Review-Journal has now prevailed in obtaining the last documents at issue in this case.

**III. ARGUMENT**

**A. Under the Plain Language of the NPRA, the Review-Journal “Prevailed” in This Matter.**

The NPRA provides that “all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person.” Nev. Rev. Stat. § 239.010(1). The purpose animating this presumption of access to public records is to “foster democratic principles by providing members of the public with prompt access to inspect, copy, or receive a copy of public books and records to the extent permitted by law.” Nev. Rev. Stat. § 239.001(1); *see also DR Partners v. Bd. of Cnty. Comm’rs of Clark Cnty.*, 116 Nev. 616, 622, 6 P.3d 465, 468 (2000).

Pursuant to Nev. Rev. Stat. § 239.011, if a governmental entity refuses to disclose public records, the requester may “apply to the district court in the county in which the book or record is located for an order” either permitting the requester to inspect or copy the records, or requiring the governmental entity to provide a copy of the records to the requester. Nev. Rev. Stat. § 239.011(1) (a) and (b). Further, “[i]f the requester prevails, the requester is 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.” *Id.*

As the Nevada Supreme Court has explained, “...by its plain meaning, [Nev. Rev. Stat. § 239.011(2)] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production.” *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615

(2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015). The Supreme Court went on to explain that a party need only prevail on “any significant issue:”

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

*Id.* at 615; *see also DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628–29, 6 P.3d 465, 473 (2000) (reversing an order denying access and remanding to district court to award fees).<sup>3</sup> And as the Supreme Court recently clarified, a requester “prevails” for the purposes of Nev. Rev. Stat. § 239.011(2) “absent a district court order compelling production when the requester can demonstrate a causal nexus between the litigation and the voluntary disclosure or change in position by the Government.” *Las Vegas Metro. Police Department v. Center for Investigative Reporting, Inc.*, 136 Nev. Adv. Op. 15, \*4 (2020) (quotation omitted).

Here, the Review-Journal had to seek judicial intervention to obtain the records Henderson was withholding. This is exactly what the NPRA created a judicial mechanism to achieve, and exactly what the attorney’s fees provision of the NPRA is designed to compensate. As discussed above, the Review-Journal repeatedly requested copies of the withheld record, and Henderson would only begin searching for and reviewing responsive records upon payment of an illegal, exorbitant, and impermissible fee.<sup>4</sup> Although the

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<sup>3</sup> Other Nevada Supreme Court cases likewise make clear that a party who substantially prevailed is entitled to recoup all attorney’s fees and costs, even if the party 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).

<sup>4</sup> Counsel for the Review-Journal and Henderson City Attorney Josh Reid agreed to allow inspection of the requested records as an interim measure. Mr. Reid, however, refused to 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 Reply to Response to Amended Position, p. 5.)

1 Review-Journal did not obtain all the information and relief it sought in this litigation,  
2 Henderson did not produce a substantial amount of the records until after the Review-Journal  
3 submitted and fully briefed its Petition and Amended Petition, then prepared for and attended  
4 a hearing on the Amended Petition. Moreover, only following the Supreme Court’s partial  
5 reversal of this Court’s order denying the Review-Journal’s Amended Petition, did  
6 Henderson disclosed the public records it had withheld pursuant to the deliberative process  
7 privilege.

8 **B. The Nevada Supreme Court Has Recently Held That a Requester**  
9 **“Prevails” in a Public Records Action When a Governmental Entity**  
10 **Changes Its Behavior After Litigation Commences.**

11 **1. Overview**

12 Under the catalyst theory, a requester “prevails” for the purposes of a public record  
13 action “when its public records suit causes to governmental agency to substantially change  
14 its behavior in the manner sought by the requester.” *Las Vegas Metro. Police Department v.*  
15 *Center for Investigative Reporting, Inc.*, 136 Nev. Adv. Op. 15, \*4 (2020). This is so even  
16 absent a district court order compelling production of the withheld records if the requester  
17 can demonstrate “a causal nexus between the litigation and the voluntary disclosure or  
18 change in position by the Government.” *Id.* (quotation omitted).

19 In *Center for Investigative Reporting*, the Center for Investigative Reporting  
20 (“CIR”) submitted a records request to the Las Vegas Metropolitan Police Department  
21 (“Metro”) seeking records related to the 1996 murder of rap artist Tupac Shakur. *Center for*  
22 *Investigative Reporting*, 136 Nev. Adv. Op. 15 at \*1. Metro initially ignored CIR’s request  
23 for approximately three months. *Id.* When Metro did eventually respond to the request, it  
24 produced only a single, two-page police report, and refused to disclose any additional  
25 records. *Id.*

26 CIR then filed a petition for a writ of mandamus seeking to inspect or copy all  
27 records in Metro’s custody or control that pertained to Tupac Shakur’s murder. *Id.* at \*2.  
28 During a hearing on the petition, the district court indicated that Metro had not met its burden  
of demonstrating that the requested investigative files were confidential, and presented Metro

1 with two options: produce the requested records with redaction, or participate in an *in camera*  
2 evidentiary hearing. *Id.* at \*2. Metro initially opted for the latter. *Id.* Prior to the *in camera*  
3 hearing, however, CIR and Metro reached an agreement whereby Metro would produce  
4 portions of the record, as well as an index identifying and describing any withheld or redacted  
5 records. *Id.* Pursuant to the agreement, the parties additionally agreed that CIR could reserve  
6 the right to seek an award of fees and costs pursuant to Nev. Rev. Stat. § 239.011(2). *Id.*

7         On appeal, the Nevada Supreme Court noted that several other state courts with  
8 attorney’s fees provisions similar to Nev. Rev. Stat. § 239.011(2) have “rejected the stringent  
9 requirement that public records requesters must obtain an order on the merits to prevail for  
10 the purposes of an attorney fees award.” *Id.* at \*3 (compiling cases). In particular, the Court  
11 pointed to the analysis of the Nevada Jersey Supreme Court in *Mason v. City of Hoboken*,  
12 196 N.J. 51, 951 A.2d 1017 (2008). In that case, the New Jersey Supreme Court found there  
13 was a strong policy reasons for allowing an attorney’s fees award under the catalyst theory:  
14 the potential for government abuse in that an agency otherwise could “deny access,  
15 vigorously defend against a lawsuit, and then unilaterally disclose the documents sought at  
16 the eleventh hour to avoid the entry of a court order and the resulting award of attorney’s  
17 fees.” *Id.* at \*4 (quoting *Mason*, 951 A.2d at 1031). The Nevada Supreme Court found that  
18 this public policy rationale was particularly persuasive, and “supports utilizing the catalyst  
19 theory to determine whether a requester has prevailed in an NPRA lawsuit.” *Id.* Moreover,  
20 the Supreme Court held that the catalyst theory “promotes the Legislature’s intent behind the  
21 NPRA—public access to information.” *Id.* (citing Nev. Rev. Stat. § 239.001).

22         In assessing whether a requester “prevailed” under the catalyst theory, the Court  
23 must consider three factors: “(1) when the documents were released, (2) what actually  
24 triggered the documents’ release, and (3) whether [the requester] was entitled to the  
25 documents at an earlier time.” *Id.* at \*4 (quotations omitted). Additionally, the Supreme Court  
26 required district courts to determine (1) whether the litigation was frivolous, unreasonable,  
27 or groundless, and (2) whether the requester reasonably attempted to settle the matter short  
28 of litigation by notifying the governmental agency of its grievances and giving the agency

1 an opportunity to supply the records within a reasonable time. *Id.* (citations omitted).

2 **2. An Application of the *Center for Investigative Reporting* Factors**  
3 **Demonstrates The Review-Journal is Entitled to its Fees and**  
4 **Costs Under the Catalyst Theory.**

5 Applying the factors to the instant matter, the Review-Journal is entitled to an  
6 award of attorney's fees and costs under the catalyst theory. With respect to the first factor,  
7 as discussed above, the Review-Journal initially requested public records from Henderson  
8 pertaining to public relations/communications firm Trosper Communications and its  
9 principal, Elizabeth Trosper, On October 4, 2016. (Exh. 1 to November 29, 2016, Petition.)  
10 When Henderson refused to disclose the records unless the Review-Journal paid a usurious  
11 "extraordinary use" fee, the Review-Journal filed its Petition on November 26, 2016, and  
12 subsequently amended that Petition on February 8, 2017. Not until this matter finally came  
13 before the Court for a hearing on March 20, 2017, did Henderson finally agreed to provide  
14 the Review-Journal a USB drive with copies of the requested documents. (March 30, 2017,  
15 hearing transcript, p. 8:8-10.) Even later, following the resolution of the Petition Appeal in  
16 the Nevada Supreme Court, Henderson provided additional documents that were withheld  
17 pursuant to its assertion they were subject to a deliberative process privilege. (McLetchie  
18 Decl., ¶ 5.)

19 Turning to the second factor—what actually triggered the documents' release—the  
20 record is plain that but for the Review-Journal's Petition, Henderson would not have released  
21 any of the requested records. As the above-described factual history and the exhibits included  
22 with the Review-Journal's Petition and associated filings illustrate, the Review-Journal  
23 attempted to obtain copies or access to view copies of the requested records without having  
24 to pay the exorbitant fee Henderson was demanding prior to filing its Petition. It was only  
25 after the Review-Journal filed its Petition and forced Henderson to defend its position in  
26 court that Henderson agreed to provide a large portion of the withheld records. Additionally,  
27 with respect to the documents Henderson had previously withheld pursuant to a deliberative  
28 process privilege, after the Supreme Court held that the Court abused its discretion in failing



1 to conduct the proper balancing test<sup>5</sup>, Henderson finally disclosed those records.

2 With respect to the third factor— whether the Review-Journal was entitled to the  
3 documents at an earlier time—the NPRA sets forth that documents that are not confidential  
4 are to be produced within five days (unless, for some reason, more time is needed).  
5 Henderson’s unilateral disclosure of the records both at the March 30, 2017, hearing and  
6 following the Supreme Court’s partial reversal demonstrates Henderson knew, and the law  
7 of course is clear, that the Review-Journal was entitled to the records when it first requested  
8 them, and, certainly, long before they were produced.

9 As noted above, in addition to the three factors set forth above, this Court must  
10 consider “(1) whether the litigation was frivolous, unreasonable, or groundless, and (2)  
11 whether the requester reasonably attempted to settle the matter short of litigation by notifying  
12 the governmental agency of its grievances and giving the agency an opportunity to supply  
13 the records within a reasonable time.” *Center for Investigative Reporting*, 136 Nev. Adv. Op.  
14 15 at \*4 (citations omitted). The litigation here was not frivolous, unreasonable, or  
15 groundless. As discussed above, the Review-Journal and Henderson disputed whether  
16 Henderson was entitled under the now-repealed “extraordinary use” provision of the NPRA  
17 (Nev. Rev. Stat. § 239.055). When attempts to resolve these disputes proved fruitless, the  
18 Review-Journal filed suit to seek judicial resolution. And Henderson even welcomed the  
19 Court’s intervention, noting in a December 5, 2016, letter to counsel for the Review-Journal  
20 that “[t]he City is interested in having the courts provide clarity to the meaning and  
21 application of NRS 239.055, as clear and concise guidance on these provisions would greatly  
22 benefit both local governments and the public.”<sup>6</sup> Thus, even Henderson agreed that this  
23 litigation was not frivolous.

24 ///

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26 <sup>5</sup> *Las Vegas Review-Journal v. City of Henderson*, 441 P.3d 546 at \*4 (Nev. 2019).

27 <sup>6</sup> (Exh. 12 to March 23, 2017 Reply to Henderson’s Response to Amended Public Records  
28 Petition at p. 3 of December 5, 2016 letter.)

1 Finally, while the NPRA does not require requesters to meet and confer prior to  
2 petitioning the courts, the Review-Journal did make good faith efforts to resolve its disputes  
3 with Henderson prior to filing suit, including having multiple telephone conferences with  
4 counsel for the City of Henderson, and filed suit when it became apparent that the parties  
5 were at an impasse. While Henderson has previously tried to insinuate that the Review-  
6 Journal should have wasted additional time and resources meeting and conferring (*see, e.g.*,  
7 March 8, 2017, Henderson Response to Petition, pp. 5:12-6:2), the fact remains that the  
8 Review-Journal went beyond the requirements of the NPRA and attempted to negotiate  
9 access to the records prior to filing suit.

10 Additionally, in considering this factor, this Court should consider that the express  
11 purpose of the NPRA is to foster democratic principles by facilitating prompt access to public  
12 records. Nev. Rev. Stat. § 239.001. That emphasis on prompt access is woven through the  
13 NPRA. For example, Nev. Rev. Stat. § 239.0107(1) enumerates the types of responses a  
14 governmental entity must provide within five business days of receiving a records request.  
15 Further, courts around the country have recognized that the First Amendment requires swift  
16 access to public records because “the public interest in obtaining news is an interest in  
17 obtaining contemporaneous news.” *Courthouse News Services v. Planet*, 947 F.3d 581, 594  
18 (9th Cir. 2020) (citing *In re Reporters Comm. for Freedom of the Press*, 773 F.2d 1325, 1352  
19 (D.C. Cir. 1985) (Skelly Wright, J., concurring); *see also Grove Fresh Distributors, Inc. v.*  
20 *Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (“The newsworthiness of a particular  
21 story is often fleeting. To delay or postpone disclosure undermines the benefit of public  
22 scrutiny and may have the same result as complete suppression.”); *Nebraska Press Ass’n v.*  
23 *Stuart*, 423 U.S. 1327, 1329 (1975) (holding that “each passing day may constitute a separate  
24 and cognizable infringement of the First Amendment” and that “any First Amendment  
25 infringement that occurs with each passing day is irreparable”). Thus, the Review-Journal’s  
26 decision to file suit approximately seven weeks after Henderson denied its request and after  
27 negotiations proved unsuccessful was reasonable. Thus, the Review-Journal is entitled to a  
28 finding by this Court that it prevailed for the purposes of Nev. Rev. Stat. § 239.011(2) under



the newly adopted catalyst theory.

**C. The Review-Journal is Entitled to Its Reasonable Attorney’s Fees on Appeal.**

In addition to all costs and reasonable attorney’s fees incurred during the litigation before this Court, the Review-Journal is also entitled to the reasonable attorney’s fees it incurred in the Petition Appeal and the Fees Appeal. The NPRA explicitly provides that a prevailing requester is “entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney’s fees *in the proceeding*.” Nev. Rev. Stat. § 239.011(2) (emphasis added).

Nothing within the plain language of Nev. Rev. Stat. § 239.011(2) limits attorney’s fees to those incurred at the district court. *See In re Estate of Miller*, 125 Nev. 550, 555, 216 P.3d 239, 243 (2009) (holding that the fee-shifting provisions of Nev. R. Civ. P. 68 and Nev. Rev. Stat. § 17.115, concerning offers of judgment, extend to fees and costs on appeal because “nothing in the language of NRCP 68 and NRS 17.115 suggests that their fee-shifting provisions cease operation when the case leaves trial court”). Instead, construing Nev. Rev. Stat. § 239.011(2)’s costs and fees provision to include fees incurred on appeal is consistent with the intent of the provision: permitting members of the public to recoup the fees and costs they incurred to obtain public records that were wrongfully withheld by a governmental entity. Moreover, such an interpretation of the statute is consistent with the NPRA’s mandate that its provisions “must be construed liberally” to carry out the Act’s purpose: fostering democratic principles by providing prompt access to public records<sup>7</sup>, and that any exemptions must be “construed narrowly.”<sup>8</sup>

Given these explicit mandates from the Nevada Legislature, Nev. Rev. Stat. § 239.011(2) must be interpreted liberally to encompass attorney’s fees incurred on appeal.

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<sup>7</sup> Nev. Rev. Stat. § 239.001(2); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) (holding that the NPRA “must be liberally construed to maximize the public’s right of access”).

<sup>8</sup> Nev. Rev. Stat. § 239.001(3).

The entire purpose of § 239.011(2) is to make requesters whole after they have had to fight for access to public records that were improperly withheld. The costs associated with appellate litigation can be prohibitive, and requesters who have legitimate public records requests that are denied may simply give up if they are faced with the high costs of appeal with no possibility to recover those costs even if they prevail. Such a result would deter requesters from exercising their right to copy and inspect public records and thus directly work against the NPRA's express purpose of fostering democratic principles. This would be an absurd result, which this Court must avoid. *Tate v. State, Bd. of Med. Exam'rs*, 131 Nev. 675, 678, 356 P.3d 506, 508 (2015) ("Statutes should be construed so as to avoid absurd results.") (citation omitted). Accordingly, this Court must interpret Nev. Rev. Stat. § 239.011(2) liberally to include appellate fees incurred on appeal.

**D. The Court Should Award the Review-Journal Attorney's Fees in the Amount of \$122,455.00.**

**1. The Review-Journal's Attorney's Fees Are Reasonable.**

Any fee-setting inquiry begins with the calculation of the "lodestar:" the number of hours reasonably expended multiplied by a reasonable hourly rate. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 896-97 (1984); *accord Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). Relevant factors include the preclusion of other employment by the attorney due to acceptance of the case; time limitations imposed by the 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 its Reasonable Attorney's Fees for All the Work Performed by its Counsel.**

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,

1 and some of those claims are frivolous and some are not, a court may award defendants  
2 attorney's fees with respect to the frivolous claims only when those claims are not  
3 'intertwined.'" *Tutor-Saliba Corp. v. City of Hailey*, 452 F.3d 1055, 1063-64 (9th Cir. 2011);  
4 accord *Fox v. Vice*, 563 U.S. 826, 839-40 (2011) (discussing the "interrelated[ness]" of  
5 plaintiffs' frivolous and non-frivolous claims); see also *McCown v. City of Fontana*, 711 F.  
6 Supp. 2d 1067, 1070 (C.D. Cal. 2010), aff'd, 464 F. App'x 577 (9th Cir. 2011) (holding that  
7 although the plaintiff's claims involved "different legal theories against different  
8 defendants," the court "should not attempt to divide the request for attorney's fees on a claim  
9 by claim basis" because each of claims "arose from a common core of facts"); cf. *Cain v.*  
10 *J.P. Prods.*, 11 F. App'x 714, 716 (9th Cir. 2001) (holding that, in the context of a Lanham  
11 Act case, "no apportionment was needed because the claims are so inextricably intertwined  
12 that even an estimated adjustment would be meaningless") (citing *Gracie v. Gracie*, 217 F.3d  
13 1060, 1068, (9th Cir.2000); other citation omitted).

14 The Review-Journal anticipates that Henderson will argue that it is not entitled to  
15 any award of attorney's fees at all, and alternatively argue that any award should be reduced  
16 to reflect that the Review-Journal did not obtain all of the relief it sought in its Amended  
17 Petition. However, where, as here, the claims asserted by the Review-Journal in its petition  
18 for a writ of mandamus and the work done to obtain disclosure of the records are so  
19 interrelated that this Court should not separate those claims for the purposes of awarding  
20 attorney's fees. The Review-Journal obtained access to the withheld records while the  
21 litigation was pending before this Court by inspection and by receiving the USB drive from  
22 Henderson after the hearing on the Review-Journal's Amended Petition, and received  
23 additional previously withheld documents from Henderson after the conclusion of the  
24 appeals.

25 The Review-Journal prevailed in this litigation by obtaining most of the records  
26 Henderson had refused to disclose. Furthermore, the issues raised by the Review-Journal that  
27 were not successful were not frivolous, and the work on those issues was all interrelated to  
28 the ones on which the Review-Journal prevailed. See, e.g., *Braunstein v. Arizona Dep't of*

1 *Transp.*, 683 F.3d 1177, 1187 (9th Cir. 2012). Accordingly, the Review-Journal is entitled to  
2 an award of attorneys' fees for all the work performed in this case.

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

5 Pursuant to Nev. R. Civ. P. 54(d)(2)(B), statements "swearing that the fees were  
6 actually and necessarily incurred and were reasonable" are set forth in the attached  
7 Declaration of Margaret A. McLetchie and supported by the billings for the Review-  
8 Journal's attorney fees and costs attached hereto as **Exhibits 1, 2, and 3**.

9 The litigation in this matter was complex and time-consuming. As detailed in the  
10 prior Motion for Attorney's Fees and Costs filed with this Court, the Review-Journal met  
11 and conferred extensively with Henderson City Attorneys regarding the records request—  
12 both before and after filing the Petition in this matter. In addition, the Review-Journal was  
13 obligated to brief the matter extensively before this Court, including amending the Petition  
14 after receiving additional records and information from Henderson, filing extensive  
15 pleadings in support of the Amended Petition, filing extensive pleadings in support of its  
16 prior Motion for Attorney's Fees and Costs, and attending multiple hearings. In the Petition  
17 and Fees Appeals, the Review-Journal was again required to engage in extensive briefing,  
18 and counsel was required to dedicate substantial time to preparing for and arguing the  
19 Petition Appeal before the Supreme Court. In addition, on remand to this Court, counsel for  
20 the Review-Journal has been required to prepare for and attend additional hearings and has  
21 been obligated to submit this Motion.

22 The Review-Journal's counsel exercised appropriate billing judgment and  
23 structured work on this case to maximize efficiencies, and the hours listed in the fee request  
24 are neither duplicative, unnecessary nor excessive. (Declaration of Margaret A. McLetchie  
25 at ¶¶ 7-8.) *See also Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) ("Counsel for the  
26 prevailing party should make a good faith effort to exclude from a fee request hours that are  
27 excessive redundant, or otherwise unnecessary, just as a lawyer in private practice ethically  
28 is obligated to exclude such hours from his fee submission.").

To keep billing as low as possible, attorney Alina 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 ¶¶ 7, 15.) Potentially duplicative or unnecessary time has not been included. (*Id.* at ¶ 8.) In all these ways, counsel for the Review-Journal has charged a reasonable and reduced rate for the attorneys' time. (*Id.* at ¶ 17.) Counsel also exercised appropriate billing judgment by *not* including in this application certain time, even time which would likely be compensable. (*Id.* at ¶ 18.)

#### 4. The *Brunzell* Factors

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

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties 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.

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

##### a. The Advocates' Skills Support a High Award

In determining the reasonable value of an attorney's services, this Court must consider the qualities of the advocate, including ability, training, education, experience, professional standing, and skill. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33.

Margaret A. McLetchie, working a total of 131.2 hours on this case, is the lead attorney at, and owner of, McLetchie Law, with almost 17 years of experience, and admitted to the bar in both California and Nevada. After working at a large corporate law firm in

1 California, Ms. McLetchie became a Staff Attorney, then Legal Director of the American  
2 Civil Liberties Union of Nevada. While with the ACLU of Nevada, Ms. McLetchie litigated  
3 several complex civil rights cases, including cases focused on freedom of speech. Ms.  
4 McLetchie has extensive experience handling First Amendment cases, public records cases,  
5 court access cases, and similar matters. In 2018, Ms. McLetchie was named a First  
6 Amendment Champion by the Nevada Press Association in recognition of her years of efforts  
7 to further public access to records and protect the freedom of the press.<sup>9</sup> Ms. McLetchie's  
8 work on this matter was billed at a rate of \$450.00 per hour, for a total of \$58,365.00.

9 Alina Shell, working a total of 176 hours on this case, is a senior attorney at  
10 McLetchie Law with over ten years of experience. Prior to transitioning into private practice,  
11 Ms. Shell was an attorney with the Federal Public Defender (FPD) for the District of Nevada.  
12 While employed by the FPD, Ms. Shell represented numerous defendants in a variety of  
13 criminal cases, including complex mortgage fraud and sentencing cases, and criminal cases  
14 implicating the First Amendment. Ms. Shell also wrote and argued several complex criminal  
15 appeals before the United States Court of Appeals for the Ninth Circuit. Since moving into  
16 private practice, Ms. Shell has represented parties in state and federal court in a variety of  
17 civil matters, including First Amendment, NPRA, court access, and defamation cases. Ms.  
18 Shell's work in this matter was billed at a rate of \$300.00 per hour, for a total of \$52,590.00.

19 Leo S. Wolpert, working a total of 35.9 hours, is a research and writing attorney at  
20 McLetchie Law. Mr. Wolpert is 2011 graduate of the University of Virginia School of Law  
21 with seven years of legal experience, including experience with First Amendment and  
22 defamation matters. Mr. Wolpert's time on this case was billed at a rate of \$250.00 per hour,  
23 for a total billed of \$8,975.00.

24 Pharan Burchfield, working a total of 42.2 credited hours on this case, is a  
25 paraprofessional at McLetchie Law. Ms. Burchfield has an associate's degree in paralegal  
26 studies and has been a paralegal for five years. Ms. Burchfield's time on this case was billed

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27 <sup>9</sup> [https://www.reviewjournal.com/local/local-las-vegas/las-vegas-attorney-mcletchie-](https://www.reviewjournal.com/local/local-las-vegas/las-vegas-attorney-mcletchie-named-first-amendment-champion/)  
28 [named-first-amendment-champion/](https://www.reviewjournal.com/local/local-las-vegas/las-vegas-attorney-mcletchie-named-first-amendment-champion/)



1 at the rate of \$100.00 per hour, for a total billed of \$4,200.00.

2 Lacey Ambro, working a total of 4.3 credited hours on this case, is a  
3 paraprofessional at McLetchie Law with over seven years of experience in the legal field.  
4 From 2007 to 2012, Ms. Ambro worked as a legal assistant at a firm specializing in medical  
5 malpractice defense. Ms. Ambro has been employed at McLetchie Law as a legal assistant  
6 since August 2017. Ms. Ambro's time on this case was billed at the rate of \$100.00 per hour,  
7 for a total billed of \$430.00.

8 Gabriel Czop, working a total of 15.7 credited hours on this case, was a law clerk  
9 at McLetchie Shell<sup>10</sup>, while enrolled at the William S. Boyd Law School at the University of  
10 Nevada Las Vegas. Mr. Czop's time on this case was billed at the rate of \$125.00 per hour,  
11 for a total billed of \$1,087.50.

12 In addition, the Review-Journal utilized a paraprofessional to perform  
13 administrative tasks in this matter. Administrative tasks were billed at a rate of \$25.00 per  
14 hour for 6.6 hours, for a total billed of \$165.00.

15 In sum, the attorneys and employees at McLetchie Law billed 411.9 hours on this  
16 case, for a total of \$125,812.50, at what would be a blended average of approximately  
17 \$305.00 per hour—well under market for the experience brought to bear on this action.  
18 Reasonable costs for documents, filing fees, and the like were calculated for a total billed of  
19 \$1,336.50. With costs, the total billed for McLetchie Law is \$127,419.00. Further  
20 qualification and qualities, along with an itemization of these bills are included in the  
21 attached declaration of Ms. McLetchie and **Exhibits 1, 2, and 3**.

22 **b. The Character of the Work.**

23 The next factor this Court must consider is “the character of the work to be done:  
24 its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed  
25 and the prominence and character of the parties where they affect the importance of the  
26 litigation.” *Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (citation omitted). This case involved  
27

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28 <sup>10</sup> McLetchie Shell became McLetchie Law in October 2018.

1 the interpretation and application of several provisions of the NPRA, which represents the  
2 Nevada Legislature's important interest in fostering democracy by enabling members of the  
3 public to have access to public records of governmental entities and officials. As the record  
4 of this case reflects, the Review-Journal and its counsel were required to address several  
5 important issues that had the potential to impact the public, including whether a  
6 governmental entity can charge a requester for reviewing public records for privilege,  
7 whether the documents Henderson was withholding were confidential pursuant to a number  
8 of different theories of privilege and/or confidentiality asserted by Henderson, and whether  
9 a requester who prevails on any significant issue in a public records matter is entitled to  
10 attorney's fees and costs under Nev. Rev. Stat. § 239.011(1). Moreover, this litigation  
11 involved two prominent parties: the Review-Journal, the largest-circulation newspaper in  
12 Nevada, and the City of Henderson, the second-largest city in Nevada.

13 **c. The Work Performed, Including Skill, Time, and Attention.**

14 The work actually performed by the lawyer is relevant to the reasonableness of  
15 attorneys' fees, including the skill, time, and attention given to the work. *Brunzell*, 85 Nev.  
16 at 349, 455 P.2d at 33. As demonstrated by the billing statement attached in **Exh. 1** and the  
17 attached declaration of Ms. McLetchie, a substantial portion of the work in this case was  
18 done by attorneys and paraprofessional staff with low billing rates. Counsel for the Review-  
19 Journal fully briefed this matter, including filing a petition, amending that petition, fully  
20 briefing its original Motion for Attorney's Fees and Costs, and fully briefing two appeals. In  
21 addition, Ms. McLetchie was required to dedicate 29.5 hours to preparing for and  
22 representing the Review-Journal at oral argument before the Nevada Supreme Court in the  
23 Petition Appeal. (**Exh. 2**, LVRJ088-91 (documenting work performed by Ms. McLetchie in  
24 preparing for and participating in oral argument).) Even though some of the work was done  
25 by lower-billing attorneys and paraprofessional staff, Ms. McLetchie was still required to  
26 analyze the research and apply it strategically to the various arguments posed by Henderson.

27 ///

28 ///



1                                    **d.     The Result.**

2                    Lastly, “the result: whether the attorney was successful and what benefits were  
3 derived” is relevant to this inquiry. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. As noted above,  
4 the Review-Journal prevailed in this matter because it succeeded in obtaining previously  
5 withheld records from Henderson. Because each of these factors weighs in the Review-  
6 Journal’s favor, this Court should exercise its discretion and award the Review-Journal  
7 reasonable attorneys’ fees and costs in the sum of \$127,419.00.

8                    **IV.     CONCLUSION**

9                    For these reasons, and for the reasons set forth in the Review-Journal’s original  
10 June 1, 2017, Motion for Attorney’s Fees and its supporting documentation, the Review-  
11 Journal prevailed in this litigation pursuant to Nev. Rev. Stat. § 239.011(2) because it  
12 achieved the most significant goal in this litigation: obtaining improperly withheld public  
13 records from the City of Henderson. Accordingly, the Review Journal is entitled to an award  
14 of its costs and reasonable attorney’s fees.

15                    DATED this 11<sup>th</sup> day of May, 2020.

16  
17                                    /s/ Margaret A. McLetchie

18                                    MARGARET A. MCLETCHIE, Nevada Bar No. 10931

19                                    ALINA M. SHELL, Nevada Bar No. 11711

20                                    **MCLETCHIE LAW**

21                                    701 E. Bridger Avenue, Suite 520

22                                    Las Vegas, NV 89101

23                                    Telephone: (702) 728-5300; Fax (702) 728-5300

24                                    Email: maggie@nvlitigation.com

25                                    *Attorneys for Petitioner Las Vegas Review-Journal*  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 11<sup>th</sup> day of May, 2020, I did cause a true copy of the foregoing PETITIONER LAS VEGAS REVIEW-JOURNAL'S AMENDED MOTION FOR ATTORNEY'S FEES AND COSTS in *Las Vegas Review-Journal v. City of Henderson*, Clark County District Court Case No. A-16-747289-W, to be served using the Odyssey E-File & Serve electronic court filing system, to all parties with an email address on record.

/s/ Pharan Burchfield  
EMPLOYEE of McLetchie Law