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Electronically Filed
Aug 05 2022 04:23 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT FOR THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE ADRIANA ESCOBAR,
DISTRICT JUDGE,

Respondents,

and

DUE DILIGENCE GROUP, LLC, a
limited liability company,

Real Party in Interest.

Supreme Court Case No.: 85129

PETITIONER LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT'S EMERGENCY
MOTION FOR RELIEF TO STAY

UNDER NRAP 27(e)

(Relief needed before

August 12, 2022)

Appellant Las Vegas Metropolitan Police Department (“LVMPD”), by and through their attorneys of record, Marquis Aurbach, hereby moves this Court for emergency relief of the District Court’s Recusal Order pursuant to NRAP 27(e).

I. INTRODUCTION AND OVERVIEW OF RELIEF REQUESTED

The instant case stems from the Honorable Judge Adriana Escobar’s improper recusal under Rule 2.11(A), Comment 1, as a result of her 30-year friendship with non-party, political figure Governor Steve Sisolak. There are two fundamental legal principles involved in determining whether Judge Escobar’s voluntary disqualification was proper. First, a judge must hear all cases assigned to her unless disqualification is required. Second, the judiciary is presumed to be impartial. Here, there is no evidence to overcome Judge Escobar’s presumption of impartiality and no rule or law that requires disqualification in the instant case. LVMPD has filed a Writ Petition seeking relief from this Court to issue an order requiring that Judge Escobar abide by her duty to preside over the case. Due to Judge Escobar’s recusal, the case has been reassigned to Department 9, the Honorable Judge Maria Gall. Currently, Judge Gall intends to issue an order on a pending, disputed motion for pro hac vice on August 12, 2022. As such, LVMPD requests for the Court to stay enforcement of Judge Escobar’s recusal order pending the outcome of its Writ Petition before the Court. As demonstrated below,

the factors that this Court must consider for purposes of a stay weigh in favor of LVMPD. Therefore, the Court should grant the request for a stay.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. DDG BRINGS SUIT UNDER THE NPRA AGAINST LVMPD.

Real Party in Interest, Due Diligence Group, LLC (“DDG”) filed a Petition for Writ of Mandamus in district court under the Nevada Public Records Act (NPRA) seeking access to e-mails between Sheriff Joseph Lombardo (“Sheriff Lombardo”) and various individuals involved in his campaign for Governor. *See* Application for Order Compelling Disclosure of Public Records Pursuant to NRS 239.011/Petition for Writ of Mandamus attached hereto as **Exhibit 1**. Subsequently, DDG filed a motion for an order from the district court to grant the motion. *See* Motion for Order Granting Plaintiff’s Application for Writ of Mandamus attached hereto as **Exhibit 2**. LVMPD substantively opposed the motion and also sought to dismiss the suit on the basis that DDG was not the real party in interest.¹ *See* LVMPD’s Opposition to DDG’s Motion for an Order Granting Application and Countermotion to Dismiss attached hereto as **Exhibit 3**. One of the arguments raised by LVMPD is that the records sought do not pertain to

¹ If Governor Sisolak is the real party in interest, then LVMPD recognizes that the Honorable Judge Escobar would then have a basis under Rule 2.11 to recuse herself. However, because that has not been established, LVMPD maintains that recusal is wholly improper.

a provision of LVMPD's public service as required for records to be disclosed under the NPRA. *See id.* Rather, the records pertain to Sheriff Lombardo's run for Governor not in relation to his position as Sheriff over LVMPD. *Id.* DDG then filed its reply. *See* DDG's Reply in Support of its Motion for Order Granting Application attached hereto as **Exhibit 4**. DDG contends that the records do fall within the ambit of the NPRA. *See* Exhibits 1 and 4.

B. JUDGE ESCOBAR RECUSES HERSELF FROM THE CASE.

The underlying case was initially before the honorable Judge Adriana Escobar in Department 14. *See* Exhibit 1. Judge Escobar held a hearing on DDG's motion on July 14, 2022. *See* Transcript attached hereto as **Exhibit 5**. Prior to hearing any argument, Judge Escobar announced that she was required to recuse herself under Nevada Code of Judicial Conduct 2.11. *Id.* at p.4. Relying on comment one to that Rule, Judge Escobar stated that she has nearly 30 years of friendship with Governor Sisolak and previously served on Taxicab Authority together. *Id.* at p.5. Judge Escobar further stated that her husband (unnamed) serves on Governor Sisolak's subcabinet. *Id.* Based on these circumstances, Judge Escobar issued a minute order providing that recusal was necessary under Rule 2.11(A), Comment 1 because the "Court's impartiality would be questioned due to a personal connection to a party cited in the pleadings." *See* Minute Order issued July 27, 2022 attached hereto as **Exhibit 6**.

C. THE CASE IS REASSIGNED TO DEPARTMENT 9.

After Judge Escobar issued her minute order, the matter was reassigned to Department 9 before the Honorable Judge Maria Gall. *See* Docket at **Exhibit 7**. Currently, Judge Gall is expected to decide an outstanding contested motion for pro hac vice in chambers on August 12, 2022. *Id.* A hearing on the merits of DDG's initial motion is currently scheduled to be heard on August 17, 2022. *Id.*

D. JUDGE ESCOBAR ROUTINELY DISQUALIFIES HERSELF IN NPRA CASES.

At the initial hearing, Judge Escobar stated she understood that she has a duty to preside over cases assigned to her. *See* Exhibit 4. Judge Escobar, however, has routinely recused herself from cases addressing the NPRA. First, Judge Escobar recused herself in *ABC et al, v. LVMPD*, Eighth Judicial District Court, Case No. A-17-764030-W, concerning public records pertaining to the 1 October shooting that occurred on the Las Vegas Strip. *See* Recusal Order dated January 22, 2019 attached hereto as **Exhibit 8**. The basis for recusal was that the Police Protective Association (PPA) contributed to her judicial campaign. *Id.* A year later, Judge Escobar relies on the same basis for recusing herself from a public records litigation pertaining to the Alpine Fire that occurred in December 2019. *See* Recusal Order dated February 18, 2020 attached hereto as **Exhibit 9**.

III. LEGAL ARGUMENT

A. STANDARDS FOR GRANTING A STAY PENDING WRIT PETITION.

NRAP 8(a) provides that before moving for a stay in this Court, a party must generally seek a stay in the District Court. However, a movant may first seek a stay with this Court if it can demonstrate that first asking the district court for relief is truly impracticable. *TRP Fund VI, LLC v. PHH Mortg. Corp.*, 138 Nev. Adv. Op. 21, 506 P.3d 1056, 1058 (2022). “Impracticable” requires the movant to show that it was “not capable” of first seeking relief in the district court or that such an act could not be done. *Id.* (citing Webster’s II New College Dictionary, at 556 (1995)). Given the short time from when the case was reassigned, July 27, 2022 to the next hearing on a disputed issue, August 12, 2022 it was not practicable to request a stay from district court. More concerning, however, is that the reassigned Judge should not make decisions on the case if it is improperly before her. And, due to Judge Escobar’s recusal, she also could not decide a motion for stay. Thus, requesting a stay in the district court is entirely impracticable because Judge Escobar could not make a decision as a result of her recusal, and the newly assigned judge should not issue a decision on the case if it is improperly before her. This, coupled with the shortened time, made it impracticable for LVMPD to seek a stay in the district court.

In determining whether to issue a stay of a judgment or order, NRAP 8 outlines four factors for this Court to consider: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether LVMPD will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether DDG will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether LVMPD is likely to prevail on the merits of the appeal. *See Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004) (holding that while no one factor is more important, “if one or two factors are especially strong, they may counterbalance other weak factors”).

B. LVMPD SATISFIES THE NRAP 8(C) FACTORS FOR THIS COURT TO ENTER A STAY PENDING A DECISION ON ITS WRIT PETITION.

1. The Object of LVMPD’s Writ Petition Will Be Defeated if the Stay is Denied.

The central issue raised in this request for a stay is that the appeal will be defeated because Judge Maria Gall will enter decisions on disputed issues, including on the merits of the case, when Judge Escobar should retain this case. That is if a stay is not entered, Judge Maria Gall’s decisions cannot be undone of the Court grant’s LVMPD’s Writ Petition.

Consequently, because the object of the Writ Petition pertains to whether Judge Escobar is required to preside over the instance case, the Writ Petition would be defeated if Judge Maria Gall is permitted to move forward and issue decisions on the same case.

2. LVMPD Will Suffer Serious Injury if a Stay is Denied.

Unlike traditional civil litigation matters, matters brought under the NPRA are resolved quickly once a decision on the petition, or in this case the motion for order granting petition, is issued. LVMPD will suffer significant prejudice, including to rely on a peremptory challenge as the case is not properly before Judge Maria Gall and to have the case already decided on the merits. If a stay is not granted pending the Writ Petition, it is more than likely that a judge will address the merits of the underlying action before a decision on the Writ Petition is reached.

3. DDG Will Not Suffer Irreparable Injury if a Stay is Granted.

Notably, a writ petition in and of itself does not constitute harm for purposes of entering a stay. *See Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 986–987 (2000). There is no conceivable harm that DDG could suffer. A grant of a stay preserves the status quo until this Court can issue a decision on the Writ Petition. Because there is no harm to DDG, this factor weighs in favor of a stay.

4. **LVMPD Is Likely to Prevail on the Merits of its Writ Petition.**

A judge has a duty to “preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary.” *Ham v. District Court*, 93 Nev. 409, 415, 56 P.2d 420, 424 (1977). The Nevada Code of Judicial Conduct (“NCJC”) mandates a sitting judge to hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law. NCJC 2.7. Equally important is the notion that a judge is *presumed* to be impartial unless established by sufficient facts and legal grounds. *City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 640, 643, 5 P.3d 1059, 1061 (2000). “Because a judge has a duty to sit, there must be a compelling reason—in other words, a showing of sufficient factual and legal grounds—warranting judicial disqualification or recusal.” *Humboldt Cnty. Pub. Def. v. Sixth Jud. Dist. Ct. of State*, 126 Nev. 722, 367 P.3d 781 (2010).

In the present case, Judge Escobar asserted that her impartiality may reasonably be questioned “due to a personal connection to a party cited in the pleadings.” Exhibits 5 and 6. At the hearing, Judge Escobar made it clear she was recusing herself based on her 30-year friendship with Governor Steve Sisolak. Ex. 5 at p. 5. Judge Escobar further acknowledged that the public record request at

issue in the litigation was related to Sheriff Joseph Lombardo who is currently Governor Sisolak's opponent in the upcoming Governor's election. *Id.* It was based on this attenuated link that Judge Escobar voluntarily recused herself even though judges are apolitical and non-partisan.

The fact that Governor Sisolak is not actually a party and the only mention of him is in reference to press releases and Judge Escobar has a friendship with him is not sufficient to ***reasonably*** question her impartiality which is the standard this Court uses to review a judge's recusal. *City of Las Vegas Downtown Redevelopment Agency v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 640, 644, 5 P.3d 1059, 1062 (2000).

A long-term friendship, without more, is not sufficient in law or fact for recusal under Rule 2.11(A). *United States v. Mosesian*, 972 F.2d 1346, *6 (9th Cir.1992) (unpublished) ("A judge is not required to forsake established friendships and professional relationships with members of the bar just because he has taken a seat on the bench."); *In re Complaint of Jud. Misconduct*, 816 F.3d 1266, 1268 (9th Cir. 2016) ("[F]riendship between a judge and a lawyer, or other participant in a trial, without more, does not require recusal.").

IV. CONCLUSION

Based on the foregoing, LVMPD seeks a stay of the recusal order until this Court issues a decision on the Writ Petition.

Dated this 5th day of August, 2022.

MARQUIS AURBACH

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NRAP 27(e) CERTIFICATE

I hereby certify that this Emergency Motion for Relief Under NRAP 27(e) relies upon issues raised by LVMPD in the District Court, and otherwise complies with the provisions of NRAP 27(e).

As set forth in the body of this motion, emergency relief is needed on or before August 12, 2022 because Judge Maria Gall will issue a decision on a disputed motion.

LVMPD did not seek a stay at the district court because it was impracticable because Judge Escobar could not make a decision as a result of her recusal and the newly assigned judge should not issue a decision on the case if it is improperly before her. This, coupled with the shortened time, made it impractical for LVMPD to seek a stay in the district court.

Judge Escobar's recusal order was entirely improper. Judge Escobar has a duty to preside over the instant case and it is presumed that she is impartial. Judge Escobar's sole basis for recusal is her 30-year friendship with a non-party, political figure Governor Steve Sisolak. Under the NPRA, DDG seeks emails from Sheriff Lombardo regarding his campaign for Governor. The basis for recusal is the attenuated link that Sheriff Lombardo is currently running for Governor. This is not a sufficient basis for recusal under Nevada Code of Judicial Conduct 2.11(A). The object of the Writ Petition will be defeated and LVMPD will suffer prejudice

if a stay is denied as the matter is improperly before Judge Maria Gall. Without a stay, a decision on the merits will issue prior to this Court's decision on the Writ Petition.

On August 4, 2022 the Marquis Aurbach advised all counsel for DDG, that LVMPD would be filing a Writ Petition and seeking a stay of the recusal order.

The telephone numbers and office addresses of the attorneys for the parties are as follows:

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Attorneys for Plaintiff Due Diligence Group, LLC

According to the attached certificate of service, all parties through their counsel of record have been served via email due to the exigent nature of the request.

Dated this 1st day of August, 2022.

MARQUIS AURBACH

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONER LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S EMERGENCY MOTION FOR RELIEF TO STAY UNDER NRAP 27(e)** was filed electronically with the Nevada Supreme Court on the 5th day of August, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List. as follows:

I further certify that due to the exigent nature of the Emergency Motion for Stay, that all parties received a copy via email as follows:

Honorable Maria Gall
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DC9Inbox@clarkcountycourts.us
Current Presiding Judge

Honorable Adriana Escobar
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/s/ Leah A. Dell

An employee of Marquis Aurbach

EXHIBIT 1



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CASE NO: A-22-853953-W
Department 14

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**IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY**

DUE DILIGENCE GROUP, LLC, a limited
liability company,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

Case No.:

Dept. No.:

**APPLICATION FOR ORDER
COMPELLING DISCLOSURE OF
PUBLIC RECORDS PURSUANT TO
NRS 239.011/PETITION FOR WRIT
OF MANDAMUS**

**Priority Matter Pursuant to
NRS 239.011(2)**

COMES NOW Plaintiff Due Diligence Group, LLC, a limited liability company formed under the laws of Delaware ("Plaintiff"), by and through its undersigned counsel, and files this Nevada Public Records Act Application and Petition for Writ of Mandamus for declaratory and injunctive relief ("Application"), ordering the Las Vegas Metropolitan Police Department ("LVMPD" or "Defendant") to provide Plaintiff access to and complete copies of public records requested pursuant to the Nevada Public Records Act, NRS §§ 239.001 *et seq.* ("NPR"). Plaintiff

1 also requests an award of all fees and costs associated with its efforts to compel LVMPD's
2 compliance and obtain the withheld public records, and that this matter be expedited as mandated
3 by NRS § 239.011(2).

4 In support thereof, Plaintiff alleges as follows:

5 **NATURE OF ACTION**

6 1. Plaintiff brings this application for relief pursuant to NRS § 239.011. *See Reno*
7 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877-78, 882, 266 P.3d 623, 626 (2011).

8 2. Plaintiff's application to this Court is the proper means to secure LMVPD's
9 compliance with the NPRA. *Id.*; *see also DR Partners v. Bd. of Cnty. Comm'rs of Clark Cnty.*, 116
10 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Donrey of Nev. v. Bradshaw*, 106 Nev. 630, 798
11 P.2d 144 (1990)) (writ of mandamus is the appropriate procedural remedy to compel compliance
12 with the NPRA).

13 3. Plaintiff is entitled to an expedited hearing on this matter pursuant to NRS §
14 239.011(2), which mandates that "the court shall give this matter priority over other civil matters
15 to which priority is not given by other statutes."

16 **JURISDICTION AND VENUE**

17 4. This Court has jurisdiction to issue a writ of mandamus pursuant to Article 6
18 Section 6 of the Nevada Constitution and NRS § 34.160.

19 5. This Court has jurisdiction to hear Plaintiff's claim pursuant to NRS § 239.001
20 because Clark County is where the public records requested are held.

21 6. Venue is proper in the Eighth Judicial District Court of Nevada because all relevant
22 actions have occurred in Clark County, Nevada.

23 **PARTIES**

24 7. Plaintiff Due Diligence Group, LLC is a limited liability company and consulting
25 firm specializing in background research, which often requires the submission of public records
26 requests to federal, state, and local government agencies. Plaintiff helps ensure government
27 transparency and accountability in the provision of public services and public records.
28

8. Defendant LVMPD is a public agency in Clark County, Nevada subject to the NPRA pursuant to NRS § 239.005(5)(d).

STANDING

9. Plaintiff has standing to pursue this action pursuant to NRS § 239.011 because LVMPD has unjustifiably withheld documents responsive to Plaintiff's numerous public records requests, each of which were properly submitted in accordance with all applicable state laws and LVMPD's prescribed policies and procedures. Furthermore, LVMPD has failed to meaningfully respond to Plaintiff's requests, in violation of the NPRA.

FACTUAL ALLEGATIONS

10. On December 1, 2021, Plaintiff submitted two public records requests to LVMPD (NPR2022-0018285 and NPR2022-0018286) seeking “releasable/redacted copies of incoming-and-outgoing emails (including attachments) between Sheriff Joe Lombardo” and his campaign consultants Mike Slanker and Ryan Ewrin “from January 1, 2021, to December 1, 2021.”

11. Just a day later, on December 2, 2021, LVMPD informed Plaintiff that “[i]n order for the [LVMPD] Public Records Unit to proceed with researching [Plaintiff’s] request” it had to “provide email address(s) [sic] for the individual(s) [Plaintiff was] inquiring about.” Without those email addresses, LVMPD’s Public Records Unit claimed that it would be unable to proceed with researching Plaintiff’s requests. LVMPD’s Public Records Unit then informed Plaintiff that Plaintiff’s requests would be cancelled and instructed Plaintiff to submit new requests for the same information.

12. On January 5, 2022, Plaintiff resubmitted its requests (NPR2022-0019318 and NPR2022-0019319) as instructed and provided LVMPD's Public Records Unit with the email addresses associated with Messrs. Slanker and Erwin.

13. That same day, January 5, LVMPD's Public Records Unit requested payment of \$153.00 for approximately three hours of preliminary research to determine whether any responsive records existed. Plaintiff remitted payment immediately to LVMPD on January 8 with a check delivered via United States Postal Service.

1 14. On January 11, 2022, LVMPD informed Plaintiff that it had received payment and
2 would begin processing requests NPR2022-0019318 and NPR2022-0019319.

3 15. On January 28, 2022, LVMPD informed Plaintiff that its search had revealed
4 numerous emails responsive to Plaintiff's requests and that it anticipated those emails would be
5 ready for release on February 4, 2022.

6 16. However, on February 4, 2022, LVMPD changed its tune. Instead of releasing the
7 emails, LVMPD alleged, for the first time, that "the only records located [were] not public
8 records." LVMPD then selected and produced only a small sampling of the responsive emails
9 uncovered in its search "to demonstrate their nature" and withheld the remaining responsive
10 emails.

11 17. On March 24, 2022, Plaintiff submitted a third records request, NPR2022-0021998,
12 seeking emails between Sheriff Lombardo and former Lieutenant Governor Mark Hutchison,
13 another campaign consultant that Sherriff Lombardo hired as part of his campaign for governor.

14 18. On April 6, 2022, LVMPD refused Plaintiff's third and final records request. In
15 doing so, LVMPD cited Plaintiff's previous requests, noting that LVMPD's Public Records Unit
16 search revealed "very few emails responsive" to Plaintiff's request. LVMPD reiterated its belief
17 that "[t]he email [sic] are not public records" and that "[i]t was unlikely that any communications
18 would be related to LVMPD business[]," because the emails were "related to Mr. Lombardo's
19 campaign and not his duties as Clark County Sheriff."

20 19. LVMPD's denials of requests NPR2022-0019318, NPR2022-0019319, and
21 NPR2022-0021998 (collectively, the "Requests") prompted Plaintiff to send its first demand letter
22 on April 12, 2022, requesting LVMPD immediately produce all records responsive to Plaintiff's
23 Requests within five business days and challenging the purported justification for withholding
24 records that LVMPD had already conceded were responsive to Plaintiff's requests.

25 20. On April 19, 2022, LVMPD again refused to provide Plaintiff the records
26 responsive to its requests. LVMPD reiterated its mistaken belief that the emails were not related
27 to Sheriff Lombardo's duties as Sheriff and that, therefore, they did not concern the provision of
28 public service and were not public records subject to disclosure.

1 21. Contrary to LVMPD's assessment, the emails requested are directly related to
2 Sheriff Lombardo's duties as sheriff. First, the sample emails that the LVMPD produced include
3 information directly related to government conduct and the provision of public service, including
4 Nevada's COVID policies, an LVMPD deputy's presentation analyzing Clark County and
5 Nevada's economic status, emails from a disgruntled citizen regarding Sheriff Lombardo's
6 mismanagement of the fingerprint bureau, and press releases from Governor Sisolak regarding
7 new and pending state legislation.

8 22. Second, the timing and nature of the sample emails that the LVMPD produced show
9 that Sheriff Lombardo was using his government-issued email address to engage in political
10 activity during his hours of employment. That, in itself, sheds light on his provision of public
11 services, as it is directly in contrast to his duty to avoid conflicts of interest between public duties
12 and private interests. NRS § 281A.020. Moreover, as a state employee, Sheriff Lombardo is
13 proscribed from engaging in political activity during his hours of employment and is subject to
14 disciplinary or corrective action for doing so. NAC §§ 284.650(9), 284.770(2).

15 23. This is different than a situation where the documents sought are entirely divorced
16 from a public employee's duties and have no bearing on the public employee's execution of their
17 duties or the provision of public services. It would be deeply troubling if Nevada's public records
18 law allowed state entities to avoid compliance with public records laws by categorizing materials
19 that show that an employee is violating their duties under state law as "unrelated" to those duties
20 and thus refusing to produce them in response to a properly constituted public records request.

21 24. On April 27, 2022, in the face of LVMPD's continued refusal to produce records
22 responsive to Plaintiff's Requests, undersigned counsel sent a second demand letter directing that
23 LVMPD "produce all requested emails within 5 business days of receipt of" Plaintiff's second
24 letter.

25 25. On May 4, 2022, LVMPD again refused Plaintiff's Requests but raised a new
26 justification, not previously asserted, for withholding the responsive emails. For the first time,
27 LVMPD asserted that the records were confidential under the deliberative process privilege. That
28 privilege protects the decision-making processes of government agencies. However, Messrs.

1 Erwin, Slanker, and Hutchison are campaign consultants hired by Sheriff Lombardo for political,
2 strategic and communications consulting for his campaign for governor. They are not employees
3 of the state of Nevada, Clark County, or the LVMPD.

4 26. It cannot be that the emails were unrelated to his duties as sheriff, yet also included
5 ideas, opinions, and viewpoints which were predecisional and deliberative to an LVMPD policy
6 decision. This puts LVMPD's earlier and later justifications for withholding the emails directly at
7 odds.

8 27. To the extent Sheriff Lombardo was engaging in predecisional communications that
9 contributed to an LVMPD policy decision with his campaign consultants, that would also violate
10 his duties as sheriff. *See supra* ¶ 22.

11 28. LVMPD's persistent denials run afoul of Nevada law and the fundamental purpose
12 of the NPRPA. The NPRPA favors transparency and accountability in government and is meant to
13 guarantee that public records are broadly accessible. *See Gibbons*, 127 Nev. at 878, 266 P.3d at
14 626 (citing NRS 239.001(1)).

15 29. There is no privilege or confidentiality designation that applies to Plaintiff's
16 requests or the Sheriff's emails that justify withholding on the basis of confidentiality or the
17 deliberative process privilege.

18 30. Defendant has failed to comply with the NPRPA by providing woefully and
19 intentionally deficient responses to Plaintiff's lawful and proper Requests without any legitimate
20 basis permitting withholding under NRS § 239.107

21 **LEGAL AUTHORITY**

22 ***Legal Framework***

23 31. The NPRPA provides that a writ of mandamus is the appropriate procedural remedy
24 for pursuing the disclosure of public records and compelling production once a request is denied.
25 *See* NRS § 239.011; *City of Sparks v. Reno Newspapers, Inc.*, 133 Nev. 398, 399, 399 P.3d 352,
26 355 (2017) (collecting cases); *DR Partners*, 116 Nev. at 621, 6 P.3d at 468 (citing *Donrey*, 106
27 Nev. 630, 798 P.2d 144).

1 32. Under the NPRA, “all public records generated by government entities are public
2 information and are subject to public inspection unless otherwise declared to be confidential.” *City*
3 *of Sparks*, 133 Nev. at 400, 399 P.3d at 355 (quoting *Reno Newspapers, Inc. v. Haley*, 126 Nev.
4 211, 214, 234 P.3d 922, 924 (2010)). Specifically,

5 this court will presume that all public records are open to disclosure unless either
6 (1) the Legislature has expressly and unequivocally created an exemption or
7 exception by statute; or (2) balancing the private or law enforcement interests for
8 nondisclosure against the general policy in favor of an open and accessible
9 government requires restricting public access to government records.

10 *Id.* (quoting *Haley* at 214-15, 234 P.3d at 924-25). Unlike a typical mandamus case, under the
11 NPRA, “the burden is on the government to prove confidentiality by a preponderance of the
12 evidence” in order to advance “the underlying policy of ensuring an open and accountable
13 government.” *Id.* (quoting *Haley* at 215, 234 P.3d at 925).

14 33. Here, LVMPD first disputes the requested emails are public records at all. LVMPD
15 contends that the emails are personal and unrelated to the provision of public service and therefore
16 exempt from the NPRA’s disclosure requirements. That characterization is simply incorrect, as
17 explained below. *See infra* ¶¶ 42–45.

18 34. Second, LVMPD claims that even if the emails are public records, they are
19 confidential. In support, LVMPD has not asserted any statutory exception or exemption, but argues
20 that the common-law “deliberative process privilege” would shield the emails from disclosure.

21 35. The Supreme Court established the requirements for the deliberative process
22 privilege in *DR Partners*, 116 Nev. 616, 623, 6 P.3d 465, 469 (2000). To qualify for non-disclosure
23 under the deliberative process privilege records must be both predecisional and deliberative. *See*
24 *id.* To qualify as “predecisional” the governmental entity must pinpoint “an agency decision or
25 policy to which the documents contributed” or played a role in making. *See id.* To be deemed part
26 of the “deliberative” process, the record “must consist of opinions, recommendations, or advice
27 about agency policies.” *Id.* at 623, 6 P.3d at 469-70. Even if the subject records played a role in
28 the agency’s decision-making process, the records still must be proven deliberative—it is not
enough for them to be either/or. *See id.* The emails at issue here are neither. *See infra* ¶ 56.

1 36. Even if the deliberative process privilege applied to the emails in this case, it is not
2 an absolute statutory privilege, but rather a conditional common-law privilege that is subject to a
3 balancing of interests:

4 In balancing the interests . . . , the scales must reflect the fundamental right of a
5 citizen to have access to the public records as contrasted with the incidental right
6 of the agency to be free from unreasonable interference The citizen's
7 predominant interest may be expressed in terms of the burden of proof which is
applicable in this class of cases; the burden is cast upon the agency to explain why
the records should not be furnished.

8 *DR Partners*, 116 Nev. at 621, 6 P.3d at 468 (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d
9 413, 421-22 (1961)).

10 37. As outlined above, in balancing interests, the burden lies with the governmental
11 entity to overcome the presumption in favor of disclosure and prove by a preponderance of the
12 evidence that its interest in nondisclosure clearly outweighs the public's interest in access. *See id.*
13 at 621-22, 6 P.3d at 468; *see also Gibbons*, 127 Nev. at 880, 266 P.3d at 628. Moreover, the NPRA
14 "requires a narrower interpretation of private or government interests promoting confidentiality or
15 nondisclosure." *Id.* at 880, 266 P.3d at 627. LVMPD's interest in withholding must *clearly*
16 outweigh the presumption in favor of Plaintiff and the public's shared interest in disclosure—and
17 any doubt or ambiguities should be resolved in favor of disclosure. *See id.*; *see also* NRS §
18 239.0113; *New York Times Co. v. U.S. Food & Drug Admin.*, 529 F. Supp. 3d 260, 269–70
19 (S.D.N.Y. 2021) ("The government bears the burden of demonstrating that an exemption applies
20 to each item of information it seeks to withhold, and all doubts as to the applicability of the
21 exemption must be resolved in favor of disclosure.") (citing *Florez v. Cent. Intel. Agency*, 829 F.3d
22 178, 182 (2d Cir. 2016)).

23 38. Notably, the privilege does not apply when the government's actions are being
24 called into question and the interest in preventing disclosure is preventing the revelation of
25 misconduct. *See Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 705, 429 P.3d 313,
26 318–19 (2018). Nor does the privilege cover records prepared by outside consultants who do not
27 have a formal relationship with the government. *See DR Partners*, 116 Nev. at 624-25, 6 P.3d at
28 470 (collecting cases). Accordingly, even if the privilege applied to the emails requested here, it

1 would not shield them from disclosure. *See infra* ¶ 57.

2 ***The emails sought are public records subject to disclosure under the NPRA.***

3 39. Sheriff Lombardo's emails constitute public records as contemplated by the NPRA.
4 The NPRA applies to records of non-federal Executive Branch agencies in Nevada unless
5 otherwise declared confidential by law. NRS § 239.010(1).

6 40. Though the NPRA does not explicitly define "public record," under the NPRA, an
7 "official state record" includes, *without limitation*, information stored on computers and materials
8 made, received, or preserved by an agency as evidence of its activity or because of the information
9 contained in the material. NRS § 239.005(6). This definition, like all other provisions of the NPRA,
10 must be construed liberally to maximize the requesting party's right to access those records. *See*
11 NRS 239.001; *Gibbons*, 127 Nev. at 878, 266 P.3d at 626.

12 41. The emails in question fall within the NPRA's operative definition because of the
13 information that they contain. *See, e.g., Serv. Emps. Int'l Union Loc. 925 (SEIU) v. Univ. of Wash.*,
14 193 Wash. 2d 860, 874-76, 447 P.3d 534, 541-42 (2019) (finding emails at issue satisfied statutory
15 definition of "public records" because the information contained in the material related to
16 government conduct).

17 42. The sample emails include exactly the type of information contemplated in the
18 NPRA: information that is directly related to government conduct and, more broadly, the provision
19 of public services. *See* NRS § 239.005(6); *see also Las Vegas Metro. Police Dep't v. Blackjack*
20 *Bonding, Inc.*, 131 Nev. 80, 86, 343 P.3d 608, 613 (2015) ("[T]he information . . . requested is a
21 public record because it relates to the provision of a public service."). They include a discussion
22 of Nevada's COVID policies, a presentation prepared by an LVMPD deputy analyzing Clark
23 County and Nevada's economic status, emails from a disgruntled citizen regarding Sheriff
24 Lombardo's mismanagement of the fingerprint bureau, and press releases from Governor Sisolak
25 regarding new and pending state legislation.

26 43. Nonetheless, LVMPD ignored the NPRA's statutory definition of "official state
27 record" in favor of the Merriam-Webster dictionary definition of "public record." This is plainly
28 inappropriate, where the controlling statute provides a relevant definition itself. But LVMPD used

1 Merriam-Webster's definition to summarily conclude that Sheriff Lombardo's emails were not
2 public records subject to disclosure under the NPRA without examining the definition of an
3 "official state record" as defined in the NPRA.

4 44. With the emails provided serving as a representative sample of the larger collection,
5 it follows that the remaining emails similarly contain information related to government conduct
6 or the provision of public service, and therefore constitute public records subject to the NPRA's
7 disclosure requirements. *See id.*

8 45. To support its argument to the contrary, LVMPD suggested that the emails were
9 not public records because they were personal in nature. The LVMPD cited *Comstock Residents*
10 *Ass'n v. Lyon Cnty. Bd. of Comm'rs*, 134 Nev. 142, 414 P.3d 318 (2018), and *Blackjack Bonding,*
11 *Inc.*, 131 Nev. 80 343 P.3d 608, for support. However, in both cases, the Court employed an
12 expansive reading of the NPRA, as mandated, to determine that records at issue *were* in fact public
13 records subject to disclosure because they related to or concerned the provision of public service.
14 Although *Comstock* and *Blackjack* involve requests for records maintained on private devices or
15 by a private entity, the dispositive inquiry supports Plaintiff's request here, given that the emails
16 at issue relate to the provision of a public service. *See supra* ¶ 42.

17 46. To the extent that the fact pattern in this case is different from those in *Comstock*
18 and *Blackjack* because the emails at issue were sent using Sheriff Lombardo's government email,
19 that fact does not help Defendant. Indeed, Sheriff Lombardo used his government email to engage
20 in political activity in contravention of the Nevada Administrative Code, which itself weighs on
21 the Sheriff's duties. *See* NAC §§ 284.650(9), 284.770(2); *see supra* ¶¶ 22, 42.

22 47. LVMPD's reliance on *Gibbons*, in support of its decision to withhold the
23 communications in question is also misplaced. In *Gibbons*, 104 of Governor Jim Gibbons' emails
24 were at issue, 24 of which the lower court had deemed personal and exempt from disclosure. 127
25 Nev. 873, 877, 266 P.3d 623, 626. However, the issue before the Court was whether the
26 governmental entity was required to provide the requesting party a privilege log. *See id.* at 877,
27 266 P.3d at 626. Having reached a conclusion on that issue, the Court never performed an analysis
28 of the lower court's determination that those 24 emails at issue were personal and therefore exempt

1 from disclosure. *Id.* at 884, 266 P.3d at 630 n.5. Consequently, *Gibbons* offers no guidance as to
2 whether the emails at issue here are indeed personal in nature.

3 48. LVMPD's reliance on an out-of-jurisdiction case, *Zeigler v. United States*
4 *Department of Agriculture-Farm Services Agency*, No. 4:19-cv-02633-RBH, 2021 WL 4155260,
5 (D.S.C. Sep. 10, 2021), is inapposite as well. As an initial matter, in reaching its conclusion, the
6 Court relied on tests crafted specifically for the federal Freedom of Information Act ("FOIA"),
7 which have never been adopted or applied by any Nevada state court for NPRA requests.
8 Additionally, the facts were decidedly different from those before the Court here.

9 49. At issue in *Zeigler* was whether some of a government employee's e-mails sent to
10 and from the employee's government-issued account were truly personal in nature and not
11 reachable under FOIA. 2021 WL 4155260, at *7. After an *in camera* review of a representative
12 sample, the Court found the agency had properly withheld specific emails that were completely
13 unrelated to government conduct or the provision of public service. *See id.* at *8, 11 (explaining
14 that

15 the emails designated as 'personal' do not contain substantive or official agency
16 information and they do not appear to facilitate any agency business"). Quite to the
17 contrary, the emails discussed "various aspects of the hunting business such as the
18 number of hogs killed in the past year, obtaining tags to hunt turkeys, different
19 animals caught on trail cameras, acquiring land through sale or lease to hunt,
20 weather, taxes paid on hunting land, etc. Other withheld emails include emails
between [the employee] and his Sunday School class, members of the community
regarding local athletics, Junior Legion, and Booster Club. There are also some
emails that involve personal real estate transactions and other personal business. *Id.*
at *8.

21
22 50. These emails are distinguishable from the emails here. Sheriff Lombardo's ongoing
23 exchange of emails with his consultants as part of his campaign, which *do include* substantive and
24 official LVMPD information, are patently different.

25 51. More on point is *SEIU*, 193 Wash. 2d 860, 447 P.3d 538. In *SEIU*, the court
26 considered a similarly broad definition of "public record" from Washington's Public Records Act,
27 which requires that a writing contain "information relating to the conduct of government or the
28 performance of any governmental or proprietary function." *Id.* at 867, 447 P.3d at 538. The

1 information contained in a record is key to a court's consideration of whether it constitutes a public
2 record. *See id.* at 870, 447 P.3d at 539. The court further explained that this standard "'casts a wide
3 net' and 'suggest[s] records can qualify as public records if they contain any information that refers
4 to or impacts the actions, processes, and functions of government.'" *Id.*

5 52. The emails at issue in *SEIU* were sent from a state employee's government issued
6 email account but were not created within the scope of his employment. *See id.* at 872-73, 447
7 P.3d at 540-41. The emails were created in the employee's capacity as chapter president for the
8 American Association of University Professors and unrelated to his duties as a state employee. *See*
9 *id.* In its analysis, the Court found that the contents of the emails made them public records because
10 the topics discussed were related to government functions or conduct. *See id.* at 872-73, 875, 447
11 P.3d at 540-42.

12 53. The court emphasized that, "for an e-mail to 'contain information relating to the
13 conduct of government or the performance of any governmental or proprietary function, it need
14 not have been sent or received within the scope of employment.'" *Id.* at 876, 447 P.3d at 542
15 (internal citations omitted). In other words, the fact that Sheriff Lombardo's emails "contain
16 information relating to the conduct of government or the performance of any governmental or
17 proprietary function"—including, it would appear, his violation of his duties as a public
18 employee—is sufficient to bring them within the NRPA's broad definition of what constitutes a
19 public (or state) record subject to disclosure.

20 54. The law is clear: if the communications are related to government conduct or the
21 provision of public service—which these are—then they are public records subject to disclosure.
22 Though the emails were exchanged with the Sheriff's campaign consultants in furtherance of his
23 efforts to win his race for governor, this is not enough to show they are not public.

24 ***The deliberative process privilege does not apply, and, even if it did, Plaintiff's interest in***
25 ***disclosure outweighs Defendant's interest in nondisclosure.***

26 55. LVMPD's second justification for withholding the requested emails—that they are
27 subject to the deliberative process privilege—is equally unsuccessful.

1 56. The deliberative process privilege requires communications be both predecisional
2 *and* deliberative. Sheriff Lombardo's emails are neither. As LVMPD itself has admitted, the emails
3 at issue are related to Sheriff Lombardo's campaign for governor. LVMPD has never identified an
4 agency decision or policy that the Sheriff's emails contributed to or played a role in making.
5 Instead, LVMPD has relied on Plaintiff's assertion that Sheriff Lombardo's emails with his
6 consultants contained the Sheriff's views, opinions, and viewpoints on matters on which Sheriff
7 Lombardo has issued official policies. Plaintiff's observations regarding the sample emails do not
8 carry LVMPD's heavy burden to justify withholding pursuant to the deliberative process privilege,
9 as mere mention of views, opinions, and viewpoints without more do not show the emails were
10 predecisional—that they played a role in the decision-making process for the policies discussed.
11 *See id.* at 623, 6 P.3d at 469.

12 57. Even if the emails were both deliberative and predecisional, the privilege would not
13 apply here. The emails at issue contain information that the Sheriff shared with his campaign
14 consultants to gain a political advantage in his race for governor and improve his chances of
15 winning office. This violates NAC § 284.770, which prohibits employees from “engag[ing] in
16 political activity during the hours of his or her state employment to improve the chances of a
17 political party or a person seeking office[.]”

18 58. Consequently, even if the privilege did apply, its conditional nature would still
19 make it inapplicable to Sheriff Lombardo's emails, as the only interest in nondisclosure is
20 preventing the revelation of wrongdoing. *See Clark Cnty. Sch. Dist.*, 134 Nev. at 705, 429 P.3d at
21 318–19. Additionally, as Sheriff Lombardo's campaign consultants have no formal relationship
22 with LVMPD, the deliberative process privilege does not cover their exchanges with Sheriff
23 Lombardo in either his capacity as a candidate nor as sheriff. *See DR Partners*, 116 Nev. at 624–
24 25, 6 P.3d at 470 (collecting cases).

25 59. Lastly, LVMPD never addresses the burden it carries pursuant to *Donrey* to show
26 that its interest in withholding the emails *clearly* outweighs Plaintiff and the public's shared
27 interest in disclosure. Instead LVMPD relied solely on its presumption that the emails are not
28 public records and that even if they were, the deliberative process privilege would still justify

1 withholding. Nevertheless, a balancing of interests under *Donrey* favors disclosure because the
2 LVMPD has not articulated an interest in withholding the emails. This alone is insufficient to
3 overcome the NPRA's strong presumption in favor of disclosure. *See, e.g., Gibbons*, 127 Nev. at
4 880, 266 P.3d at 628.

5 60. There is no basis pursuant to the NPRA or any exceptions articulated in the
6 applicable case law which would support withholding Sheriff Lombardo's emails. Thus, the only
7 remaining basis for deeming the Sheriff's emails confidential would be an express provision of
8 law—and there's not one which is applicable to Sheriff Lombardo's emails. *See, e.g., NRS §*
9 *239.010(1)*. With no legal authority or basis in law for withholding LVMPD's persistent refusal to
10 produce Sheriff Lombardo's email is in direct contravention of the NPRA and infringes on
11 Plaintiff's inherent right to access the requested records.

12 **PRAYER FOR RELIEF**

13 1. The foregoing paragraphs of this Complaint are realleged and fully incorporated as
14 if set forth in full herein.

15 2. Plaintiff should be provided with the records requested pursuant to the Nevada
16 Public Records Act.

17 3. Defendant has violated the intent and letter of the Nevada Public Records Act by
18 failing to provide Plaintiff with the Records responsive to its Requests.

19 4. The Records requested are subject to disclosure and Defendant has failed to meet
20 its burden of proving otherwise by providing any legitimate legal basis for withholding as is
21 mandated by the Nevada Public Records Act. NRS § 239.0107(1)(d).

22 5. A writ of mandamus is the only relief available to Plaintiff and necessary to compel
23 Defendant's compliance with the Nevada Public Records Act.

24 **WHEREFORE**, Plaintiff prays for the following relief:

25 A. That the Court resolve this matter on an expedited basis as mandated by NRS §
26 239.011(2);

27 B. Injunctive relief ordering the Las Vegas Metropolitan Police Department to come
28 into compliance the Nevada Public Records Act, NRS §§ 239.001 *et seq.*,

1 C. Grant a writ of mandamus ordering the Las Vegas Metropolitan Police Department
2 to provide complete copies of all Records responsive to requests NPR2022-0019318, NPR2022-
3 0019319, and NPR2022-0021998 no later than five days after issuance of the Court's order in this
4 case;

5 D. Declaratory relief that the Las Vegas Metropolitan Police Department has violated
6 the NPRA by refusing to disclose records responsive to Plaintiff's requests;

7 E. Awarding Plaintiff reasonable costs and attorneys' fees; and

8 F. Granting such other relief as the Court deems appropriate.

9
10 DATED this 10th day of June, 2022

11 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &**
12 **RABKIN, LLP**

13 By: /s/ Bradley S. Schrager

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EXHIBIT 2

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Attorneys for Plaintiff

**IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY**

DUE DILIGENCE GROUP, LLC, a limited
liability company,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

Case No.: A-22-853953-W

Dept. No.: 14

HEARING REQUESTED

**MOTION FOR ORDER GRANTING
PLAINTIFF'S APPLICATION FOR
WRIT OF MANDAMUS PURSUANT
TO NRS 239.011, ON AN ORDER
SHORTENING TIME ON**

COMES NOW Plaintiff Due Diligence Group, LLC, a limited liability company formed under the laws of Delaware ("Plaintiff"), by and through its undersigned counsel, and files this Motion for an Order Granting Plaintiff's Application for Writ of Mandamus Pursuant to NRS 239.011, on an Order Shortening Time.

///

///

1 This Motion is based on the Memorandum of Points and Authorities below, the papers and
2 exhibits on file, and any oral argument this Court sees fit to allow at the hearing on this Motion.

3 DATED this 17th day of June, 2022.

4 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &**
5 **RABKIN, LLP**

6 By: /s/ Bradley S. Schrager

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1 **DECLARATION OF BRADLEY S. SCHRAGER, ESQ.**

2 I, Bradley S. Schrager, Esq., declare as follows:

3 1. I am duly admitted to practice law in the state of Nevada and am a partner with the
4 law firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, local counsel for Plaintiff in the above-
5 captioned matter.

6 2. I make this declaration of personal, firsthand knowledge and, if called and sworn
7 as a witness, I could and would testify competently thereto. I have personal knowledge of the facts
8 stated herein and submit this Declaration in support of the request to consider Plaintiff's Motion
9 for an Order Granting Plaintiff's Application for Writ of Mandamus Pursuant to NRS 239.011 (the
10 "Motion") on an order shortening time with an expedited briefing schedule.

11 3. On June 10, 2022, Plaintiff filed its Application for Order Compelling Disclosure
12 of Public Records Pursuant to NRS 239.011/Petition for Writ of Mandamus ("Petition for Writ of
13 Mandamus").

14 4. On June 13, 2022, Defendant was served the Petition for Writ Of Mandamus, and
15 the deadline for Defendant to file a responsive pleading is July 5, 2022.

16 5. The factual timeline set forth in the Petition for Writ of Mandamus is fully
17 incorporated as if set forth in full herein.

18 6. Shortening time for a hearing and an expedited briefing schedule is appropriate
19 because Defendant has thus far stymied Plaintiff's request for public documents, pursuant to the
20 Nevada Public Records Act, NRS § 239.001 *et seq.* ("NPRA"). The importance of the NPRA is
21 exemplified by NRS § 239.011(2), which mandates that "the court shall give this matter priority
22 over other civil matters to which priority is not given by other statutes." Therefore, an order
23 shorting time is appropriate here, and Plaintiff is entitled to an expedited briefing schedule hearing
24 on this matter.

25 7. A briefing schedule granting a week to ten days for opposition and a week for reply
26 is likely appropriate, with hearing to follow at the Court's convenience.

27 ///

28 ///

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of June, 2020.

By: /s/ Bradley S. Schrager
BRADLEY S. SCHRAGER, ESQ.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 On January 5, 2022, Plaintiff submitted two public records requests to LVMPD seeking
4 emails exchanged between Sheriff Joseph Lombardo and two of his campaign consultants, Michael
5 Erwin and Mike Slanker, using his government-issued email address. *See* Ex. 1.

6 On February 4, 2022, LVMPD responded with a boilerplate denial for both of Plaintiff's
7 requests, with no meaningful application of the cited law to the request and an unacceptably narrow
8 reading of the NRPA. *See* Ex. 2. LVMPD claimed that the emails were personal because they were
9 related to Sheriff Lombardo's campaign for governor and not related to his present duties as Clark
10 County Sheriff or LVMPD business. *See id.*

11 LVMPD included a small sampling of responsive emails with its denial. *See* Exhibit 4. The
12 sample emails that LVMPD produced include information directly related to government conduct
13 and the provision of public service, including Nevada's COVID policies, an LVMPD deputy's
14 presentation analyzing Clark County and Nevada's economic status, emails from a disgruntled
15 citizen regarding Sheriff Lombardo's mismanagement of the fingerprint bureau, and press releases
16 from Governor Sisolak regarding new and pending state legislation. *See id.*

17 The timing and nature of the sample emails also showed Sheriff Lombardo had acted in
18 contravention of his duty to avoid conflicts of interest between his public duties and private
19 interests and refrain from engaging in political activity during his hours of employment. *See*
20 NRS § 281A.020; NAC §§ 284.650(9), 284.770(2).

21 On March 24, 2022, Plaintiff submitted a third records request seeking emails sent to a
22 third Lombardo campaign consultant, Mark Hutchison, using the Sheriff's government-issued
23 email address. *See* Ex. 3.

24 On April 6, 2022, LVMPD responded with another boilerplate denial. *See* Exhibit 5. Again,
25 LVMPD claimed that the emails were personal and related to Sheriff Lombardo's campaign for
26 governor and not his duties as Sheriff or LVMPD business. *See id.*

27 On April 12, 2022 and April 27, 2022, Plaintiff sent LVMPD two demand letters explaining
28 that LVMPD's denials and continued refusal to produce records responsive to Plaintiff's requests

1 were illegal and violated of the NRPA. *See* Exs. 6, 8. In its demand letters, Plaintiff explained why
2 LVMPD's boilerplate denials and cited authority were not applicable to Plaintiff's requests or the
3 responsive emails.

4 On April 19 and May 4, 2022, LVMPD responded to Plaintiff's demand letters with flawed
5 and contradictory justifications for withholding the responsive emails. *See* Exs. 7, 9.

6 As described above, LVMPD initially denied Plaintiff's requests claiming the emails were
7 personal and unrelated to Sheriff Lombardo's duties as Sheriff of Clark County, LVMPD business,
8 or the provision of public service. *See* Exs. 2, 5, 7. However, on May 4, 2022, months after its
9 initial denial in February, LVMPD asserted for the first time that the records were confidential
10 under the deliberative process privilege, which would require the emails be predecisional and
11 deliberative to an LVMPD policy decision. *See* Ex. 9.

12 LVMPD wrongfully denied Plaintiff's requests and withheld the responsive emails based
13 on inadequate and contradictory justifications. *See* Exs. 7, 9. There is no privilege or
14 confidentiality designation that applies to Plaintiff's requests or the Sheriff's emails that justifies
15 withholding. *See* NRS §§ 239.010, 239.0107.

16 LVMPD's persistent denials ran afoul of Nevada law and the fundamental purpose of the
17 NRPA, which favors transparency and accountability in government and is meant to guarantee that
18 public records are broadly accessible. *See Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878,
19 266 P.3d, 623, 626 (2011) (citing NRS 239.001(1)).

20 On June 10, 2022, Plaintiff filed its Application for Order Compelling Disclosure of Public
21 Records Pursuant to NRS § 239.011/Petition for Writ of Mandamus ("Petition for Writ of
22 Mandamus") against Defendant Las Vegas Metropolitan Police Department ("LVMPD"). *See* Ex.
23 10. In its Petition for Writ of Mandamus, Plaintiff seeks priority consideration and relief pursuant
24 to NRS § 239.011 of the Nevada Public Records Act ("NPRA"). *See id.* Plaintiff seeks the Court's
25 expedited consideration of its Petition for Writ of Mandamus to enforce its right to view and copy
26 public records as articulated by the NPRA. *See id.*

27 Defendant LVMPD has failed to comply with the NPRA by providing woefully and
28 intentionally deficient responses to Plaintiff's lawful and proper requests without any legitimate

1 basis in the law. *See* Exs. 2, 3, 5, 7, 9.

2 Plaintiff has exhausted all available means to compel LVMPD to produce the responsive
3 emails. Now, a writ of mandamus is the only available means to compel LVMPD's compliance
4 with the NRPA. *See* Exs. 6, 8.

5 Plaintiff has now waited more than six months for LVMPD to produce the responsive
6 emails and is entitled to expedited relief pursuant to NRS § 239.011. *See* Ex. 10.

7 **II. ARGUMENT**

8 **A. *Legal Framework***

9 A writ of mandamus compels performance of ministerial acts required by law or controls
10 the public official or agency's arbitrary or capricious exercise of discretion. *See DR Partners v.*
11 *Bd. of Cnty. Comm'rs of Clark Cnty.*, 116 Nev. 616, 620, 6 P.3d 465, 468 (2000). An arbitrary or
12 capricious exercise of discretion is one not founded "on reason, or contrary to the evidence or
13 established rules of law" and warrants mandamus relief. *See Thomas v. Eighth Jud. Dist. Ct.*, 133
14 Nev. 468, 470-71, 402 P.3d 619, 623 (2017).

15 Mandamus is the appropriate procedural remedy to compel a public official or agency's
16 compliance with the NPRA. *See DR Partners*, 116 Nev. at 621, 6 P.3d at 468. When an agency
17 denies a public records request, the requestor may apply to the district court in the county where
18 the record is maintained for relief. NRS § 239.011(1). The NPRA mandates that requestors be
19 granted access to public records as expeditiously as possible and any application to the court for
20 relief be prioritized "over other civil matters to which priority is not given by other statutes." *See*
21 *id.* §§ 239.0107(2), 239.011(2).

22 Unlike a typical mandamus case, under the NPRA, "the burden is on the government to
23 prove confidentiality by a preponderance of the evidence" in order to advance "the underlying
24 policy of ensuring an open and accountable government[.]" *City of Sparks v. Reno Newspapers,*
25 *Inc.*, 133 Nev. 398, 401, 399 P.3d 352, 355 (2017).

1 ***B. The emails responsive to Plaintiff's requests are public records subject to***
2 ***disclosure under the NPRA.***

3 All public records are subject to inspection unless otherwise declared to be confidential.
4 *City of Sparks*, 133 Nev. at 400, 399 P.3d at 355 (quoting *Reno Newspapers, Inc. v. Haley*, 126
5 Nev. 211, 214, 234 P.3d 922, 924 (2010)). Specifically,

6 this court will presume that all public records are open to disclosure unless either
7 (1) the Legislature has expressly and unequivocally created an exemption or
8 exception by statute; or (2) balancing the private or law enforcement interests for
 nondisclosure against the general policy in favor of an open and accessible
 government requires restricting public access to government records.

9 *Id.*

10 LVMPD does not, and cannot, allege a statutory basis for withholding the emails because
11 none exists. *See* NRS § 239.0107. Instead, LVMPD alleged two conflicting bases for withholding
12 Sheriff Lombardo's emails, first, they are personal and not subject to disclosure, second, they are
13 shielded from disclosure by the deliberative process privilege, but neither contention is correct.
14 *See* Exs. 7, 9.

15 As discussed *infra*, Sheriff Lombardo's emails are not personal as contemplated by the
16 NPRA. To the contrary, the sample emails include exactly the type of information the NPRA is
17 intended to address: information that is directly related to government conduct and, more broadly,
18 the provision of public services. *See* NRS § 239.005(6); *see also Las Vegas Metro. Police Dep't*
19 *v. Blackjack Bonding, Inc.*, 131 Nev. 80, 86, 343 P.3d 608, 613 (2015) (“[T]he information . . .
20 requested is a public record because it relates to the provision of a public service.”).

21 Though the NPRA does not explicitly define “public record,” under the NPRA, an “official
22 state record” includes, *without limitation*, information stored on computers and materials made,
23 received, or preserved by an agency as evidence of its activity or because of the information
24 contained in the material. NRS § 239.005(6). This definition, like all other provisions of the NPRA,
25 must be construed liberally to maximize the requesting party's right to access those records. *See*
26 *id.* § 239.001; *Gibbons*, 127 Nev. at 878, 266 P.3d at 626.

27 Sheriff Lombardo's emails include discussion of Nevada's COVID policies, a presentation
28 prepared by an LVMPD deputy analyzing Clark County and Nevada's economic status, emails

1 from a disgruntled citizen regarding Sheriff Lombardo's mismanagement of the fingerprint bureau,
2 and press releases from Governor Sisolak regarding new and pending state legislation. *See Exhibit*
3 3. With these emails serving as a representative sample, it follows that the emails being withheld
4 are also public records and subject to disclosure. *See Exs. 2, 3.*

5 Moreover, the emails responsive to Plaintiff's request show Sheriff Lombardo acted in
6 contravention of his obligation to avoid conflicts of interest between his public duties and his own
7 private interest in winning his campaign for governor, and furthermore that he refrain from
8 engaging in political activity during his hours of employment. *See Ex. 3; see also NRS § 281A.020;*
9 *NAC §§ 284.650(9), 284.770(2).* In sum, the emails represent public records as contemplated by
10 the NRPA both because of the information they contain, but also because they implicate the
11 integrity of Sheriff Lombardo's public service.

12 LVMPD is obligated to cite the legal authority it believes supports its decision to deny
13 Plaintiff's requests. *See NRS § 239.0107.* However, the cases cited in LVMPD's letters to Plaintiff
14 do not support its decision to withhold Sheriff Lombardo's emails. *See Exs. 7, 9.*

15 The LVMPD cited *Comstock Residents Association v. Lyon County Board of*
16 *Commissioners*, 134 Nev. 142, 414 P.3d 318 (2018), and *Blackjack Bonding, Inc.*, 131 Nev. 80,
17 343 P.3d 608, for support. *See id.* However, in both cases, the Court employed an expansive
18 reading of the NPRA, as mandated, to determine that records at issue *were* in fact public records
19 subject to disclosure because they related to or concerned the provision of public service. *See*
20 *Comstock*, 134 Nev. at 145-46, 414 P.3d at 321-22; *Blackjack*, 131 Nev. at 85-86, 343 P.3d at 612-
21 13. Although *Comstock* and *Blackjack* involve requests for records maintained on private devices
22 or by a private entity, the dispositive inquiry supports Plaintiff's request here, given that the emails
23 at issue relate to the provision of a public service. *See id.*

24 To the extent that the fact pattern here differs from those in *Comstock* and *Blackjack*
25 because the emails at issue were sent using a government-issued email address, that fact does not
26 help Defendant. Sheriff Lombardo used his government email to engage in political activity in
27 contravention of the Nevada Administrative Code, which itself weighs on the Sheriff's duties. *See*
28 *NAC §§ 284.650(9), 284.770(2).*

1 LVMPD's reliance on *Reno Newspapers, Inc. v. Gibbons*, is equally misplaced. *See* Ex. 9.
2 In *Gibbons*, 104 of Governor Jim Gibbons' emails were at issue, 24 of which the lower court had
3 deemed personal and exempt from disclosure. *Gibbons*, 127 Nev. at 877, 266 P.3d at 626.
4 However, the issue before the Court in *Gibbons* was not whether the emails were appropriately
5 designated as personal. *See id.* at 877, 266 P.3d at 626. Rather, the question was whether the
6 governmental entity was required to provide the requesting party a privilege log. *See id.* at 877,
7 266 P.3d at 626. Having reached a conclusion on that issue, the Court never performed an analysis
8 of the lower court's determination that those 24 emails were personal and exempt from disclosure.
9 *Id.* at 884, 266 P.3d at 630 n.5. Consequently, *Gibbons* offers no support for LVMPD's refusal.

10 LVMPD's reliance on the out-of-jurisdiction case *Zeigler v. United States Department of*
11 *Agriculture-Farm Services Agency*, No. 4:19-cv-02633-RBH, 2021 WL 4155260, (D.S.C. Sep. 10,
12 2021), is especially inapposite. *See* Ex. 9. First, *Zeigler* employed tests crafted specifically for the
13 federal Freedom of Information Act ("FOIA"), which have never been adopted or applied by any
14 Nevada state court for NPRA requests. *See Zeigler*, 2021 WL 4155260, at *9. Second, the emails
15 at issue in *Zeigler* were sent to and from the employee's government-issued account but were truly
16 personal in nature and not reachable under FOIA. *Id.* at *7. After an *in camera* review of a
17 representative sample, the court found the agency had properly withheld specific emails that were
18 completely unrelated to government conduct or the provision of public service. The court
19 explained that "the emails properly designated as 'personal' do not contain substantive or official
20 agency information and they do not appear to facilitate any agency business. *See id.* at *8. Quite
21 to the contrary, the emails at issue discussed

22 various aspects of the hunting business such as the number of hogs killed in the past
23 year, obtaining tags to hunt turkeys, different animals caught on trail cameras,
24 acquiring land through sale or lease to hunt, weather, taxes paid on hunting land,
25 etc. Other withheld emails include emails between [the employee] and his Sunday
26 School class, members of the community regarding local athletics, Junior Legion,
27 and Booster Club. There are also some emails that involve personal real estate
28 transactions and other personal business.

Id. at *8.

The *Zeigler* emails, which were entirely divorced from the public employee's duties and

1 had no bearing on the execution of his duties or the provision of public services, are patently
2 different from Sheriff Lombardo's with his consultants, which *do include* substantive and official
3 LVMPD information and show that he is violating his duties under state law. *Compare id.*
4 (withholding emails about hunting, Sunday School, local athletics, and other similarly personal
5 topics), *with* Ex. 3 (withholding emails about state COVID policies, a deputy's presentation
6 analyzing the county and state's economic status, a disgruntled citizen's email about Sheriff
7 Lombardo, and Governor Sisolak's press releases).

8 More on point is the decision in *Service Employees International Union Local 925 (SEIU)*
9 *v. University of Washington*, 193 Wash. 2d 860, 447 P.3d 534 (2019). In *SEIU*, the court
10 considered a similarly broad definition of "public record" from Washington's Public Records Act,
11 which requires that a public record contain "information relating to the conduct of government or
12 the performance of any governmental or proprietary function." *Id.* at 867, 447 P.3d at 538;
13 *compare also* NRS 239.005(6) (defining "official state record"), *with* RCW § 42.56.010(3)
14 (defining "public record"). The information contained in a record is key to a court's consideration
15 of whether it constitutes a public record. *See SEIU*, 193 Wash. 2d at 870, 447 P.3d at 539. The
16 court explained that this standard "'casts a wide net' and 'suggest[s] records can qualify as public
17 records if they contain any information that refers to or impacts the actions, processes, and
18 functions of government.'" *Id.* (quoting *Nissen v. Pierce County*, 183 Wash. 2d 863, 880, 357 P.3d
19 45, 54 (2015)).

20 The emails at issue in *SEIU* were sent from a state employee's government-issued email
21 account but were not created within the scope of his employment. *See SEIU*, 193 Wash 2d. at 872-
22 73, 447 P.3d at 540-41. The emails were created in the employee's capacity as chapter president
23 for the American Association of University Professors and unrelated to his duties as a state
24 employee. *See id.* Nevertheless, the court found that the contents of the emails made them public
25 records because the topics discussed were related to government functions or conduct. *See id.* at
26 872-73, 875, 447 P.3d at 540-42.

27 The court emphasized that, "for an e-mail to 'contain information relating to the conduct
28 of government or the performance of any governmental or proprietary function,' it need not have

1 been sent or received within the ‘scope of employment.’” *Id.* at 876, 447 P.3d at 542 (internal
2 citations omitted).

3 In other words, whether the emails were created in Sheriff Lombardo’s capacity as Sheriff
4 or a candidate for governor, it is the fact that the emails “contain information relating to the conduct
5 of government or the performance of any governmental or proprietary function”—including, it
6 would appear, his violation of his duties as a public employee—that brings them within the
7 NRPA’s broad definition of what constitutes a public (or state) record subject to disclosure. *See*
8 *id.*

9 The law is clear: if the communications are related to government conduct or the provision
10 of public service—which these are—then they are public records subject to disclosure. *See* NRS
11 § 239.005. Though the emails were exchanged with the Sheriff’s campaign consultants in
12 furtherance of his efforts to win his race for governor, this is not enough for LVMPD to sustain its
13 burden of demonstrating that they are not public. *See id.*

14 **C. *LVMPD improperly relied on the deliberative process privilege to justify***
15 ***withholding.***

16 The Supreme Court established the requirements for the deliberative process privilege in
17 *DR Partners*, 116 Nev. 616, 623, 6 P.3d 465, 469 (2000). To qualify for non-disclosure under the
18 deliberative process privilege records must be both predecisional and deliberative. *See id.* To
19 qualify as “predecisional” the governmental entity must pinpoint “an agency decision or policy to
20 which the documents contributed” or played a role in making. *See id.* To be deemed part of the
21 “deliberative” process, the record “must consist of opinions, recommendations, or advice about
22 agency policies.” *Id.* at 623, 6 P.3d at 469-70. Even if the subject records played a role in the
23 agency’s decision-making process, the records still must be proven deliberative—it is not enough
24 for them to be either/or. *See id.* The emails at issue here are neither.

25 Even if the deliberative process privilege applied to the emails in this case, it is not an
26 absolute statutory privilege, but rather a conditional common-law privilege that is subject to a
27 balancing of interests:
28

1 In balancing the interests . . . , the scales must reflect the fundamental right of a
2 citizen to have access to the public records as contrasted with the incidental right
3 of the agency to be free from unreasonable interference The citizen's
4 predominant interest may be expressed in terms of the burden of proof which is
applicable in this class of cases; the burden is cast upon the agency to explain why
the records should not be furnished.

5 *Id.* at 621, 6 P.3d at 468 (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421-22 (1961)).

6 In balancing interests, the burden lies with the governmental entity to overcome the
7 presumption in favor of disclosure and prove by a preponderance of the evidence that its interest
8 in nondisclosure clearly outweighs the public's interest in access. *See id.* at 621-22, 6 P.3d at 468;
9 *see also Gibbons*, 127 Nev. at 880, 266 P.3d at 628. Moreover, the NPRA "requires a narrower
10 interpretation of private or government interests promoting confidentiality or nondisclosure." *Id.*
11 at 880, 266 P.3d at 627.

12 Under this standard, LVMPD's interest in withholding must *clearly* outweigh the
13 presumption in favor of Plaintiff and the public's shared interest in disclosure—and any doubt or
14 ambiguities should be resolved in favor of disclosure. *See id.*; *see also* NRS § 239.0113; *N.Y. Times*
15 *Co. v. U.S. Food & Drug Admin.*, 529 F. Supp. 3d 260, 269–70 (S.D.N.Y. 2021) ("The government
16 bears the burden of demonstrating that an exemption applies to each item of information it seeks
17 to withhold, and all doubts as to the applicability of the exemption must be resolved in favor of
18 disclosure." (quoting *Florez v. Cent. Intel. Agency*, 829 F.3d 178, 182 (2d Cir. 2016))).

19 Notably, the privilege does not apply when the government's actions are being called into
20 question and the interest in preventing disclosure is preventing the revelation of misconduct. *See*
21 *Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 705, 429 P.3d 313, 318–19 (2018). Nor
22 does the privilege cover records prepared by outside consultants who do not have a formal
23 relationship with the government. *See DR Partners*, 116 Nev. at 624-25, 6 P.3d at 470 (collecting
24 cases). Accordingly, even if the privilege applied to the emails requested here, it would not shield
25 them from disclosure. *See id.*

26 First, Sheriff Lombardo's emails are neither predecisional nor deliberative—let alone both
27 as the privilege requires. *See* Exs. 7, 9. As LVMPD itself has admitted, the emails at issue are
28 related to Sheriff Lombardo's campaign for governor. *See id.* LVMPD has never identified an

1 agency decision or policy that the Sheriff's emails contributed to or played a role in making. *See*
2 Exs. 2, 5, 7, 9. Instead, LVMPD has relied on Plaintiff's assertion that Sheriff Lombardo's emails
3 with his consultants contained the Sheriff's views, opinions, and viewpoints on matters on which
4 Sheriff Lombardo has issued official policies. *See* Exhibits 8, 9. Plaintiff's observations regarding
5 the sample emails do not carry LVMPD's heavy burden to justify withholding pursuant to the
6 deliberative process privilege, as mere mention of views, opinions, and viewpoints without more
7 do not show the emails were predecisional—that they played a role in the decision-making process
8 for the policies discussed. *See Gibbons*, 166 Nev. at 623, 6 P.3d at 469.

9 Second, even if the emails were both deliberative and predecisional, the privilege would
10 not apply here. *See Clark Cnty. Sch. Dist.*, 134 Nev. at 705, 429 P.3d at 318–19. The privilege
11 does not apply when governmental actions are being called into question. *See id.* The emails at
12 issue contain information that the Sheriff shared with his campaign consultants to gain a political
13 advantage in his race for governor and improve his chances of winning office. *See* Ex. 3. This
14 violates NAC § 284.770(2), which prohibits employees from “engag[ing] in political activity
15 during the hours of his or her state employment to improve the chances of a political party or a
16 person seeking office[.]” It cannot be that a governmental agency is permitted to leverage the
17 deliberative process privilege to shield violative conduct from disclosure. *See Clark Cnty. Sch.*
18 *Dist.*, 134 Nev. at 705, 429 P.3d at 318–19. The privilege's applicability is much narrower and
19 limited to “communications designed to directly contribute to the formulation of *important public*
20 *policy.*” *Id.* at 705, 429 P.3d at 319 (quoting *Anderson v. Marion Cnty. Sheriff's Dep't*, 220 F.R.D.
21 555, 560 (S.D. Ind. 2004)) (emphasis in original). Consequently, the conditional nature of the
22 deliberative process privilege would still make it inapplicable to Sheriff Lombardo's emails, as
23 LVMPD's only interest in nondisclosure would be preventing the revelation of Sheriff Lombardo's
24 wrongdoing. *See Clark Cnty. Sch. Dist.*, 134 Nev. at 705, 429 P.3d at 318–19.

25 Third, as Sheriff Lombardo's campaign consultants have no formal relationship with
26 LVMPD, the deliberative process privilege does not cover their exchanges with Sheriff Lombardo
27 in either his capacity as a candidate nor as sheriff. *See DR Partners*, 116 Nev. at 624–25, 6 P.3d at
28 470 (collecting cases).

1 Lastly, any privilege raised is subject to a balancing of interests pursuant to *Bradshaw*.
2 *Donrey of Nev., Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990); *see also Gibbons*, 127 Nev.
3 at 879-80, 266 P.3d at 627-28; *DR Partners*, 116 Nev. at 621, 6 P.3d at 468. *Bradshaw* established
4 the test for any common law limitations placed on the NPRA's liberal disclosure requirements.
5 *See Bradshaw*, 106 Nev. at 635, 798 P.2d at 147. In *DR Partners*, the Court expanded upon the
6 *Bradshaw* balancing of interests when considering claims of confidentiality pursuant to the
7 deliberative process privilege. *See DR Partners*, 113 Nev. at 619-23, 6 P.3d at 467-69; *see also*
8 *Gibbons*, 127 Nev. at 879, 266 P.3d at 628. The Court concluded that even when the deliberative
9 process privilege applies the withholding governmental entity must still make a particularized
10 evidentiary showing that its interests in withholding outweighs the NPRA's policy of favoring
11 disclosure. *See id.* Finally, in *Gibbons*, the Court added the requirement that "the state entity bear[]
12 the burden to prove that its interest in nondisclosure *clearly* outweighs the public's interest in
13 access." *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (emphasis added) (citing *Reno Newspapers v.*
14 *Sheriff*, 126 Nev. 211, 218-19, 234 P.3d 922, 927 (2010)). In sum, the NPRA requires a
15 governmental entity raising the deliberative process privilege as justification for withholding must
16 make a particularized evidentiary showing that its interests in withholding the documents clearly
17 outweighs the public's right to access. *See Gibbons*, 127 Nev. at 880, 266 P.3d at 628
18 (summarizing and explaining NRPA jurisprudence).

19 LVMPD never addresses the burden it carries to show that its interest in withholding
20 Sheriff Lombardo's emails *clearly* outweighs Plaintiff and the public's shared right to access and
21 interest in disclosure. *See Exs. 2, 5, 7, 9.* Instead LVMPD relied solely on its presumption that the
22 emails are not public records and that even if they were, the deliberative process privilege would
23 still justify withholding. *See id.* Nevertheless, a balancing of interests under *Bradshaw* favors
24 disclosure because the LVMPD has not articulated an interest in withholding the emails. *See DR*
25 *Partners*, 116 Nev. at 624-25, 6 P.3d at 470 (finding "a particularized evidentiary showing" is
26 necessary "to establish application of the deliberative process privilege"); *see also Gibbons*, 127
27 Nev. at 880, 266 P.3d at 628. This alone is insufficient to overcome the NPRA's strong
28 presumption in favor of disclosure. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628.

1 ***D. Mandamus is appropriate because the LVMPD refuses to perform its***
2 ***ministerial duties as mandated by the NPRA.***

3 A writ of mandamus compels performance of ministerial acts required by law or restrains
4 an arbitrary or capricious exercise of discretion. *See DR Partners*, 116 Nev. at 620-21, 6 P.3d at
5 468. Pursuant to the NPRA, mandamus is the appropriate procedural remedy to compel compliance
6 with its mandates when an agency denies a public records request. *See id.* at 621, 6 P.3d at 468.
7 However, unlike the typical mandamus case, the NPRA places the burden of proof squarely on the
8 governmental agency to prove by a preponderance of the evidence that the records at issue have
9 been properly withheld. *See City of Sparks*, 133 Nev. at 400, 399 P.3d at 355. To survive judicial
10 scrutiny, an agency withholding responsive records must show that its decision was founded in
11 reason, and not contrary to the NPRA and the evidence of the case. *See DR Partners.*, 116 Nev. at
12 620, 6 P.3d at 468; *Thomas*, 133 Nev. at 470-71, 402 P.3d at 623.

13 The NPRA mandates that all public books and public records of governmental entities must
14 remain open to the public, unless “otherwise declared by law to be confidential.” *Gibbons*, 127
15 Nev. at 877, 266 P.3d at 626-27 (citing NRS § 239.010(1)). To avoid mandamus, LVMPD is
16 obligated to prove by a preponderance of the evidence that Sheriff Lombardo’s emails have been
17 properly withheld. *See City of Sparks*, 133 Nev. at 400, 399 P.3d at 355. However, as explained
18 above, Sheriff Lombardo’s emails are indeed public records as contemplated by the NPRA and
19 subject to disclosure. Not only do the emails contain information related to the provision of public
20 service, but they also implicate the integrity of Sheriff Lombardo’s service. *See id.* So, there is no
21 proper basis to withhold them because they are public records not subject to any declaration of
22 confidentiality or otherwise shielded by privilege. *See id.*

23 Even if held to the typical standard for mandamus relief, the relief requested by Plaintiff
24 here is appropriate. Because Sheriff Lombardo’s emails are public records, LVMPD has a
25 ministerial duty to produce them “as expeditiously as practicable.” *See* NRS § 239.0107(1)(d)(2);
26 *DR Partners*, 116 Nev. at 620-21, 6 P.3d at 468. Under the NPRA, the LVMPD does not have
27 discretion to withhold public records responsive to Plaintiff’s lawful and proper requests because
28 the records are not otherwise deemed confidential or subject to any applicable privilege. *See* NRS

1 §§ 239.010, 239.0107.

2 Despite the NPRA's clear mandate, the LVMPD has repeatedly refused to produce Sheriff
3 Lombardo's emails. *See* Exs. 2, 5, 7, 9. For months, LVMPD has refused to perform its ministerial
4 duties as mandated by the NPRA. *See id.* Plaintiff has exhausted all the available remedies and has
5 no "plain, speedy and adequate remedy in the ordinary course of law" besides mandamus. *See*
6 *Thomas*, 133 Nev. at 471, 402 P.3d at 623 (quoting NRS § 34.170). Indeed, mandamus is the only
7 appropriate procedural remedy for Plaintiff to enforce its right to access the emails LVMPD insists
8 on withholding, both by circumstance and law. *See id.*; *see also DR Partners*, 116 Nev. at 621, 6
9 P.3d at 468.

10 Though LVMPD has a ministerial duty to produce Sheriff Lombardo's emails, even if it
11 had the discretion not to, its ultimate decision to withhold his emails would still warrant
12 mandamus. Mandamus is appropriate when an exercise of discretion is exercised arbitrarily or
13 capriciously. *See Thomas*, 133 Nev. at 470-71, 402 P.3d at 623. Stated differently, that a decision
14 is not grounded in "reason, or [is] contrary to the evidence or established rules of law." *See id.*
15 Here, the LVMPD's decision to withhold Sheriff Lombardo's emails is just that. *See id.*

16 The evidence before the court shows Sheriff Lombardo's emails are indeed public records
17 subject to disclosure as contemplated by the NPRA and the same has been readily available to the
18 LVMPD to inform any ostensible exercise of discretion. Any exercise of discretion grounded in
19 reason and law would lead LVMPD to the conclusion that the emails are public records because
20 there is no applicable declaration of confidentiality and the emails fit within the definition of public
21 records as specified by the NPRA. Moreover, any doubts or ambiguities as to whether a record
22 should be withheld should have been resolved in favor of disclosure because of the strong
23 presumption in favor of disclosure that carries throughout the NPRA and its jurisprudence. *See,*
24 *e.g.*, NRS § 239.0113; *Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also N.Y. Times Co.*, 529 F.
25 Supp. 3d at 269-70 ("The government bears the burden of demonstrating that an exemption applies
26 to each item of information it seeks to withhold, and all doubts as to the applicability of the
27 exemption must be resolved in favor of disclosure." (citing *Florez v. Cent. Intel. Agency*, 829 F.3d
28 178, 182 (2d Cir. 2016))). In sum, even if LVMPD had been at liberty to exercise its discretion to

1 deny Plaintiff's requests it nevertheless should have granted Plaintiff access and produced Sheriff
2 Lombardo's emails. *See id.* Thus, LVMPD's denial would constitute an arbitrary and capricious
3 exercise of discretion that warranted mandamus relief. *See id.*

4 **III. CONCLUSION**

5 Plaintiff should be provided with the records requested pursuant to the Nevada Public
6 Records Act. Plaintiff has sought relief via the only available and appropriate means pursuant to
7 the NPRA by submitting its Petition for Writ of Mandamus on June 10, 2022 and is entitled to
8 expedited relief pursuant to NRS § 239.011(2).

9 Plaintiff respectfully requests that this Court:

10 A. Grant Plaintiff's Application For Writ Of Mandamus Pursuant To NRS 239.011;

11 B. Prioritize this matter before all "other civil matters to which priority is not given by
12 other statutes" pursuant to NRS § 239.011(2); and

13 C. Set this matter for hearing on shortened time with a briefing schedule on an
14 expedited basis.

15 DATED this 17th day of June, 2022

16 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &
17 RABKIN, LLP**

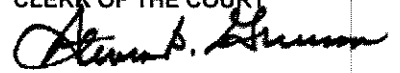
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EXHIBIT 3



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DISTRICT COURT

CLARK COUNTY, NEVADA

DUE DILIGENCE GROUP, LLC, a limited
liability company,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

Case No.: A-22-853953-W
Dept. No.: 14

Date of Hearing: July 14, 2022
Time of Hearing: 10:00 A.M.

**DEFENDANT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S
OPPOSITION TO PLAINTIFF DUE DILIGENCE GROUP, LLC'S MOTION FOR
ORDER GRANTING PLAINTIFF'S APPLICATION FOR WRIT OF MANDAMUS
PURSUANT TO NRS 239.011 ON AN ORDER SHORTENING TIME**

AND

COUNTERMOTION TO DISMISS PETITION

Defendant Las Vegas Metropolitan Police Department (the "Department" or "LVMPD"),
by and through their attorneys of record, the law firm of Marquis Aurbach, hereby submit their
Opposition to Plaintiff Due Diligence Group, LLC's Motion for Order Granting Plaintiff's
Application for Writ of Mandamus Pursuant to NRS 239.011 on an Order Shortening Time.

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1 ...
2 ...
3 This Opposition is made and based upon all papers, pleadings, and records on file herein,
4 the attached Memorandum of Points and Authorities, and any oral argument allowed at a hearing
5 on this matter.

6 Dated this 1st day of July, 2022.

7
8 MARQUIS AURBACH

9
10 By: /s/ Jackie Nichols
11 Craig R. Anderson, Esq.
12 Nevada Bar No. 6882
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18 Metropolitan Police Department

19 **MEMORANDUM OF POINTS & AUTHORITIES**

20 **I. INTRODUCTION**

21 The Motion to Grant the Petition must be denied. The Due Diligence Group (DDG) fails
22 to provide any basis to convince this Court that the requested records are actually "public"
23 records that are required to be disclosed under the Nevada Public Records Act (NPR). The
24 truth of the matter is, DDG seeks to exploit the NPR by seeking Sheriff Lombardo's emails
25 that have nothing to do with the provision of public service related to the Las Vegas
26 Metropolitan Police Department (LVMPD), but limited to his campaign for governor. And, like
27 other candidates, the mere fact that Sheriff Lombardo is a government official does not render
28 every single email sent to or received by him a "public" record for purposes of the NPR. The
authorities relied upon by DDG do not require this Court to reach a different conclusion as the
relied upon statues pertain to state agencies and employees, which do not apply to Sheriff
Lombardo or LVMPD. In the event the Court believes that there is some factual issue that would
allow the Court to believe that the emails did pertain to a provision of public service, a *Vaughn*

1 *Index* and supplemental briefing regarding the applicable privileges is necessary. Accordingly,
2 LVMPD asks that this Court deny the motion and dismiss the Petition in its entirety.

3 **II. STATEMENT OF FACTS**

4 **A. THE JANUARY 5, 2022 REQUESTS.**

5 On January 5, 2022, Payton and Casey submitted two separate public records requests
6 related to email communications between Sheriff Lombardo and other individuals. See
7 Declaration of Charles Jivapong attached hereto as **Exhibit A**; *see also* Exhibit 1 to Motion. The
8 request specifically sought email communications between Sheriff Lombardo and Ryan between
9 January 1, 2021 to December 1, 2021 and between Sheriff Lombardo and Mike Slanker between
10 January 1, 2021 to January 5, 2022. *Id.* LVMPD advised that in order to research the request, it
11 would take approximately three hours, resulting in a cost of \$153.00. *See* Correspondence
12 attached hereto as **Exhibit B**. Payton and Casey submitted payment to the Public Records Unit
13 (PRU) for the research. **Exhibit A.** After PRU completed the research, it advised Payton and
14 Casey that the emails sought pertained to Joseph Lombardo's run for Governor of Nevada as the
15 communications sought involved individuals known to be involved in his campaign. *See* Exhibit
16 2. LVMPD further explained that such communications were not subject to disclosure under the
17 NPRA as they were not *public* records. *Id.* Nevertheless, LVMPD provided emails to Payton
18 and Casey that pertained to the request. Exhibit 2. While DDG characterizes these records as a
19 small sampling, they are not. Indeed, in its correspondence, LVMPD maintained that it had
20 provided responsive emails. *See* Exhibit 7. These emails were provided because LVMPD
21 determined that, because of the context of the records, they *could be* viewed as related to a
22 provision of a public service. *Id.*

23 Thereafter, Payton and Casey sought email communications between Sheriff Lombardo
24 and Mark Hutchison between January 1, 2021 and March 7, 2022. *See* Exhibit 4. LVMPD
25 provided the same previous response regarding the fact that Payton and Casey sought records
26 related to Sheriff Lombardo's campaign for governor and not in relation to his duties as Sheriff
27 over LVMPD. *See* Exhibit 5.

28 DDG now seeks a Petition for Writ of Mandamus regarding the subject records.

1 **B. THE CONTINUED BURDENSOME AND HARASSING REQUESTS.**

2 In addition to the enumerated requests above, Payton and Casey have bombarded
3 LVMPD with over 60 requests in the past year. *See* Exhibit A-1. Many requests pertain to
4 Sheriff Lombardo in his capacity as Sheriff of LVMPD, including his calendar, swipes of his
5 proxy badge, reports, and email communications. *Id.* After spending countless hours
6 researching various requests, LVMPD provided DDG with responsive records, to the extent
7 records existed and were not otherwise subject to disclosure. *Id.* The evidence clearly shows that
8 LVMPD complies with the NPRA and provides “public” records pertaining to Sheriff Lombardo
9 and his position as Sheriff of the Las Vegas Metropolitan Police Department. *Id.*

10 **III. LEGAL STANDARD FOR THE NPRA.**

11 The NPRA, codified at NRS 239.010 *et. seq.*, governs public records requests to
12 government agencies within Nevada. Under the NPRA, all public books and public records of
13 governmental entities must remain open to the public, unless “otherwise declared by law to be
14 confidential.” NRS 239.010(1). A government agency has five business days to inform a
15 requester that it is unable to make the record available. NRS 239.0107(1)(c). If the
16 confidentiality of a public records is at issue in a judicial proceeding, and a governmental entity
17 withholds records on the basis of confidentiality, it bears the burden of proving, by a
18 preponderance of the evidence, that the records are confidential. NRS 239.0113. *See Reno*
19 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877–878, 266 P.3d 623, 626 (2011). A balancing-
20 of-competing-interests test is employed “when the requested record is not explicitly made
21 confidential by a statute” and the governmental entity nonetheless resists disclosure of the
22 information. *Id.* at 878–879, 266 P.3d at 627. This test weighs “the fundamental right of a
23 citizen to have access to the public records” against “the incidental right of the agency to be free
24 from unreasonable interference.” *DR Partners v. Bd. of Cnty. Comm’rs*, 116 Nev. 616, 621, 6
25 P.3d 465, 468 (2000). “[A]n individual’s privacy is also an important interest, especially
26 because private and personal information may be recorded in government files.” *Clark County*
27 *School District v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018); *Reno*
28 *Newspapers v. Sheriff*, 126 Nev. 211, 218, 234 P.3d 922, 927 (2010).

1 **IV. LEGAL ARGUMENT**

2 **A. THE NEVADA SUPREME COURT CONSISTENTLY LOOKS TO FOIA**
3 **FOR GUIDANCE.**

4 As a preliminary matter, it is imperative that the Court understand the Nevada Supreme
5 Court's interpretation of the NPRA and that it routinely looks to the Freedom of Information Act
6 (FOIA) for guidance. In an attempt to discredit the authority cited and relied by LVMPD, in
7 single line, DDG contends that the Nevada Supreme Court has never adopted any aspects of
8 FOIA. *See* Motion at 11:13-14. A review of the Nevada Supreme Court's jurisprudence on the
9 NPRA proves otherwise.

10 First, in a seminal case, the Nevada Supreme Court directly referred to Exemption 7 of
11 FOIA in establishing the balancing test that applies when a statute does not expressly render a
12 record confidential. *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 631, 798 P.2d 144, 145
13 (1990). Specifically, the Court recognized that the announced balancing test and policy
14 considerations were identical to Exemption 7 of FOIA.¹ *Id.* at 636, n.4, 798 P.2d at 148, n.4. A
15 decade later, the Supreme Court yet again looked to FOIA in determining how to apply the
16 deliberative process privilege under the NPRA. *DR Partners v. Bd. of Cty. Comm'rs of Clark*
17 *Cty.*, 116 Nev. 616, 622, 6 P.3d 465, 469 (2000) (relying on Exemption 5 of FOIA in recognizing
18 that the deliberative process privilege may serve as a privilege to protect records from disclosure

19 ¹ Exemption 7 of FOIA exempts the following records from disclosure:

20 (7) records or information compiled for law enforcement purposes, but only to the
21 extent that the production of such law enforcement records or information (A)
22 could reasonably be expected to interfere with enforcement proceedings, (B)
23 would deprive a person of a right to a fair trial or an impartial adjudication, (C)
24 could reasonably be expected to constitute an unwarranted invasion of personal
25 privacy, (D) could reasonably be expected to disclose the identity of a
26 confidential source, including a State, local, or foreign agency or authority or any
27 private institution which furnished information on a confidential basis, and, in the
28 case of a record or information compiled by criminal law enforcement authority in
the course of a criminal investigation or by an agency conducting a lawful
national security intelligence information, information furnished by a confidential
source, (E) would disclose techniques and procedures for law enforcement
investigations or prosecutions, or would disclose guidelines for law enforcement
investigations or prosecutions if such disclosure could reasonably be expected to
risk circumvention of the law, or (F) could reasonably be expected to endanger
the life or physical safety of any individual.

1 under the NPRA). Thereafter, the Court established that, in some circumstances, a log detailing
2 specific of the records may be necessary in order for a requester to rebut the government's
3 contention of confidentiality, also known under FOIA as a Vaughn Index. *Reno Newspapers,*
4 *Inc. v. Gibbons*, 127 Nev. 873, 881, 266 P.3d 623, 628 (2011) (requiring, in certain instances a
5 Vaughn Index, which is a submission commonly utilized in cases involving FOIA, the federal
6 analog of the NPRA).

7 More recently, the Nevada Supreme Court addressed FOIA in two separate cases. First,
8 in *Pub. Employees' Ret. Sys. of Nevada v. Nevada Policy Research Inst., Inc.*, 134 Nev. 669,
9 677-78, 429 P.3d 280, 287 (2018), the Court relied on FOIA and other laws in relation to
10 requirements for a state agency to query and search its database to identify, retrieve, and produce
11 responsive records for inspection if the agency maintains public records in an electronic
12 database. Second, the Court adopted another balancing test in *Clark Cty. Sch. Dist. v. Las Vegas*
13 *Review-Journal*, 134 Nev. 700, 707, 429 P.3d 313, 320 (2018). The two-part balancing test
14 related to Exemption 6 concerning privacy interests as established under FOIA. *Id.*

15 Accordingly, LVMPD's reliance on federal law and FOIA matters involving similar
16 situations is persuasive as the Supreme Court has consistently turned to FOIA in interpreting the
17 NPRA.

18 **B. THE PETITION IS NOT SOUGHT BY THE REAL PARTY IN INTEREST**
19 **AS REQUIRED BY NRCP 17 AND MUST BE DISMISSED.**

20 NRCP 17(a)(1) provides that "[a]n action must be prosecuted in the name of the real
21 party in interest." "A 'real party in interest' under NRCP 17(a)(1) is one who possesses the right
22 to enforce the claim and has a significant interest in the litigation." *Szilagyi v. Testa*, 99 Nev.
23 834, 838, 673 P.2d 495, 498 (1983). Similar to the question of whether a party has standing, the
24 focus is "on the party seeking adjudication rather than on the issues sought to be adjudicated."
25 *Id.*

26 The purpose of the Rule is to enable the defendant to avail himself of evidence and
27 defenses that the defendant has against the real party in interest and to protect the defendant
28 against another suit brought by the real party in interest on the same matter. *Painter v. Anderson*,

1 96 Nev. 941, 943, 620 P.2d 1254, 1256 (1980), *quoting Celanese Corp. of America v. John Clark*
2 *Industries*, 214 F.2d 551, 556 (5th Cir. 1954).

3 Because NRCF 17 is identical to FRCP 17, federal procedural law is authoritative.
4 *Painter* at fn. 4. The necessity for the plaintiff to be the real party in interest applies to cases
5 brought under the federal Freedom of Information Act (the substantial equivalent of the Nevada
6 Public Records Act). *See, e.g., Lazaridis v. United States DOJ*, 713 F. Supp. 2d 64, 67 (D.D.C.
7 2010) (concluding that father cannot bring FOIA lawsuit on behalf of daughter); *see also DR*
8 *Partners v. Board of County Comm'rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (holding the
9 procedure for bringing a lawsuit under the Nevada Public Records Act is a petition for writ of
10 mandamus); NRS 34.300 (the Nevada Rules of Civil Procedure govern petitions for writs of
11 mandamus). Therefore, the plaintiff in this case must be the real party in interest in order to
12 maintain this lawsuit.

13 In its Application and Motion, DDG claims to be a Delaware limited liability company.
14 DDG further claims that it is a "consulting firm specializing in background research..." On its
15 website, DDG advertises that "we specialize in using public records research to provide our
16 clients with the knowledge and insights needed to drive strategic decision making." (Emphasis
17 added.) The website goes on to state:

18 Whether you are a political campaign, marketing firm, small
19 business, or Fortune 500 company, we'll utilize our expertise in
20 FOIA (Freedom of Information Act) and local public record laws
to get you the knowledge you need.

21 *See* <https://www.duediligencegroupllc.com/home>.

22 It is quite obvious, in fact, that DDG is not the real party in interest. When reporting on
23 the lawsuit (which was filed immediately prior to the primary election on June 14, 2022), local
24 media noted that DDG "made its name by designing and executing document retrieval plans for
25 political clientele, including national democratic campaign committees, opposition research
26 firms, and labor unions, among others, throughout the country." *See* [https://www.ktnv.com/13-](https://www.ktnv.com/13-investigates/lawsuit-accuses-sheriff-joe-lombardo-of-doing-political-business-on-publics-time)
27 [investigates/lawsuit-accuses-sheriff-joe-lombardo-of-doing-political-business-on-publics-time](https://www.ktnv.com/13-investigates/lawsuit-accuses-sheriff-joe-lombardo-of-doing-political-business-on-publics-time).
28

1 Therefore, at least one local media outlet has asked for “the identity of [DDG’s] client behind the
2 lawsuit.” *Id.* DDG refuses to provide it. *Id.*

3 In sum, DDG is clearly not the force behind this lawsuit. Rather, DDG’s client is the
4 party with the significant interest in the outcome. Moreover, the purpose of Rule 17 will not be
5 served unless and until the real party in interest is named. After all, LVMPD’s primary defense
6 is that the public records request is seeking a private record from a political campaign, not a
7 public record. As demonstrated below, the requests here are not about the provision of a public
8 service. Rather, *on their face*, they are about communications between a political candidate and
9 his campaign staff. Knowing the name of DDG’s client better enables LVMPD to present this
10 defense. *See Painter, supra*. It also ensures that LVMPD will not face another set of requests
11 from some other party who is actually DDG’s client. *Id.* By way of another example, if any of
12 the records, after determined to be “public” records, contain criminal history information, such
13 information can only be released in accordance with NRS 179A.100. Without knowing the real
14 party in interest, LVMPD has no way knowing whether certain privileges would apply. Because
15 DDG’s client, not DDG itself, is the real party in interest, Rule 17(a)(1) applies. The name of
16 DDG’s client must be joined as the named plaintiff, and if DDG refuses, then the case must be
17 dismissed.

18 **C. THE REQUESTED RECORDS ARE NOT PUBLIC RECORDS AND**
19 **THEREFORE NOT SUBJECT TO DISCLOSURE UNDER THE NPRA.**

20 The Sheriff’s email communications regarding his run for governor between himself and
21 specific individuals involved in his campaign are not related to a provision of public service.
22 Accordingly, the emails being requested are not public records and not subject to disclosure.

23 The purpose of the NPRA “is to promote government transparency and accountability by
24 facilitating public access to information regarding government activities.” *Pub. Employees’ Rel.*
25 *Sys. v. Reno Newspapers, Inc.*, 129 Nev. 833, 836-37, 313 P.3d 221, 223 (2013) (emphasis
26 added). Therefore, “[t]he proper question for determining whether the requested records . . .
27 constitute public records subject to disclosure under a public records request . . . is whether they
28 concern the provision of a public service.” *Comstock Residents Ass’n v. Lyon Cty. Bd. of*

1 *Commtrs*, 134 Nev. 142, 144-45, 414 P.3d 318, 321 (Nev. 2018), quoting *Las Vegas Metro.*
2 *Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 86, 343 P.3d 608. 613 (2015). In
3 *Blackjack Bonding*, the Nevada Supreme Court relied heavily on the dictionary definition of
4 "public service:" "[P]ublic service" has been broadly defined as "a service rendered in the public
5 interest." 131 Nev. at 85, 343 P.3d at 612, quoting *Merriam- Webster's Collegiate Dictionary*
6 942 (10th ed. 2000) (emphasis added). Notably, Merriam-Webster's defines "public record" as
7 "a record required by law to be made and kept" or "a record made by a public officer or a
8 government agency in the course of the performance of a duty." Merriam-Webster: "public
9 record" (emphasis added)².

10 Nevada law makes clear that not every record in the government's possession is a public
11 record for purposes of the NPRA. See NRS 239.010 (expressly utilizing the term "public
12 record"); NAC 239.101 (defining "Record of a local governmental entity"). By way of example,
13 in *Blackjack Bonding*, the Court held that phone records from the county jail were public records
14 because LVMPD needed them "for use in administrative and investigative purposes." 131 Nev.
15 at 82-83, 343 P.3d at 610. There, the requester sought phone logs from the county jail. The law
16 required LVMPD to provide inmates in its custody with access to phones. As such, the requested
17 logs "relate[d] to the provision of a public service," which is why the Court held them to be
18 "public records," even though LVMPD had hired a third-party vendor to provide the service.

19 Likewise, in *Comstock Residents*, the Court held that telephone and email
20 communications of county commissioners were public records because the records involved
21 "county business" and the perform[ance] [of the commissioners'] duties as public servants." 414
22 P.3d at 121. There, he requester sought texts and emails of county commissioners. The Court
23 held that if particular texts or emails concerned the commissioners' performance of their
24 public duties, then they would be public records even if the records were on private devices. The
25 County admitted that the commissioners used their personal devices to conduct government
26

27
28 ² See <https://www.merriam-webster.com/legal/public%20record> (last accessed July 1, 2022)

1 business. But it was equally clear that the devices would contain texts and emails of a personal
2 nature. The Court concluded:

3 [T]he district court did not make any findings as to which specific
4 communications were made in furtherance of the public's interests or would be
5 exempt from the NPRA, and we remand this matter to the district court with
instructions to determine whether the requested records regard the provision of a
public service and are subject to disclosure.

6 34 Nev. 142 at 146-47, 414 P.3d 318 at 322 (emphasis added)

7 In attempt to circumvent the “provision of public service” requirement, DDG first relies
8 on NRS 239.005(6), which defines an “official state record.” This argument carries no water for
9 multiple reasons. The obvious, LVMPD is not a state actor and therefore has no state records.
10 See NRS Chapter 280. Rather, LVMPD is a statutorily created agency that is recognized as a
11 local government entity and a political subdivision of the state of Nevada. See NRS 280.280.
12 Thus, if the Court seeks a definition for the term “record,” NAC 239.101 expressly defines a
13 record of a local government entity—such as LVMPD. In that context, NAC 239.101 provides:

14 “Record of a local governmental entity” or “record” means information that is
15 created or received pursuant to a law or ordinance, or in connection with the
16 transaction of the official business of any office or department of a local
17 governmental entity, including, without limitation, all documents, papers, letters,
18 bound ledger volumes, maps, charts, blueprints, drawings, photographs, films,
newspapers received pursuant to NRS 247.070, recorded media, financial
statements, statistical tabulations and other documentary materials or information,
regardless of physical form or characteristic.

19 (emphasis added). Relying on this definition, it makes clear that not every single record
20 maintained by LVMPD is a public record. Instead, the record must pertain to the transaction of
21 the official business of LVMPD, i.e., law enforcement. Nevertheless, the Court reaches the same
22 conclusion if it were to rely on DDG’s proffered definition as it expressly recognizes that the
23 record must be “made, received, or preserved by an agency as evidence of its activity.” NRS
24 239.005(6).

25 Next, DDG contends that *Blackjack Bonding* and *Comstock* support their position
26 because the Court ordered production of records from private companies and private devices.
27 See Motion at 10-13. Grasping at straws, DDG asserts, albeit improperly, that the use of a
28 government-issued email address for his campaign relates to a public service because such

1 conduct is in direct contravention to the Nevada Administrative Code (NAC). DDG then cites to
2 two separate provisions that have no application to the Sheriff. *See* NAC §§ 284.650(9) and
3 284.770(2). First, NAC Chapter 284 applied to the *State* Personnel System. That is, NAC
4 Chapter 284 has no application to local government agencies or political subdivisions like the
5 Las Vegas Metropolitan Police Department or Sheriff Lombardo.

6 A cursory review of the language of NAC 284.650(9) supports LVMPD's interpretation
7 that NAC Chapter 284 does not govern here. NAC 284.650(9) provides that disciplinary or
8 corrective action may be taken for prohibited public activity.³ However, the rules of statutory
9 construction require that the statutory scheme be read as a whole. *See Knickmeyer v. State ex.*
10 *rel. Eighth Jud. Dist. Ct.*, 133 Nev. 675, 679, 408 P.3d 161, 166 (Nev. App. 2017) ("In
11 interpreting a statute, we begin with its plain meaning and consider the statute as a whole,
12 awarding meaning to each word, phrase, and provision, while striving to avoid interpretations
13 that render any words superfluous or meaningless."); *State Induc. Ins. System v. Bokelman*, 113
14 Nev. 1116 (1997). NAC 284.638 states an employee⁴ may be disciplined if his conduct comes
15 under one of the causes for action listed in NAC 284.650. Employee, for purposes of Chapter
16 284, means person legally holding a position in the public service as defined in NRS 284.015.
17 NAC 284.062. Similarly, NAC 284.700 prohibits a state employee from engaging in political
18 activity during the hours of his state employment to improve the chances of a political party or a
19 person seeking office. Like NAC Chapter 284, NRS Chapter 284 also pertains to the state
20 personnel system. To be sure, NRS 284.015 defines "public service" as:

21 providing service for any office, department, board, commission, bureau, agency
22 or institution in the Executive Department of the State Government operating
23 by authority of the Constitution or law, and supported in whole or in part by any
24 public money, whether the money is received from the Government of the United
25 States or any branch or agency thereof, or from private or any other source.

26 ³ DDG further relies on the definition of political activity, citing NAC 284.770.

27 ⁴ It is also worth noting that Sheriff Lombardo is an a typical "employee" who works a simply 8-hour job.
28 Indeed, the public recognizes that the Sheriff is a 24/7 position that cannot be limited to 8 hours a day 5
days a week.

1 The Sheriff and LVMPD are governed by NRS Chapter 280 and 248. Accordingly, the Court
2 must reject DDG's arguments that any emails pertaining to Sheriff Lombardo's run for governor
3 are related to a provision of public service because he is barred from such conduct because the
4 only provisions relied upon to support such an argument do not apply to LVMPD of Sheriff
5 Lombardo and strictly apply to state employees.

6 Finally, inconsistent with DDG's position, the case law supports that Sheriff Lombardo's
7 email communications are irrelevant to LVMPD do not need to be disclosed under the NPRA.
8 Trying to distinguish Blackjack Bonding and Comstock, DDG claims that in those cases the
9 Court found that the records were, in fact, public records, so this Court should also find that the
10 subject emails are required to be disclosed. *See* Motion at 10-13.

11 LVMPD directed DDG, to *Reno Newspapers v. Gibbons*, 127 Nev, 873, 266 P.3d 623
12 (2011), which specifically addressed emails communications involved with a government
13 official. There, the district court determined that of the 98 of the 104 emails were not subject to
14 disclosure for various reasons. While the Supreme Court concluded that a log was required so
15 that Reno Newspapers could determine whether the withholding was proper, it implicitly
16 recognized that the personal nature of emails would be a sufficient basis for withholding records.
17 *Id.* This notion was subsequently accepted by the Supreme Court in *Clark Cty. Sch. Dist. v. Las*
18 *Vegas Review-Journal*, 134 Nev. 700, 706, 429 P.3d 313, 319 (2018), when it adopted the two-
19 part balancing test for privacy interests.

20 Another case for this Court to consider is *Zeigler v. USDA - Farm Serv. Agency*, 2021
21 WL 4155260 (D.S.C. Sep. 10, 2021). There the Court reiterated the difference between agency
22 records and personal records:

23 "[P]ersonal records of an agency employee are not agency records and are not
24 subject to the FOIA." *Ethyl Corp.*, 25 F.3d at 1247. "[C]ase law makes clear that
25 'the term "agency records" is not so broad as to include personal materials in an
26 employee's possession, even though the materials may be physically located at the
27 agency.' " *Gallant v. N.L.R.B.*, 26 F.3d 168, 171 (D.C. Cir. 1994) (citing *U.S.*
28 *Dep't of Just. v. Tax Analysts*, 492 U.S. 136, 145 (1989)). "Nor does the statute
'sweep into FOIA's reach personal papers that may "relate to" an employee's
work ... but which the individual does not rely upon to perform his or her duties.'
" *Gallant*, 26 F.3d at 171 (citing *Bureau of Nat. Affs., Inc. v. U.S. Dep't of Just.*,
742 F.2d 1484, 1493 (D.C. Cir. 1984)).

1 *Id.* To qualify as an “agency record” subject to FOIA disclosure rules, the agency must: 1) create
2 or obtain the requested materials; and 2) be in control of the requested materials at the time the
3 FOIA request is made. *Tax Analysts*, 492 U.S. at 144. As to the second prong of the *Tax Analysts*
4 test, four factors are relevant to a determination of whether an agency exercises sufficient control
5 over a document to render it an “agency record”: “(1) the intent of the document's creator to
6 retain or relinquish control over the records; (2) the ability of the agency to use and dispose of
7 the record as it sees fit; (3) the extent to which agency personnel have read or relied upon the
8 document; and (4) the degree to which the document was integrated into the agency's record
9 system or files.” *Burka v. U.S. Dep't of Health & Hum. Servs.*, 87 F.3d 508, 515 (D.C. Cir.
10 1996). These four factors are commonly referred to as the *Burka* factors. *Democracy Forward*
11 *Foundation v. U.S. Gen. Servs. Admin.*, 393 F. Supp. 3d 45, 51 (D.D.C. 2019).

12 In *Zeigler*, the emails were deemed personal because they pertain to emails between in
13 government agency and his business partner (from a government email address). The emails
14 discussed various aspects of their hunting business. Some emails also pertained to real estate and
15 real estate transactions. The Court ultimately determined that the records were personal because
16 they did not contain substantive or official agency information and they did not appear to
17 facilitate any agency business. *Id.*

18 While DDG attempts to distinguish this case, it fails. Like *Zeigler*, the requested records,
19 as recognized by DDG, have nothing to do with Sheriff Lombardo's position as Sheriff but
20 strictly related to his campaign for governor. DDG conflates the state employee standard with a
21 local government entity employee, it remains clear that there is no express law that prohibits
22 Sheriff Lombardo's de minimis contact with his campaign. Even looking to *Serv. Employees*
23 *Int'l Union Local 925 (SEIU) v. University of Washington*, 193 Wash. 2d 860, 447 P.3d 534
24 (2019), the notion that emails, unless related to a government function or conduct, are not
25 considered public records. Thus, the Court must determine that the emails contain information
26 relating to the conduct of government (of LVMPD) or the performance of any governmental
27 conduct (related to LVMPD) to reach the conclusion that the emails are subject to disclosure.

1 By the very nature of the request, and DDG's own acknowledgement, the records it seeks
2 are limited to Sheriff Lombardo's run for governor. The emails communications do not pertain
3 to other employees or officials within LVMPD but are strictly limited to Sheriff Lombardo's
4 campaign. Indeed, DDG does not dispute that the information it seeks is related to Sheriff
5 Lombardo's campaign. Rather, it argues that such emails are subject to disclosure because the
6 Sheriff is expressly prohibited from engaging in political activity. However, the sole basis for
7 disclosure is DDG's reliance on codes that have no application to Sheriff Lombardo or LVMPD.
8 Thus, this Court cannot conclude that the emails sought are public records. If the Court
9 determines that there is a factual issue, it should allow LVMPD the opportunity to provide a
10 Vaughn Index, as discussed below, and supplemental briefing on privileges that could be
11 asserted in relation to public records.

12 **D. ALTERNATIVELY, THIS COURT SHOULD ORDER LVMPD TO**
13 **PRODUCE A VAUGHN INDEX AND PROVIDE FURTHER BRIEFING.**

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

24 The Nevada Supreme Court, however, explicitly held that a log is *not* required each time
25 records are withheld. *Id.* Rather, a *Vaughn* index is a method for resolving the tension between
26 the government's interest in keeping certain records confidential and the requesting party's need
27 for enough information to meaningfully contest a claim of confidentiality. *Id.* at 881-82, 266
28 P.3d at 629. In circumstances where the requesting party has sufficient information to present a

1 full legal document, as LVRJ has done here, there is no need for a *Vaughn* index. *Id.* The court
2 further determined that if a log were required—in the form of a *Vaughn* index—each time a
3 lawsuit is brought after the denial of an NRPA request, the court would be rewriting the NRPA
4 as there is no such requirement imposed within the Act. *Id.*

5 The court in *Gibbons* determined that a log was appropriate under the circumstances of
6 that case. *Id.* at 882, 266, P.3d at 629. At issue in that case, were various emails, which the
7 contents were unknown, and the governmental entity made blanket privilege assertions. *Id.*
8 While this case also pertains to email communications, it is LVMPD's position, and DDG does
9 not refute, that the central issue is that the emails sought do not pertain to Sheriff Lombardo's
10 position as Sheriff, but relate to his run for governor and his communications with his campaign
11 team. Thus, LVMPD believes that a *Vaughn* Index is not necessary on this basis. However, if
12 the Court believes that there is, in fact, a question as to whether such emails would pertain to
13 Sheriff Lombardo's position within LVMPD, rendering them public records, LVMPD should be
14 afforded the opportunity to provide a *Vaughn* Index to refute the same with identified privileges.⁵
15 As recognized in *Gibbons*, a *Vaughn* Index is not necessary absent a Court order. Accordingly,
16 LVMPD asks that the Court order a *Vaughn* Index be provided to Petitioners and the Court to
17 further demonstrate that the requested emails do not pertain to Sheriff Lombardo's position as
18 Sheriff of LVMPD.

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23 ⁵ LVMPD maintains that the records are not "public" records for purposes of the NPRPA. However, if the
24 Court believes that there is a factual issue regarding whether the emails are subject to the NPRPA, then
25 LVMPD asks that the Court required LVMPD to submit a *Vaughn* Index and additional brief identifying
26 the specific privileges and balancing tests that apply. For example, if the emails are considered public
27 records, depending on the basis that they are deemed public records, various privileges could apply, such
28 as the deliberative process privilege. Additionally, if considered to be public records, the Court would
need to also balance the privacy interests of the individuals involved in the emails against the public's
interests in access. Due to the complex nature of these arguments, additional briefing is necessary as
these arguments will be based on the fact that the Court does deem such records to be public and the
underlying basis.

1 **V. CONCLUSION**

2 Based on the foregoing, LVMPD respectfully requests the Court denies Plaintiff Due
3 Diligence Group, LLC's Motion for Order Granting Plaintiff's Application for Writ of
4 Mandamus Pursuant to NRS 239.011 on an Order Shortening Time.

5 Dated this 1st day of July, 2022.

6
7 MARQUIS AURBACH

8
9 By: /s/ Jackie Nichols
10 Craig R. Anderson, Esq.
11 Nevada Bar No. 6882
12 Jackie V. Nichols, Esq.
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14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 Attorneys for Defendant Las Vegas
17 Metropolitan Police Department
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MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S OPPOSITION TO PLAINTIFF DUE DILIGENCE GROUP, LLC'S MOTION FOR ORDER GRANTING PLAINTIFF'S APPLICATION FOR WRIT OF MANDAMUS PURSUANT TO NRS 239.011 ON AN ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1st day of July, 2022. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁶

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
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Attorneys for Plaintiff Due Diligence Group, LLC

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

Jonathan Berkon, Esq. (*pro hac vice forthcoming*)
Courtney Weisman, Esq. (*pro hac vice forthcoming*)
Meaghan Mixon, Esq. (*pro hac vice forthcoming*)
Elias Law Group LLP
10 G St. NE Suite 600
Washington, DC 20002
Attorneys for Plaintiff Due Diligence Group, LLC

/s/ Jackie Nichols
An employee of Marquis Aurbach

⁶ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit A

DECLARATION OF CHARLES JIVAPONG

CHARLES JIVAPONG, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I make this declaration in relation to the allegations asserted in *Due Diligence Group, LLC v. Las Vegas Metropolitan Police Department*, Eighth Judicial District Court, Clark County, Nevada Case No. A-22-853953-W.

3. I am currently a Sergeant with the Las Vegas Metropolitan Police Department ("LVMPD") over the Public Records Unit (PRU) and the Body Worn Camera Unit. I have been employed by LVMPD for approximately 16 years.

4. I am familiar with the various public record requests submitted by the Due Diligence Group (DDG), some of which are the subject of the instant lawsuit.

5. A true and accurate copy of a spreadsheet detailing the date of the request, the number assigned to the request by PRU, the content of the request, the estimated time to research the request, the hours quoted to complete the request, and the date the request was completed in relation to DDG's requests is attached to the declaration as Exhibit A-1.

6. For over year, PRU has responded to over 60 requests submitted by Abraham Payton and Kathleen Casey.

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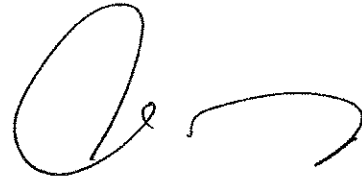
///

///

1 7. In processing these burdensome requests, PRU expended significant manpower in
2 researching to determine whether public records existed and providing public records to DDG,
3 including records related to Sheriff Lombardo, if disclosure was appropriate under the NPRA.

4 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
5 of Nevada that the foregoing is true and correct.

6 Dated this 1st day of July, 2022.

7
8  9338

9 CHARLES JIVAPONG

Exhibit A-1

Reimbursements: I am requesting copies of reimbursement records of Joe Lombardo from January 5, 2010, to April 20, 2021. Responsive records should detail which reimbursement requests were denied or granted, when they were made, the amount reimbursed, and supplementary receipts/invoices.

Office Expenses: I am requesting copies of office-related expenditures of Joe Lombardo's office in Las Vegas from January 5, 2010, to April 20, 2021. Responsive records should detail the date an expense was incurred, the cost of an expense, and a description of the expense (i.e. furnishings, technology, office supplies, food, etc).

Calendars: I am requesting copies of calendars, meeting planners, and scheduling materials of Joe Lombardo from January 5, 2010, to April 20, 2021.

Aircraft Usage: I am requesting copies of expenses, reimbursements, and logs related to Joe Lombardo's usage (or member of family's usage) of any publicly-owned/leased plane or helicopter from January 5, 2010, to April 20, 2021. Travel logs should detail the date and time of usage, the destination, the number and identity of the occupants, the model type, and the estimated distance, and the value of trip traveled as available.

Vehicle Usage: I am requesting copies of expenses, reimbursements, and logs related to Joe Lombardo's usage (or member of family's usage) of any publicly-owned/leased vehicle from January 5, 2010, to April 20, 2021. Travel logs should detail the date and time of usage, the destination, the number and identity of the occupants, the model of the vehicle, and the estimated distance traveled as available.

Private Security: I am requesting copies of contracts, invoices related to any private security services provided to Joe Lombardo outside of public office from January 5, 2010, to April 20, 2021. Please also include all related reimbursement requests submitted by Sheriff Joe Lombardo (or staff) for such security services being provided.

Salary: I am requesting copies of records that detail Joe Lombardo's salary, deferred salary, retirement benefits, and other compensation (including insurance plans) from January 5, 2010, to April 20, 2021.

Personnel: I am requesting a copy of Joe Lombardo's personnel file. These records should include available resumes, curriculum vitae, cover letters, job applications, job descriptions, interview notes, HR profiles, disciplinary history, performance evaluations, and salary history.

4/21/2021 NPR2021-0011843 15 0 5/26/2021

Emails on Specific Dates: I am requesting releasable copies of incoming and outgoing email correspondence (including attachments) of Joe Lombardo's between the following dates:

*[1] 04/20/2021 [2] 01/04/2021 thru 01/10/2021 [3] 05/25/2020 thru 06/01/2020 [4] 07/06/2016 [5] 08/09/2014 thru 08/25/2014

Emails with Specific Terms: I am requesting releasable copies of incoming and outgoing email correspondence (including attachments) of Joe Lombardo's which include the following terms (listed below) from January 5, 2015, to April 20, 2021.

*[1] Klung flu [2] stop the steal [3] Q [4] china virus [5] pizzagate [6] fake news [7] WWG1WGA [8] maga

Emails with ICE Officials: I am requesting releasable copies of incoming and outgoing email correspondence (including attachments) between Joe Lombardo and email accounts that end with domain name "@ice.gov" from January 5, 2015, to April 20, 2021.

4/21/2021 NPR2021-0011845 8 0 5/26/2021

5/19/2021	NPR2021-0012730	<p>The following request is being made in accordance with the Nevada Public Records Act (N.R.S. 239 et seq.). I am requesting copies of the following records regarding Joseph Michael "Joe" Lombardo (b. 11/08/1962):</p> <p>Personal Reimbursements: I am requesting copies of reimbursement records of Joe Lombardo from January 1, 1988, to January 4, 2015. Responsive records should detail which reimbursement requests were denied or granted, when they were made, the amount reimbursed, and supplementary receipts/invoices.</p> <p>Salary Records: I am requesting copies of records that detail Joe Lombardo's salary, deferred salary, retirement benefits, and other compensation (including insurance plans) from January 1, 1988, to January 4, 2015.</p> <p>Personnel File: I am requesting a copy of Joe Lombardo's personnel file. These records should include available resumes, curriculum vitae, cover letters, professional references, job applications, job descriptions, onboarding records (e.g. emergency contacts, employee policy acknowledgements, etc.) interview notes, HR profiles (e.g. HRIS profiles), disciplinary history, performance evaluations, complaint records, and salary history.</p> <p>Email Address(es): I am requesting documents that detail the email addresses issued to Joe Lombardo from January 1, 1988, to January 4, 2015. This includes any other state-issued email aliases generated for Joe Lombardo's use.</p>	5	0	5/26/2021
5/27/2021	NPR2021-0012948	<p>2021 Calendars: I am requesting releasable/redacted copies of calendars of Sheriff Joe Lombardo's from January 1, 2021, to May 27, 2021.</p> <p>Transaction Logs: I am requesting copies of transaction log(s)/register(s) of any credit cards, per diem accounts, or petty cash accounts assigned to Sheriff Joe Lombardo from January 1, 2020, to May 27, 2021.</p> <p>Public Records Requests: I am requesting copies of public record requests submitted to the Las Vegas Metropolitan Police Department from January 1, 2020, to May 27, 2021.</p> <p>Emails Between PIO Staff and Ralston: I am requesting copies of incoming and outgoing email correspondence between PIO staff (listed below) and Jon Ralston (ralston@therivindy.com) from May 27, 2020, to May 27, 2021 (or as available).</p> <p>•Sergeant Miguel Garcia •Officer Larry Hadfield •Officer Misael Parra •Officer Aden OcampoGomez</p> <p>Emails Between PIO Staff and Joecks: I am requesting copies of incoming and outgoing email correspondence between PIO staff (listed below) and Victor Joecks (vjoecks@reviewjournal.com) from May 27, 2020, to May 27, 2021 (or as available).</p> <p>•Sergeant Miguel Garcia •Officer Larry Hadfield •Officer Misael Parra •Officer Aden OcampoGomez</p>	6	100 200 hours	6/29/2021

			<p>Emails Referencing Chauvin: I am requesting releasable/redacted copies of incoming and outgoing email correspondence of Sheriff Joe Lombardo's which directly reference the term "Chauvin" from May 25, 2020, to May 27, 2021 (or as available).</p> <p>Emails Referencing Floyd: I am requesting releasable/redacted copies of incoming and outgoing email correspondence of Sheriff Joe Lombardo's which directly reference the term "Floyd" from May 25, 2020, to May 27, 2021 (or as available).</p> <p>Emails Referencing Floyd: I am requesting releasable/redacted copies of incoming and outgoing email correspondence of Sheriff Joe Lombardo's which directly reference the term "Floyd" from May 25, 2020, to May 27, 2021 (or as available).</p> <p>Emails Referencing Other Terms: I am requesting releasable/redacted copies of incoming and outgoing email correspondence of Sheriff Joe Lombardo's which directly reference the terms "buzagata" or "wvg3wga" from May 27, 2020, to May 27, 2021 (or as available).</p> <p>Outgoing Emails Referencing Sisolak: I am requesting releasable/redacted copies of outgoing (only) email correspondence of Sheriff Joe Lombardo's which directly reference the terms "Sisolak" or "governor" from May 27, 2020, to May 27, 2021 (or as available).</p> <p>Outgoing Emails Referencing Partisan Terms: I am requesting releasable/redacted copies of outgoing (only) email correspondence of Sheriff Joe Lombardo's which directly reference the terms "Republican" or "GOP" from May 27, 2020, to May 27, 2021 (or as available).</p>	5	100-200 hours	5/29/2021
			<p>Emails with LVMPD Vendors: I am requesting releasable/redacted copies of incoming and outgoing email correspondence between Sheriff Joe Lombardo and email accounts that end with the following domain names (listed below) from May 27, 2020, to May 27, 2021 (or as available).</p> <ul style="list-style-type: none"> • @centurylink.com • @motorolasolutions.com • @motorola.com • @capriabconstruction.com 	2	100-200 hours	5/29/2021
			<p>Lombardo's Emails with Specific Email Accounts: I am requesting releasable/redacted copies of incoming and outgoing email correspondence (including attachments) between Sheriff Joe Lombardo and email accounts that end with the domain name "@lvmpdfoundation.org" from January, 1, 2019, to July 10, 2021.</p>	2	15 hours	7/15/2021
			<p>Credit Card Transaction Logs: I am requesting copies of transaction log(s)/register(s) of credit cards assigned for Sheriff Joe Lombardo's use from January 1, 2020, to July 25, 2021.</p>	1	*Contact for quote	8/25/2021
			<p>Invoices/Purchase Agreements of Vehicles Assigned to Lombardo: I am requesting releasable/redacted copies of invoices, purchase agreements, leasing documents of the three vehicles (listed below) assigned to Sheriff Joe Lombardo.</p> <ul style="list-style-type: none"> • 2018 Chevrolet Tahoe (assigned to Lombardo from 2018 to Present) • 2017 Ford Ford Explorer (assigned to Lombardo from 2016 to 2018) • 2013 Ford Taurus (assigned to Lombardo from 2013 to 2016) 	1	*Contact for quote	8/25/2021
			<p>LVMPD Aircraft Usage: I am requesting copies of expenses, reimbursements, and logs related to Joe Lombardo's usage (or member of family's usage) of LVMPD-owned/leased plane or helicopter from January 1, 2020, to July 25, 2021. Travel logs should detail the date and time of usage, the destination, the number and identity of the occupants, the model type, and the estimated distance, and the value of trip traveled (as available).</p>	0	*Contact for quote	8/25/2021
			<p>Calendars: I am requesting releasable/redacted copies of Microsoft Outlook calendars of Joe Lombardo from November 1, 2020, to July 25, 2021</p>	0	*Contact for quote	8/25/2021

8/10/2021	NPR2021-0014933	<p>Emails with ICE Officials: I am requesting releasable copies of incoming and outgoing email correspondence (including attachments) between Joe Lombardo and email accounts that end with domain name '@ice.gov' from January 1, 2021, to July 25, 2021.</p>	0	*Contact for quote	8/25/2021
9/2/2021	NPR2021-0015599	<p>I am requesting copies of all public records requests (only) submitted to this office from November 4, 2020, to August 31, 2021. I realize that certain costs may be applicable to this request. Please contact me when you can provide a payment amount for my requests. In the meantime, I authorize an initial expense cap of \$50 to be accrued.</p> <p>I also request that you state the specific legal and factual grounds for withholding any documents or portions of documents, should you withhold any. Please identify each document that falls within the scope of this request but is withheld from release.</p> <p>If requested documents are located in, or originated in, another installation or bureau, I would request that you please refer this request, or any relevant portion of this request, to the appropriate installation or bureau. To the extent that the information is available in electronic format, I would prefer to receive that information via email, particularly if providing the information reduces the time or expense involved. Otherwise, I request to receive the information in paper form.</p>	0	0	9/2/2021
11/3/2021	NPR2021-0017498	<p>Emails with LVMPD Vendors: I am requesting releasable/redacted copies of incoming and outgoing email correspondence between Sheriff Joe Lombardo and email accounts that end with the following domain names (listed below) from November 4, 2020, to November 4, 2021 (or as available).</p>	0	0	11/3/2021
11/3/2021	NPR2021-0017499	<p>Lombardo's Emails with Erwin: I am requesting releasable/redacted copies of incoming and outgoing emails (including attachments) between Sheriff Joe Lombardo and Ryan Erwin from November 4, 2020, to November 3, 2021. Please note that Ryan Erwin is not a member of the LVMPD and his interactions with Lombardo is expected to be relatively small.</p>	0	0	11/6/2021
11/3/2021	NPR2021-0017500	<p>Lombardo's Emails with Slanker: I am requesting releasable/redacted copies of incoming and outgoing emails (including attachments) between Sheriff Joe Lombardo and Mike Slanker from November 4, 2020, to November 3, 2021. Please note that Mike Slanker is not a member of the LVMPD and his interactions with Lombardo is expected to be relatively small.</p>	0	0	11/6/2021
12/1/2021	NPR2021-0018279	<p>Reports Regarding Officer-Involved Shootings: I am requesting releasable copies of all reports produced by the LVMPD regarding office involving shooting incidents since January 1, 2021.</p> <p>Phone Logs: I am requesting a copy of phone logs of telephones designated for Sheriff Joe Lombardo since January 1, 2021.</p> <p>Emails on Specific Days: I am requesting releasable copies of incoming and outgoing email correspondence (including attachments) of Sheriff Joe Lombardo's between the following dates: *04/20/2021 *01/04/2021 thru 01/10/2021 *05/25/2020 thru 06/01/2020 *07/06/2016 thru 07/10/2016</p> <p>Text Messages on Specific Day: I am requesting releasable copies of incoming and outgoing SMS text messages of Sheriff Joe Lombardo's on January 6, 2021.</p> <p>Budgets of Detention Center: I am requesting copies of the budgets for the Clark County Detention Center from January 1, 2021, to April 20, 2021.</p> <p>Audit/Financial Review/Inspections of Detention Center: I am requesting copies of the audits, financial reviews, inspection records for the Clark County Detention Center from January 1, 2021, to April 20, 2021.</p>	2	10	12/8/2021
12/1/2021	NPR2021-0018285	<p>Lombardo's Emails with Slanker: I am requesting releasable/redacted copies of incoming and outgoing emails (including attachments) between Sheriff Joe Lombardo and Mike Slanker from January 1, 2021, to December 1, 2021.</p>	0	0	12/3/2021

12/1/2021 NPR2021-0018286 Lombardo's Emails with Erwin: I am requesting releasable/reduced copies of incoming and outgoing emails (including attachments) between Sheriff Joe Lombardo and Ryan Erwin from January 1, 2021, to December 1, 2021. 0 0 12/3/2021

12/9/2021 NPR2021-0018532 Response Letter(s) Sent/Produced For NPR2021-0017754. I am requesting copies of the response letter(s) that were produced by the Las Vegas Metropolitan Police Department in response to public record service request #NPR2021-0017754. 0 0 12/10/2021

1/5/2022 NPR2022-0019318 Lombardo's Emails with Erwin: I am requesting releasable/reduced copies of incoming and outgoing emails (including attachments) between Sheriff Joe Lombardo and Ryan Erwin (erwin@redrockstrategies.com) from January 1, 2021, to December 1, 2021. 1 1 1/5/2022

1/5/2022 NPR2022-0019319 Lombardo's Emails with Slanker: I am requesting releasable/reduced copies of incoming and outgoing emails (including attachments) between Sheriff Joe Lombardo and Mike Slanker from January 1, 2021, to January 5, 2022. Below are the email addresses associated with Mr. Slanker that should be used to search for responsive records:
Mike@joelombardoformv.com
MSlanker@joelombardoformv.com
Slanker@joelombardoformv.com
MichaelS@joelombardoformv.com
MikeS@joelombardoformv.com
MSlanker@novembenc.com
slanker@novemberinc.com
mslanker@octoberinc.org
MikeSlanker@MountainStateSolutions.com
MichaelSlanker@MountainStateSolutions.com
MSlanker@MountainStateSolutions.com 1 1 1/5/2022

1/5/2022 NPR2022-0019320 Record Request Response And/or Responsive Documents For Previous Requests. Due to the Department's record retention policy of 14 days, I am requesting copies of the responses and/or responsive documents provided for the public record requests (listed below) that I previously submitted.
•NPR2021-0018283
•NPR2021-0018279 30 Minutes 0 1/5/2022

1/17/2022 NPR2022-0019670 Phone Logs: I am requesting a copy of phone logs of telephones designated for Sheriff Joe Lombardo since January 1, 2021. 1 1 1/19/2022

1/17/2022 NPR2022-0019671 Emails on Specific Days: I am requesting releasable copies of incoming and outgoing email correspondence (including attachments) of Sheriff Joe Lombardo's between the following dates:
• 04/20/2021
• 03/04/2021 thru 01/10/2021
• 05/25/2020 thru 06/01/2020
• 07/06/2016 thru 07/10/2016 1 1 1/19/2022

1/17/2022 NPR2022-0019672 Text Messages on Specific Day: I am requesting releasable copies of incoming and outgoing SMS text messages of Sheriff Joe Lombardo's on January 6, 2021. 1 1 1/20/2022

Incoming-and-Outgoing email correspondence between Sheriff Joseph "Joe" Lombardo and any of the following LVMPD officials (listed below) that contain the keywords listed below from January 1, 2022, through February 2, 2022.

LVMPD officials

Christopher Darcy (Undersheriff)
Lazaro Chavez (Assistant Sheriff)
John McGrath (Assistant Sheriff)
Andrew Walsh (Assistant Sheriff)
Miguel Garcia (Public Information Officer)
Larry Hadfield (Public Information Officer)
Aden Ocampo Gomez (Public Information Officer)
Misael Parra (Public Information Officer)
Jamie Itoos (Public Information Officer)
Patricia Cervantes (Human Resources)

Keywords:

"vaccine mandate"
"vaccination mandate"
"vax mandate"
"booster"
"vaxed"

Date	Case Number	Count	Due Date
2/7/2022	NPR2022-0021097	1	3/2/2022

Joseph Lombardo Official Calendar Entries Mentioning "Mesquite," in 2021. I am requesting releasable/redacted copies of calendars, meeting planners, and scheduling materials of Sheriff Joseph Lombardo's that mention "Mesquite," from January 1, 2021, through December 31, 2021.
Travel Logs: I am requesting copies of travel/advance logs itineraries of Sheriff Joseph Lombardo for events occurring in Mesquite, Nevada, from January 1, 2021, through December 31, 2021. Responsive travel records should detail the date and time, the destination, the intended purpose, and whom Sheriff Lombardo met.

Date	Case Number	Count	Due Date
3/7/2022	NPR2022-0021214	2 to 3	3/15/2022

Emails between Sheriff Joe Lombardo and Mark Hutchison (mhutchison@hutchlegal.com) between 01/01/21 and 3/7/22

Date	Case Number	Count	Due Date
3/24/2022	NPR2022-0021998	2	4/6/2022

All history of Sheriff Joseph Lombardo's access badge swipes in and out of LVMPD facilities (01/01/21 - 3/24/22).

Date	Case Number	Count	Due Date
4/8/2022	NPR2022-0022608	3	4/15/2022

Date Submitted	NPR #	Request	Estimated Time Researching	Hours Quoted	Date Closed
		<p>Responding Officer's Reports: I am requesting copies of all responding officer reports (including Nick Farese and Corey Staheli), narratives, body cam footage, and case notes surrounding a fatal traffic collision that occurred on May 30, 2019, at approximately 4:48 PM – otherwise known as event number 190500147379.</p> <p>Reporting Detective's Reports: I am requesting copies of reporting detectives J. Pearson, P. Solomon, S. Baker, D. McCuiston, and Sgt R. Stauffer's reports, narratives, body cam footage, and case notes surrounding a fatal traffic collision that occurred on May 30, 2019, at approximately 4:48 PM – otherwise known as event number 190500147379.</p> <p>Communications with Lombardo: I am requesting releasable/redacted copies of incoming-and-outgoing communications between detective J. Pearson, detective P. Solomon, detective S. Baker, detective D. McCuiston, detective Sgt R. Stauffer, officer Nick Farese, officer Corey Staheli, and Sheriff Joe Lombardo on May 30, 2019, between 4:30 PM and 11:59PM. Please note that the term "communications" would include emails, text messages (SMS or encrypted), and phone logs.</p> <p>Communications with Gragson: I am requesting releasable/redacted copies of incoming-and-outgoing communications between detective J. Pearson, detective P. Solomon, detective S. Baker, detective D. McCuiston, detective Sgt R. Stauffer, officer Nick Farese, officer Corey Staheli, and Ken Gragson on May 30, 2019, between 4:30 PM and 11:59PM. Please note that the term "communications" would include emails, text messages (SMS or encrypted), and phone logs.</p>	0 - Documents were previously redacted and released	0	5/21/2021
5/8/2021	NPR2021-0012585				
		<p>Communications with Chesnoff: I am requesting releasable/redacted copies of incoming-and-outgoing communications between detective J. Pearson, detective P. Solomon, detective S. Baker, detective D. McCuiston, detective Sgt R. Stauffer, officer Nick Farese, officer Corey Staheli, and attorney David Chesnoff on May 30, 2019, between 4:30 PM and 11:59PM. Please note that the term "communications" would include emails, text messages (SMS or encrypted), and phone logs.</p> <p>Communications with Schonfeld: I am requesting releasable/redacted copies of incoming-and-outgoing communications between detective J. Pearson, detective P. Solomon, detective S. Baker, detective D. McCuiston, detective Sgt R. Stauffer, officer Nick Farese, officer Corey Staheli, and attorney Richard Schonfeld on May 30, 2019, between 4:30 PM and 11:59PM. Please note that the term "communications" would include emails, text messages (SMS or encrypted), and phone logs.</p> <p>Farese's Personnel File: I am requesting a releasable/redacted copy of Nick Farese's personnel file. These records should include available resumes, curriculum vitae, cover letters, job descriptions, interview notes, HR profiles, disciplinary history, performance evaluations, and salary history.</p> <p>Staheli's Personnel File: I am requesting a releasable/redacted copy of Corey Staheli's personnel file. These records should include available resumes, curriculum vitae, cover letters, job descriptions, interview notes, HR profiles, disciplinary history, performance evaluations, and salary history.</p>	None	0	5/21/2021
5/18/2021	NPR2021-0012686				
		<p>Responding Officer's Reports: I am requesting copies of all responding officer reports (including Nick Farese and Corey Staheli), narratives, body cam footage, and case notes surrounding a fatal traffic collision that occurred on May 30, 2019, at approximately 4:48 PM – otherwise known as event number 190500147379.</p> <p>Child case for NPR2021-0012685</p>	Unknown	10 Hours	5/19/2021
5/19/2021	NPR2021-0012690				
		<p>America Rising's Public Records Request(s): I am requesting copies of all public records request (s) submitted to your agency by America Rising (a/k/a America Rising Corporation, a/k/a America Rising PAC) between January 1, 2020, to July 16, 2021.</p>	Unknown	0	7/20/2021
07/16/2021	NPR2021-0014301				

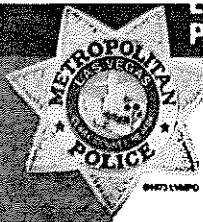
12/9/2021	NPR2021-0018530	Responsive Records Produced For NPR2021-0016654. I am requesting copies of the responsive documents and/or materials produced public record service request # NPR2021-0016654, created on October 7, 2021.	0	0	12/14/2021
12/9/2021	NPR2021-0018534	Response Letter(s) Sent/Produced For NPR2021-0017636. I am requesting copies of the response letter(s) that were produced by the Las Vegas Metropolitan Police Department in response to public record service request #NPR2021-0017636.	0	0	12/10/2021
12/9/2021	NPR2021-0018535	Response Letter(s) Sent/Produced For NPR2021-0017601. I am requesting copies of the response letter(s) that were produced by the Las Vegas Metropolitan Police Department in response to public record service request # NPR2021-0017601.	0	0	12/10/2021
12/9/2021	NPR2021-0018536	Response Letter(s) Sent/Produced For NPR2021-0017121. I am requesting copies of the response letter(s) that were produced by the Las Vegas Metropolitan Police Department in response to public record service request # NPR2021-0017121.	0	0	12/10/2021
12/9/2021	NPR2021-0018537	Response Letter(s) Sent/Produced For NPR2021-0016654. I am requesting copies of the response letter(s) that were produced by the Las Vegas Metropolitan Police Department in response to public record service request # NPR2021-0016654.	0	0	12/10/2021
		Correspondence with the Las Vegas Review-Journal: I am requesting copies of all incoming-and-outgoing correspondence (including attachments) between the Las Vegas Metropolitan Police Department (see "Police Department" for names) and the Las Vegas Review-Journal and/or Michael Scott Davidson (sdavidson@reviewjournal.com) from July 1, 2021, to November 23, 2021. Police Department Aden OcampoGomez Larry Hadfield			
12/9/2021	NPR2021-0018545	Correspondence mentioning "287(g) program": I am requesting copies of all incoming-and-outgoing correspondence (including attachments) between the Las Vegas Metropolitan Police Department (individuals listed below under "Police Department") mentioning certain keywords (listed below) from July 1, 2021, to November 23, 2021. Police Department Aden OcampoGomez Larry Hadfield Carla Alston Polyanna Toney Key Words "287(g) program" "Review-Journal" "ICE"	14	14	4/12/2022
1/4/2022	NPR2022-0019317	Las Vegas Metropolitan Police Department Fiscal Affairs Committee Agendas (2010 – 2016). I am requesting copies of all agendas, which should include all agenda items and attachments, for the Las Vegas Metropolitan Police Department Fiscal Affairs Committee from January 1, 2010, through December 31, 2016. Fiscal Affairs Committee Vendor Agreements And/or Schedules Of Private Contracts (2010 – 2016). I am requesting copies of all vendor agreements and/or Schedules of Private Contracts maintained, approved, and/or created by the Fiscal Affairs Committee from January 1, 2010, through December 31, 2016.	2	0	1/6/2022
1/17/2022	NPR2022-0019673	Budgets of Detention Center: I am requesting copies of the budgets for the Clark County Detention Center from January 1, 2021, to April 20, 2021. Audit(s) of Detention Centers: I am requesting copies of the audit(s) for the Clark County Detention Center from January 1, 2021, to April 20, 2021. Financial Review(s) of Detention Centers: I am requesting copies of the financial review(s) for the Clark County Detention Center from January 1, 2021, to April 20, 2021. Inspections of Detention Center: I am requesting copies of the inspection records for the Clark County Detention Center from January 1, 2021, to April 20, 2021.	Unknown	Unknown	1/15/2022

1/25/2022	NPR2022-0019826	<p>Records by Name/DOB: I am requesting releasable copies of police officer reports, narratives, blotters, rap sheet(s), and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below):</p> <p>Douglas "Doug" Anthony Ducey Jr. (DOB: 04/09/1964)</p> <p>Angela G. H. Ducey (aka, Angela G Herbert) (DOB: 12/05/1965)</p> <p>Records by Address: I am requesting releasable copies of police officer reports, narratives, 911 phone call logs, 911 call audio, blotters, and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below with years to search in parenthesis):</p> <p>4569 BRIGHTON DR LAS VEGAS, NV 89121 (1983-1987)</p>	5	0	1/26/2022
2/23/2022	NPR2022-0020940	<p>Work Cards: I am requesting copies of work cards issued to the following individuals (listed below) by the Las Vegas Metro Police Department (NV) from 1/1/1990-12/31/2010.</p> <p>April Becker</p> <p>April McCarney</p> <p>April Free</p> <p>April Kallas</p> <p>April Holmes</p> <p>Work Card Applications: I am requesting copies of work card applications submitted by the following individuals (listed below) to the Las Vegas Metro Police Department (NV) from 1/1/1990-12/31/2010.</p> <p>April Becker</p> <p>April McCarney</p> <p>April Free</p> <p>April Kallas</p> <p>April Holmes</p>	10 mins	N/A	2/24/2022
2/28/2022	NPR2022-0021099	<p>Police Sergeant Landon M. Reyes Personnel Records: I am requesting all releasable copies of Police Sergeant Landon Michael Reyes personnel file with the Las Vegas Metropolitan Police Department.</p> <p>DOB: 12/14/1981</p>	5 mins	N/A	3/1/2022
2/28/2022	NPR2022-0021100	<p>All memos pertaining to the consideration and approval of settlement payments by the Las Vegas Metropolitan Police Department that involve Ian Tuuamalealo and Christina Paulos and/or Case no. 2:16-cv-00619-JAD-VCF from November 1, 2021, through February 10, 2022.</p>		N/A	3/3/2022
3/2/2022	NPR2022-0021201	<p>Records by Name/DOB: I am requesting releasable copies of police officer reports, narratives, blotters, rap sheet(s), and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below): Robert Thomas Bigelow – DOB: 5/12/1944 Records by Address: I am requesting releasable copies of police officer reports, narratives, 911 phone call logs, 911 call audio, blotters, and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below with years to search in parenthesis): 1899 W Brooks Ave, Las Vegas, NV (2000 - 2008); Parcel No# 139-16-201-006</p> <p>• 810 Pinehurst Drive, Las Vegas, NV (1997 - Present); Parcel # 162-10-818-001</p> <p>• 1525 Fremont Street, Las Vegas, NV (2020 - Present); Parcel # 139-35-301-001</p> <p>• 1501 Fremont Street, Las Vegas, NV (1998 - Present); Parcel # 139-35-301-002</p>	20 mins	N/A	3/4/2022
3/2/2022	NPR2022-0021216	<p>Public Record Requests Submitted Mentioning "Lombardo," from January 1, 2021, through February 28, 2022. I am requesting copies of all requests submitted to the Las Vegas Metropolitan Police Department (NV) that mention "Lombardo," from January 1, 2021, through February 28, 2022. This request is filled due to how the Department's online portal does not allow for a member of the public to search for requests based upon either keywords or subject.</p>			3/15/2022

NPR2022-0021213	3/7/2022	Contracts/Disbursements: I am requesting documents of all contracts and disbursements from the Las Vegas Metropolitan Police Department to the entities listed below from January 5, 2015, through February 28, 2022. Sedona Magnet LLC • Bigelow Aerospace • Your Best Management LLC • Budget Suites of America	5 mins	0	3/2/2022
NPR2022-0021999	3/7/2022	All memos pertaining to the consideration and approval of settlement payments by the Las Vegas Metropolitan Police Department involving Susan Spilker. Dated between 7/1/2019-9/23/2019.	20 mins	0	3/24/2022
NPR2022-0021997	3/7/2022	All memos pertaining to the consideration and approval of settlement payments by the Las Vegas Metropolitan Police Department involving Elizabeth Romero. Dated between 01/01/2019 - 04/22/2019.	20 mins	0	3/24/2022
NPR2022-0022103	3/7/2022	All memos, information, and documentation pertaining to the consideration and approval of settlement payments by the Las Vegas Metropolitan Police Department involving Sheriff Joe Lombardo and Elizabeth Romero. Dated between 01/01/2019 - 04/22/2019.	10 mins	0	3/29/2022
NPR2022-0022609	4/8/2022	Average response time for emergency calls, broken down by area command. Requesting all data available from Fiscal Year 2014-15 through Fiscal Year 2021-2022	1 hr	0	4/12/2022
NPR2022-0024905		Records by Name/DOB: I am requesting releasable copies of sheriff reports, narratives, blotters, rap sheet(s), and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below): John Jay Lee: Born 8/20/1955 and Marilyn Reusch Lee: Born 1/1956 Records by Address: I am requesting releasable copies of sheriff reports, narratives, 911 phone call logs, 911 call audio, blotters, and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below with years to search in parenthesis): 7617 Wingspread St North Las Vegas, NV Parcel No. 124-17-615-041 (2020-2022) 3216 Villa Piumi Ct. North Las Vegas, NV Parcel No. 124-29-112-038 (2006-2012) Concealed Carry Permit Applications/Licenses: I am requesting releasable copies of concealed carry permit applications and or license(s) submitted/owned by the following	2 hr	0	
NPR2022-0025322		DUPLICATE TO NPR2022-0021201 : Records by Name/DOB: I am requesting releasable copies of police officer reports, narratives, blotters, rap sheet(s), and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below): • Robert Thomas Bigelow – DOB: 5/12/1944 Records by Address: I am requesting releasable copies of police officer reports, narratives, 911 phone call logs, 911 call audio, blotters, and arrest records (e.g. photos, fingerprint records, and other processing documents) involving the following (listed below with years to search in parenthesis): • 1899 W Brooks Ave. Las Vegas, NV (2000 - 2008): Parcel No# 139-16 201-006 • 810 Pinehurst Drive, Las Vegas, NV (1997- Present): Parcel #152-10-818-001 • 1525 Fremont Street, Las Vegas, NV (2020 - Present): Parcel # 139-35-301-001 • 1501 Fremont Street, Las Vegas, NV (1998 - Present): Parcel #139-35-301-002	5 mins to find old folder	0	

NPR2022-0025327	6/17/2022	<p>DUPLICATE TO NPR2022 0025322 The following request is being made in accordance with the Nevada Public Records Act (N.R.S. 239 et seq.) I am requesting copies of the following records regarding the Las Vegas Metropolitan Police Department</p> <p>EEO Compliance Training Materials: I am requesting releasable copies of presentations, brochures, manuals, and other education/instructive materials presented to Las Vegas Metropolitan Police Department employees regarding EEO Compliance from January 5, 2015, to April 20, 2021.</p> <p>Zero Tolerance Policies: I am requesting releasable copies of working drafts and final drafts of zero tolerance policies for the Las Vegas Metropolitan Police Department from January 5, 2015, to April 20, 2021.</p> <p>Diversity Action Plans: I am requesting copies of (working drafts and final drafts) diversity action plans generated for (or in conjunction with) the Las Vegas Metropolitan Police Department from January 5, 2015, to April 20, 2021.</p> <p>Alternative Dispute Resolution Plans/Policies: I am requesting copies of (working drafts and final drafts) alternative dispute resolution processes or policies for the Las Vegas Metropolitan Police Department from January 5, 2015, to April 20, 2021.</p>	0	5 mins to find old folder	6/23/2022
NPR2022-0025326	6/17/2022	All memos pertaining to the consideration and approval of settlement payments by the Las Vegas Metropolitan Police Department that involve Ian Tuuamalealo and Christina Paulos and/or Case no. 2:16-cv-00619-JAD-VCF from November 1, 2021, through June 17, 2022	0	2 mins to find old folder	6/23/2022
NPR2022-25324	6/17/2022	<p>Police Sergeant Landon M. Reyes Personnel Records: I am requesting all releasable copies of Police Sergeant Landon Michael Reyes personnel file with the Las Vegas Metropolitan Police Department.</p> <p>DOB: 12/14/1981</p>	N/A	5 mins	6/23/2022

Exhibit B



January 5, 2022

VIA PRU PORTAL

Abraham Payton/Kathleen Casey
records@duediligencegroupllc.com

Re: Public Records Request NPR2022-0019318 and NPR2022-0019319

Dear Abraham Payton/Kathleen Casey,

This correspondence is in response to your Nevada Public Record Act request NPR2022-0019318 and NPR2022-0019319. You have requested the following:

NPR2022-0019318

"Lombardo's Emails with Erwin: I am requesting releasable/redacted copies of incoming-and-outgoing emails (including attachments) between Sheriff Joe Lombardo and Ryan Erwin (rerwin@redrockstrategies.com) from January 1, 2021, to December 1, 2021."

NPR2022-0019319

"Lombardo's Emails with Slanker: I am requesting releasable/redacted copies of incoming-and-outgoing emails (including attachments) between Sheriff Joe Lombardo and Mike Slanker from January 1, 2021, to January 5, 2022. Below are the email addresses associated with Mr. Slanker that should be used to search for responsive records:

Mike@joelombardofornv.com

MSlanker@joelombardofornv.com

Slanker@joelombardofornv.com

MichaelS@joelombardofornv.com

MikeS@joelombardofornv.com

Mslanker@novemberinc.com

slanker@novemberinc.com

mslanker@octoberinc.org

MikeSlanker@MountainStateSolutions.com



MichaelSlanker@MountainStateSolutions.com

MSlanker@MountainStateSolutions.com”

We have preliminarily researched your request and determined the record(s) you are seeking are not readily available and would be unduly burdensome to gather, compile, redact and produce. A public entity need not produce records that are not readily available and would require research, compilation and redaction to produce. *See Lunney v. State*, 418 P.3d 943, 954 (Ariz. Ct. App. 2017) (recognizing that the agency was not required to respond to the burdensome request); *Shehadeh v. Madigan*, 996 N.E.2d 1243, 1249 (Ill. App. Ct. 2013) (holding that the Attorney General satisfied its burden by explaining that its staff members would have to go through all of the 9,200 potentially responsive documents by hand); *Beckett v. Serpas*, 112 So.3d 348, 353 (La. App. Ct. 2013) (determining that segregating 10-years worth of files is unreasonably burdensome); *Community Youth Athletic Ctr. v. City of Nat'l City*, 164 Cal.Rptr.3d 644, 676, 220 Cal.App.4th 1385, 1425 (2013) (generally, an agency is not required to undertake extraordinarily extensive or intrusive searches, and in general, the scope of an agency's search for public records need only be reasonably calculated to locate responsive documents) .

To determine if producing documents “poses an unreasonable administrative burden,” courts consider whether the general presumption in favor of disclosure is overcome by: “(1) the resources and time it will take to locate, compile, and redact the requested materials; (2) the volume of materials requested; and, (3) the extent to which compliance with the request will disrupt the agency's ability to perform its core functions.” *Lunney*, 418 P.3d at 954; *cf.* NAC 239.860 (defining “readily available” for purposes of State agencies as records that are “easily retrievable,” “not confidential,” and having a “nature...such that an officer, employee or agent of the agency...is not required to review the record to determine whether the record includes confidential information”).

In this case, PRU estimates the research required for your requests is 3 personnel hours. Pursuant to the published rate of \$51.00 dollars per hour, the total cost of the research required to complete your requests is \$153.00 dollars. If you would like to move forward with processing your requests, please provide payment in the amount of \$153.00 dollars in the form of a money order or a cashier's check/business check made payable to The Las Vegas Metropolitan Police Department. Payment can be sent to:

Attn: Public Records Unit
Las Vegas Metropolitan Police Department
400 S. Martin L. King Blvd., A-4
Las Vegas, NV 89106

It should be noted, **this invoice is only for the research portion of your requests**. Once we have determined the number of records responsive to your requests, an additional invoice will be provided for the cost of the redactions required.

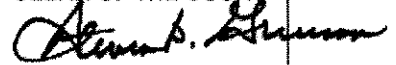
Please be advised there could also be privileged confidential criminal history information that cannot be redacted and will be withheld. NRS 239.001 provides that public records are open to inspection. However, NRS 239.010(1) expressly creates exemptions to the disclosure of records falling under various statutes, including NRS 179A.070. Pursuant to NRS 179A.070, a “record of criminal history” is “information contained in records collected and maintained by agencies of criminal justice, the subject of which is a natural person, consisting of descriptions which identify the subject and notations of summons in a criminal action, warrants, arrests, citations for misdemeanors..., detentions, decisions of a district attorney or the Attorney General not to prosecute the subject, indictments, informations or other formal criminal charges and dispositions of charges....” NRS 179A.070(1).

There may be other privileges that apply once records are gathered. For instance, personal identifiers must be redacted. NRS 239B.030; NRS 603A.040. Information about victims and witnesses may be confidential. *Donrey v. Bradshaw*, 106 Nev. 630, 798 P.2d 144, fn. 4 (1990) (referring to Exemption 7 of the federal Freedom of Information Act); 5 USC § 552(b)(7)(Subparts (C) and (F) of Exemption 7 make law enforcement records confidential if disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy” or “could reasonably be expected to endanger the life or physical safety of an individual”). Other privacy concerns may also warrant redactions. *Clark County Sch. Dist. v. Las Vegas Review-Journal*, --- Nev. ---, 429 P.3d 313, 319-20 (2018). Evidence is not a public record. BLACK’S LAW DICT., 7th ed. ab., at p. 1023 (2000) (defining “public record” as a document “made by public officer in pursuance of duty, the immediate purpose of which is to disseminate the information to the public or to serve as a memorial of official transaction for public reference”); *Id.* at p. 457 (defining “evidence” as “[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.” Moreover, providing evidence obtained through legal process, including consent, would exceed the authority granted either by the court or by the owner. *See e.g., Wilson v. Layne*, 526 U.S. 603, 119 S. Ct. 1692 (1999) (holding that when balancing a person’s Fourth Amendment right to be secure in their persons, houses, papers, and effects, probable cause may justify a police entry and seizure but it does not justify the media’s entry and/or seizure).

This list of potential privileges is not meant to be exhaustive. Once the records are gathered and reviewed, specific privileges will be stated. Again, once we have received payment, PRU will begin processing the request. If there are any questions or concerns, please feel free to contact us.

Sincerely,
Public Records Unit (PRU)
Las Vegas Metropolitan Police Department

EXHIBIT 4



JONATHAN BERKON, ESQ. (*pro hac vice* forthcoming)
COURTNEY WEISMAN, ESQ. (*pro hac vice* forthcoming)
MEAGHAN MIXON, ESQ. (*pro hac vice* forthcoming)
MAYA SEQUEIRA, ESQ. (*pro hac vice* forthcoming)

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BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
DANIEL BRAVO, ESQ. (NSB 13078)
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dbravo@wrslawyers.com

Attorneys for Plaintiff

**IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY**

DUE DILIGENCE GROUP, LLC, a limited
liability company,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

Case No.: A-22-853953-W
Dept. No.: 14

**PLAINTIFF'S REPLY IN SUPPORT
OF ITS NEVADA PUBLIC RECORDS
ACT APPLICATION AND PETITION
FOR WRIT OF MANDAMUS AND
MEMORANDUM OF POINTS AND
AUTHORITIES AND PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
COUNTERMOTION TO DISMISS
PETITION**

Hearing Date: July 14, 2022
Hearing Time: 10:00 AM

COMES NOW Plaintiff Due Diligence Group, LLC, ("Plaintiff"), by and through its
undersigned counsel, and files its Reply Brief in support of its Nevada Public Records Act

1 Application and Petition for Writ of Mandamus for declaratory and injunctive relief ("Reply
2 Brief").

3 For the reasons set forth in the attached Memorandum of Points and Authorities, Plaintiff
4 respectfully moves the Court to grant its Application for Order Compelling Disclosure of Public
5 Records Pursuant to NRS 239.011/Petition For Writ Of Mandamus ("Application") and deny
6 Defendant's Countermotion to Dismiss Petition ("Countermotion").

7 DATED this 8th day of July, 2022.

8 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &**
9 **RABKIN, LLP**

10 By: /s/ Daniel Bravo

11 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
12 DANIEL BRAVO, ESQ. (NSB 13078)
13 3773 Howard Hughes Parkway, Suite 590 South
14 Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
dbravo@wrslawyers.com

15 JONATHAN BERKON, ESQ. (*pro hac vice forthcoming*)
16 COURTNEY WEISMAN, ESQ. (*pro hac vice forthcoming*)
17 MEAGHAN MIXON, ESQ. (*pro hac vice forthcoming*)
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21 msequeira@elias.law

22 *Attorneys for Plaintiff*

1 MEMORANDUM OF POINTS & AUTHORITIES

2 I. INTRODUCTION

3 LVMPD's defenses and arguments in opposition to Plaintiff's Application are conflicting
4 and illogical. First, LVMPD argues, without evidence, that Plaintiff is not the real party in interest
5 in this matter. But there is no dispute that Plaintiff made the public records requests in question.
6 As a result, it is the proper plaintiff and real party in interest in this case, regardless of whether it
7 seeks the requested information as part of a client matter or for its own purposes. *See* NRS §
8 239.011(1)(a) ("[T]he *requester* may apply to the district court in the county in which the book or
9 record is located for an order: . . . Permitting the requester to inspect or copy the book or record.")
10 (emphasis added). Nor does this issue have any bearing on LVMPD's ability (or inability) to raise
11 a defense. The only relevant question is whether Sheriff Lombardo's emails are public records.
12 The analysis of that issue is not impacted by who made the request, or for what purpose.

13 LVMPD's argument that Sheriff Lombardo's emails are not public records fares no better.
14 Even a cursory review of the sample emails demonstrates that they contain information concerning
15 the provision of public services. And while LVMPD notably abandons its claim of deliberative
16 process privilege in its Response, the fact that LVMPD claimed this privilege as a reason for
17 denying Plaintiff's requests itself is further proof that the withheld emails concern decisions related
18 to Lombardo's role as Sheriff. Further, the emails call into question whether Sheriff Lombardo
19 was engaging in unethical behavior using public resources or during the course of his duties as
20 Sheriff—whether in violation of the Nevada Administrative Code, Nevada Revised Statutes, or
21 Las Vegas, Nevada Municipal Code.

22 Lastly, LVMPD asks that in lieu of production it be permitted to produce a *Vaughn* index—
23 a tool typically reserved for privileged or confidential public records the government has an interest
24 in shielding from disclosure. But this approach would be inappropriate here. A *Vaughn* index is
25 intended to ensure the *requesting party* (here, the *Plaintiff*) has enough information to sufficiently
26 challenge the government's claims of confidentiality or privilege. Plaintiff has already presented
27 informed and compelling challenges to LVMPD's attempts to avoid disclosure and LVMPD
28 abandoned its only claim of privilege. Neither Plaintiff nor the circumstances of the case require

1 any additional information. Yet, LVMPD attempts to turn the principles of *Vaughn* on their head
2 and submit an index of records that even it no longer claims are either confidential or privileged.
3 For all of these reasons, disclosure is required. A *Vaughn* index would be inappropriate.

4 In sum, LVMPD's steadfast refusal to comply with the NPRA is based on flawed logic. To
5 the extent that there are any ambiguities as to whether the documents are public records (and
6 Plaintiff submits there are no reasonable ones), the NPRA commands government transparency,
7 and requires any ambiguities be resolved in favor of disclosure. Accordingly, the Court should
8 grant Plaintiff's Application, deny LVMPD's Counter-motion, and order LVMPD to immediately
9 produce all emails responsive to Plaintiff's requests.

10 **II. ARGUMENT**

11 **A. Plaintiff is the proper party in interest.**

12 LVMPD's party in-interest argument is meritless. The Nevada Rules of Civil Procedure
13 require, "[a]n action must be prosecuted in the name of the real party in interest." Nev. R. Civ. P.
14 17(a)(1). A "real party in interest" is "one who possesses the right to enforce the claim and has a
15 significant interest in the litigation." *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983).
16 Plaintiff easily meets that test here.

17 *First*, there is no dispute that Plaintiff made the records requests in question and in
18 accordance with the NPRA. *Second*, under the NPRA Plaintiff has the right to enforce its claim to
19 have those records produced. In the face of LVMPD's denials, the NPRA instructs requesters in
20 Plaintiff's position to seek a writ of mandamus before the appropriate court, just as Plaintiff has
21 done here. NRS § 239.011(1). *Third*, Plaintiff plainly has a significant interest in the litigation.
22 That another individual or entity might also have an interest in the records does not negate or
23 diminish Plaintiff's interest. An entity acting on behalf of a client clearly has its own interests in
24 obtaining information that it may seek on behalf of its client. But even if that were not so, Rule
25 17(a)(1)(F) explicitly provides that, "a party with whom or in whose name a contract has been
26 made for another's benefit" "may sue in their own names without joining the person for whose
27 benefit the action is brought." Nev. R. Civ. P. 17(a)(1)(F).

28 *Finally*, none of the concerns that Rule 17 is meant to address are present here. Specifically,

1 Rule 17(a) is intended “to enable the defendant to avail himself of evidence and defenses that the
2 defendant has against the real party in interest, and to assure him finality of the judgment, and that
3 he will be protected against another suit brought by the real party at interest on the same matter.”
4 *Painter v. Anderson*, 96 Nev. 941, 943, 620 P.2d 1254, 1256 (1980) (quoting *Calanese Corp. of*
5 *Am. v. John Clark Indus.*, 214 F.2d 551, 556 (5th Cir. 1954)). There is nothing about this action—
6 or the fact that Plaintiff is the one who has brought it—that in any way hinders LVMPD’s ability
7 to avail itself of evidence or defenses that it otherwise might have against anyone else with interest
8 in the records, nor is there any risk that LVMPD will not enjoy finality of judgment or be protected
9 against another suit on the same matter brought by someone else. As the requester, Plaintiff is the
10 only appropriate party to bring suit. NRS § 239.011(1)(a) (“[T]he requester may apply to the
11 district court in the county in which the book or record is located for an order: ... Permitting the
12 requester to inspect or copy the book or record.”).

13 LVMPD’s reliance on *Lazaridis v. United States DOJ*, 713 F. Supp. 2d 64, 67 (D.D.C.
14 2010), is entirely misplaced. In *Lazaridis*, the requester, a fugitive father who kidnapped his minor
15 child and escaped to Greece, submitted multiple FOIA requests seeking records pertaining to the
16 kidnapping. *See id.* at 66. Appearing *pro se*, he claimed to bring suit on behalf of his child. *See id.*
17 at 67. The court found he lacked standing because as a lay person appearing *pro se* he was “not
18 qualified to appear as counsel for others” and had not established that he was the child’s “general
19 guardian” or “a like fiduciary.” *Id.* (quoting Fed. R. Civ. P. 17(c)(1)). But Plaintiff is not appearing
20 *pro se* on behalf of anyone else. Plaintiff brings suit against LVMPD in its own right through
21 undersigned counsel to exercise rights as articulated in the NPRA. LVMPD’s argument that
22 Plaintiff is not the appropriate party to bring this action should be rejected.

23 **B. The NPRA is not restricted by the Nevada Administration Code and the**
24 **Court should look to the NPRA for the appropriate definition of what falls**
within its purview.

25 The NPRA is intentionally broad to encourage transparency and accountability in
26 government, and open access to agency records. NRS § 239.001. This objective is paramount and
27 reflected not only in the NPRA’s provisions but in Nevada jurisprudence as well. *See id.*; *see also*
28 *Clark Cnty. Sch. Dist. (CCSD) v. Las Vegas Rev.-J.* (“CCSD”), 134 Nev. 700, 702-03, 429 P.3d

1 313, 317 (2018) (noting “the purpose of the NPRA is to further the democratic ideal of an
2 accountable government by ensuring that public records are broadly accessible”); *Comstock*
3 *Residents Ass’n v. Lyon Cnty. Bd. of Comm’rs*, 134 Nev. 142, 144, 414 P.3d 318, 320 (2018)
4 (explaining that records of governmental entities, including those of “elected or appointed officers
5 of [the] state’s political subdivisions” are subject to the NPRA in the interest of fostering
6 democratic principles and transparency regarding government activities). To achieve the
7 democratic principles served by the NPRA, its provisions must be construed as liberally as possible
8 and any restrictions on disclosure narrowly. *Id.*

9 Though the NPRA does not explicitly define “public record,” it provides guidance and
10 parameters which define its scope within its own provisions. NRS §§ 239.005(6), 239.010. The
11 Nevada Supreme Court has previously rejected invitations to look to Nevada’s Administrative
12 Code (“NAC”) in determining whether a record falls within the NPRA’s purview—particularly
13 where doing so would restrict the NPRA—and this Court must do the same. *See CCSD*, 134 Nev.
14 at 703; 429 P.3d at 317 n.2 (rejecting agency’s argument that the records at issue were “nonrecord
15 materials” under the NAC and exempt from disclosure under the NPRA as “without merit”);
16 *Comstock*, 134 Nev. at 147-48, 414 P.3d at 322-23 (rejecting agency’s reliance on NAC to define
17 what constitutes a public record). “[T]he NAC does not limit the reach of the NPRA, but merely
18 establishes regulations for good records management practices of those local programs.” *CCSD*,
19 134 Nev. at 704, 429 P.3d at 318 (quoting *Comstock*, 134 Nev. at 147, 414 P.3d at 322) (cleaned
20 up). To the extent the NAC provides any definition of public record, its purpose is limited to
21 records management practices and the Nevada Supreme Court has warned, it should not be
22 conflated with “what constitutes a public record for purposes of the NPRA.” *Comstock*, 134 Nev.
23 at 147, 414 P.3d at 322; *see also CCSD*, 134 Nev. at 704-05, 429 P.3d at 318. In *Comstock*, the
24 Court rejected the lower court’s adoption of the NAC’s definition of public record and “nonrecord
25 materials.” *Id.* at 147 n.1. As the Court explained, “[b]oth are administrative regulations pertaining
26 to local records management programs, and do not determine the overall scope of the NPRA.” *Id.*
27 Thus, LVMPD’s reliance on NAC § 239.101 to define what constitutes a public record under the
28 NPRA is misguided and contradicts prior precedent against doing so.

1 **C. Sheriff Lombardo’s emails are public records subject to disclosure under the**
2 **NPRA.**

3 In *Blackjack Bonding* and *Comstock*, the Nevada Supreme Court crafted the accepted
4 standard for determining what constitutes a public record subject to disclosure under the NPRA.
5 *Comstock*, 134 Nev. at 144-45, 414 P.3d at 321; *Las Vegas Metro. Police Dep’t v. Blackjack*
6 *Bonding, Inc.*, 131 Nev. 80, 86, 343 P.3d 608. 613 (2015)). Under that precedent, the proper
7 question is whether the material “concern[s] the provision of a public service.” *Comstock*, 134
8 Nev. at 144-45, 414 P.3d at 321 (quoting *Blackjack Bonding*, 131 Nev. at 86, 343 P.3d at 613).
9 “Public service” must be broadly defined as “a service rendered in the public interest.” *Blackjack*
10 *Bonding*, 131 Nev. at 85, 343 P.3d at 612 (cleaned up). Thus, disclosure is appropriate when the
11 records requested concern the provision of a service rendered in the public interest. LVMPD’s
12 argument that this definition excludes Sheriff Lombardo’s emails should be rejected.

13 Sheriff Lombardo’s emails are public records subject to disclosure because they concern
14 the provision of public service. The NPRA requires “that its provisions must be liberally construed
15 to maximize the public’s right of access.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878,
16 266 P.3d 623, 626 (2011) (citing NRS §§ 239.001(1)-(2); 2007 Nev. Stat., ch. 435, § 2, at 2061);
17 see also *Comstock*, 134 Nev. at 144, 146-47, 414 P.3d at 320, 321-22 (prefacing the Court’s
18 analysis by explaining that it is required to construe the NPRA’s provisions liberally). There are
19 several independent grounds upon which this Court should find that the emails broadly concern
20 the provision of public services.

21 *First*, the content of the sample emails produced by LVMPD alone is sufficient to come to
22 this conclusion. For example, in one of the emails Sheriff Lombardo asks his consultants and an
23 LVMPD sergeant to investigate a citizen’s complaint about Sheriff Lombardo’s mismanagement
24 of the fingerprint bureau which processes concealed carry weapons permits. In another, Sheriff
25 Lombardo weighs in on the success of the State’s vaccine lottery in encouraging residents to get
26 vaccinated against COVID-19. Both emails concern public services rendered in the public interest.

27 *Second*, Sheriff Lombardo “holds a public office, which constitutes a public trust to be held
28 for the sole benefit of the people of the State of Nevada (in particular, the people of [Clark]

1 County).” Nev. Comm’n on Ethics, *In re Antinoro*, Comm’n Op. No. 18-031C, 18-052C, 5 (Nov.
2 2019) (available at [https://ethics.nv.gov/uploadedFiles/ethicsnv.gov/content/News/20190827](https://ethics.nv.gov/uploadedFiles/ethicsnv.gov/content/News/20190827_StipulatedAgreement_18-031C_18-052C(Antinoro).pdf)
3 [StipulatedAgreement_18-031C_18-052C\(Antinoro\).pdf](https://ethics.nv.gov/uploadedFiles/ethicsnv.gov/content/News/20190827_StipulatedAgreement_18-031C_18-052C(Antinoro).pdf)) (last accessed July 8, 2022). Public
4 officers have a duty to avoid conflicts of interest between public duties and private interests.” *Id.*
5 (citing NRS § 281A.020). It would thoroughly undermine the purpose of the NPRA’s central goal
6 of bringing transparency to governmental affairs if the government could claim that records are
7 exempt from disclosure because they involve conduct by governmental officials that violate ethical
8 or legal requirements of persons in that position. And the emails themselves indicate that this is
9 precisely what was happening.

10 As Sheriff, Lombardo is restricted from engaging in certain conduct during his hours of
11 employment or using government resources for personal benefit. For example, the Nevada Ethics
12 in Government Law prohibits Sheriff Lombardo from “us[ing] governmental time, property,
13 equipment or other facility to benefit [his own] significant personal or pecuniary interest[.]” NRS
14 § 281A.400(7). The Nevada Commission on Ethics considers maintaining an elected (paid)
15 position in government to be a “significant personal and financial interest” for these purposes and
16 has concluded that “incumbent public officers are not entitled to the advantage of public resources
17 during a campaign for re-election.” Nev. Comm’n on Ethics, *supra*.

18 Accordingly, if Sheriff Lombardo failed to keep his public duties and private interests
19 separate when he used government time and resources to confer with his campaign consultants in
20 an attempt to secure an elected, paid position, that in and of itself involves the provision of public
21 services—albeit in an abusive and potentially unlawful manner. Sheriff Lombardo’s apparent
22 failure to comply with the ethical rules that govern him as Sheriff is directly related to his
23 provision of public service. *See id.*; Las Vegas, Nev. Ord. 2.51.020 (2002) (restricting political
24 activity of city employees while on duty). Although LVMPD posits that Sheriff Lombardo’s
25 contact with his campaign is de minimis, *see* Countermotion at 13:20-22, it has refused to provide
26 the evidence needed to evaluate that assertion or explain why or cite authority that this would
27 exempt them from the NPRA. In addition, LVMPD’s previous citation to the burden of producing
28 emails responsive to Plaintiffs request contradicts its claim. *See* Def.’s Opp’n, Ex. B.

1 Lastly, LVMPD contends that Sheriff Lombardo is not a typical employee because his
2 duties require his attention at times outside the typical workday. By this argument, LVMPD
3 appears to infer that Sheriff Lombardo is exempt from complying with ethical and legal
4 requirements of his position that restrict his conduct during his hours of employment. LVMPD
5 cites no authority that would support this assertion, which would amount to an enormous carveout
6 of the public records laws for high-ranking officials, clearly at odds with the law's clear purpose.
7 The fact that much is demanded of a Las Vegas Sheriff, including that they work outside the normal
8 work day, does not eliminate either the Sheriff's obligation to perform his duties ethically and in
9 accordance with Nevada law, or LVMPD's duties to comply with the NPRA.

10 In sum, because Sheriff Lombardo's emails contain information related to and concerning
11 the provision of public service, and more specifically the performance of his duties, they are public
12 records under the standard articulated in *Blackjack Bonding* and *Comstock*.

13 **D. A *Vaughn* index is unnecessary and inappropriate because Plaintiff has**
14 **sufficient information to challenge LVMPD's claims of confidentiality.**

15 A *Vaughn* index is not appropriate in every case. LVMPD concedes as much in its brief,
16 and it thoroughly fails to demonstrate that a *Vaughn* index would be appropriate here. *See Gibbons*,
17 127 Nev. at 881-82, 266 P.3d at 628-29. When "*the requesting party* 'has sufficient information
18 to present a full legal argument, there is no need for a *Vaughn* index.'" *Id.* (emphasis added). The
19 *Vaughn* index is not intended to assist the withholding agency in meeting its burden. *See id.* The
20 index is meant to preserve the adversarial process when the requesting party lacks information
21 about the withheld records and is relegated "to advocating from a nebulous position where it is
22 powerless to contest a claim of confidentiality." *Id.* at 882. This is not the case here.

23 As the requesting party, Plaintiff is not at a disadvantage with respect to information about
24 the emails LVMPD is withholding as contemplated in *Vaughn*. LVMPD provided Plaintiff with a
25 representative sample of the responsive emails to "demonstrate the nature" of the larger
26 compendium. Plaintiff's review of the representative sample shows that the emails do concern the
27 provision of public service, making them public records subject to disclosure under the standard
28 articulated in *Blackjack Bonding* and *Comstock*. *See supra* at 7-8. LVMPD itself is the one that

1 decided those emails were representative of the larger whole. As a result, it follows the remaining
2 emails are similarly related to the provision of public service and subject to disclosure.

3 But for its ability to review the sample emails and confirm their content Plaintiff might
4 have been forced to contend with the disadvantages a *Vaughn* index is intended to cure—the lack
5 of information regarding the requested records to sufficiently challenge claims of confidentiality
6 and privilege. But Plaintiff is not in that position and LVMPD's claims of confidentiality and
7 privilege are easily extinguished.

8 Sheriff Lombardo's emails are not deemed confidential by statute. Nor are the records
9 private as contemplated by the NPRA or FOIA. *See Zeigler v. U.S. Dep't of Agric.-Farm Serv.*
10 *Agency*, No. 4:19-cv-02633-RBH, 2021 WL 4155260, at *8, 11 (D.S.C. Sep. 10, 2021); *Serv.*
11 *Emps. Int'l Union Loc. 925 v. Univ. of Wash.*, 193 Wash. ("SEIU") 2d 860, 874-76, 447 P.3d 534,
12 541-42 (2019). Sheriff Lombardo's emails are not completely divorced from his duties as Sheriff
13 or government activity as the emails in *Zeigler*. *See* 2021 WL 4155260, at *8, 11. They are
14 analogous to those in *SEIU*, which, although they were not created within the employees' scope
15 of employment were public records nonetheless because the content concerned the provision of
16 public service. *See* 193 Wash. 2d at 872-73, 447 P.3d at 540-42. Thus, the only other applicable
17 exceptions to disclosure are those of privilege, and neither is applicable here.

18 LVMPD abandoned its claim of deliberative process privilege and rightfully so because it
19 fails scrutiny and goes against LVMPD's earlier argument that the emails are not public records.
20 The deliberative process privilege is intended to protect public records created in the decision-
21 making process of government agencies. *See CSSD*, , 134 Nev. at 705, 429 P.3d at 318. The
22 privilege does not apply where government action is called into question and should only be raised
23 to shield communications designed to directly contribute to the formulation of important public
24 policy. *See id.* at 705, 429 P.3d at 318-19. Thus, regardless of whether the emails Plaintiff seeks
25 were shared with Sheriff Lombardo's consultants as part of the decision-making process for any
26 important public policy or solely for political gain because they reveal potentially violative conduct
27 the deliberative process privilege cannot shield them from disclosure. Claims of privilege pursuant
28 to the deliberative process cannot be used to shield evidence of government misconduct from

1 disclosure. *See id.* at 706, 429 P.3d at 319. This alone vitiates LVMPD's claim of privilege making
2 additional information unnecessary for Plaintiff to challenge LVMPD's claim.

3 A *Vaughn* index is not appropriate in this matter and *Gibbons* does not counsel otherwise.
4 *See Gibbons*, 127 Nev. at 881, 266 P.3d at 628. In *Gibbons*, the Reno Gazette-Journal requested a
5 log in the event the State denied its request for emails sent to or from Governor Gibbons' state-
6 issued e-mail account. *See id.* at 876, 266 P.3d at 625. Once denied, the paper repeated its request
7 for a log describing each individual email so that it could assess whether to challenge the State's
8 classification of the emails as confidential. *See id.* Plaintiff, as the requesting party, does not share
9 the same uncertainties as the Reno Gazette-Journal and consequently has no need for a *Vaughn*
10 index. LVMPD's classification of Sheriff Lombardo's emails as confidential is incorrect and the
11 information that is already readily available is sufficient to challenge LVMPD's claim of
12 confidentiality making a *Vaughn* index unnecessary. *See id.* at 881-882, 266 P.3d at 628-29
13 (collecting cases confirming a *Vaughn* index is unnecessary where the requesting party has
14 sufficient information to present its case and challenge confidentiality claims).

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1 **III. CONCLUSION**

2 LVMPD's ongoing attempts to avoid complying with the NPRA must stop. Sheriff
3 Lombardo's emails with his campaign consultants are public records subject to disclosure upon
4 proper request and should be produced immediately. For the foregoing reasons, this Court should
5 grant Plaintiff's Application and deny LVMPD's Countermotion.

6 DATED this 8th day of July, 2022.

7 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &**
8 **RABKIN, LLP**

9 By: /s/ Daniel Bravo

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11 DANIEL BRAVO, ESQ. (NSB 13078)
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13 Las Vegas, Nevada 89169
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17 JONATHAN BERKON, ESQ. (*pro hac vice forthcoming*)
18 COURTNEY WEISMAN, ESQ. (*pro hac vice forthcoming*)
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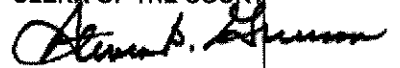
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8th day of July, 2022, a true and correct copy of this
3 **PLAINTIFF'S REPLY IN SUPPORT OF ITS NEVADA PUBLIC RECORDS ACT**
4 **APPLICATION AND PETITION FOR WRIT OF MANDAMUS AND MEMORANDUM**
5 **OF POINTS AND AUTHORITIES, AND PLAINTIFF'S OPPOSITION TO**
6 **DEFENDANT'S COUNTERMOTION TO DISMISS PETITION** was served by electronically
7 filing with the Clerk of the Court using the Odyssey eFileNV system and serving all parties with
8 an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

9
10 By: /s/ Dannielle Fresquez
11 Dannielle Fresquez, an employee of
12 WOLF, RIFKIN, SHAPIRO,
13 SCHULMAN & RABKIN, LLP
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EXHIBIT 5



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DUE DILIGENCE GROUP LLC,
9 Plaintiff(s),

CASE NO: A-22-853953-W

DEPT. NO: XIV

10 vs.

11 LAS VEGAS METROPOLITAN
12 POLICE DEPARTMENT.

13 Defendant(s).

14 BEFORE THE HONORABLE ADRIANA ESCOBAR,
15 DISTRICT COURT JUDGE
16 THURSDAY, JULY 14, 2022

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**
18 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR**
19 **ORDER GRANTING PLAINTIFF'S APPLICATION FOR WRIT OF**
20 **MANDAMUS PURSUANT TO NRS 239.011 AND COUNTERMOTION**
21 **TO DISMISS PETITION; MOTION FOR ORDER GRANTING**
22 **PLAINTIFF'S APPLICATION FOR WRIT OF MANDAMUS PURSUANT**
23 **TO NRS 239.011 ON AN ORDER SHORTENING TIME**

24 (See appearances on Page 2)

25 RECORDED BY: STACEY RAY, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):	BRADLEY S. SCHRAGER, ESQ. MAYA SEQUEIRA, ESQ.
For the Defendant(s):	JACQUELINE V. NICHOLS, ESQ.
Also present:	MATT CHRISTIAN Las Vegas Metropolitan Police Department

1 **Las Vegas, Nevada; Thursday, July 14, 2022**

2 [Proceedings commenced at 11:01 a.m.]

3
4 THE COURT: This is Due Diligence Group LLC versus Las
5 Vegas Metropolitan Police Department. And your appearances for the
6 record. Let's start with Plaintiff's Counsel, please.

7 MR. SCHRAGER: Your Honor, Bradley Schrager, local
8 counsel for the Petitioner/Plaintiff. With me is Maya Sequeira who has a
9 pending pro hac vice --

10 THE COURT: Okay.

11 MR. SCHRAGER: -- motion before you. And I would ask for
12 the Court's permission for her to be able to argue our presentation
13 today. I actually have a copy of the order if you'd like.

14 THE COURT: Well, before you argue, there is something I
15 have to discuss with you but --

16 MR. SCHRAGER: Certainly.

17 THE COURT: -- thank you. So good morning -- how do I
18 pronounce your last name? No, you.

19 MR. SCHRAGER: Schrager -- Bradley Schrager.

20 THE COURT: Schrager, okay. And Ms. Sequeira?

21 MS. SEQUEIRA: Sequeira.

22 THE COURT: Okay. Thank you. Please be seated. You can
23 be seated. And then for the Defendants?

24 MS. NICHOLS: Good morning, Your Honor. Jackie Nichols
25 on behalf of the Las Vegas Metropolitan Police Department. And with

1 **Las Vegas, Nevada; Thursday, July 14, 2022**

2 [Proceedings commenced at 11:01 a.m.]

3
4 THE COURT: This is Due Diligence Group LLC versus Las
5 Vegas Metropolitan Police Department. And your appearances for the
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16 MR. SCHRAGER: Certainly.

17 THE COURT: -- thank you. So good morning -- how do I
18 pronounce your last name? No, you.

19 MR. SCHRAGER: Schrager -- Bradley Schrager.

20 THE COURT: Schrager, okay. And Ms. Sequeira?

21 MS. SEQUEIRA: Sequeira.

22 THE COURT: Okay. Thank you. Please be seated. You can
23 be seated. And then for the Defendants?

24 MS. NICHOLS: Good morning, Your Honor. Jackie Nichols
25 on behalf of the Las Vegas Metropolitan Police Department. And with

1 me today I have Matt Christian from the Las Vegas Metropolitan Police
2 Department.

3 THE COURT: Okay. Welcome, --

4 MR. CHRISTIAN: Good morning, Your Honor.

5 THE COURT: -- both of you. Good morning.

6 All right. Look, normally I do this immediately, but honestly,
7 I've been overwhelmed with cases. I've been in evidentiary hearings,
8 they're really like a bench trial, and then in jury trials after jury trials. So
9 reviewing, you know, I looked at the first -- I signed the first --

10 MR. SCHRAGER: OST.

11 THE COURT: -- thank you. The OST because, you know, I
12 understand the need to move this case forward. But then the more I
13 reviewed it, it strikes me -- and believe me, I don't throw cases. I have a
14 duty to serve and I serve. In fact, some of the cases that I get are like,
15 oh my God, I can't believe I have that case, but I still, you know, it is --
16 that's what I'm here for.

17 However, I want to explain to you why I cannot hear this case.
18 I just wrote something out. I'm sorry that I didn't tell you before. I
19 haven't had a chance to take a step back. So I was really thinking about
20 it, and I was looking at the code of judicial conduct. Okay? So I just
21 made sure that I typed this, you know, this is typed so I don't miss
22 anything. All right?

23 So Canon 2, and I'm sure you're all familiar with it, but Canon
24 2, Rule 2.11(A), is what has to do if there's a potential conflict when a
25 Judge is hearing a case; right? So it says a Judge shall disqualify

1 herself in a proceeding in which the Judge's impartiality might be
2 reasonable questioned. Comment one to that -- to Rule 2.11(A), states
3 whether the Judge's impartiality might reasonably be questioned
4 regardless of whether any of those specific provisions above apply.

5 So, okay, so here's what I have to let you know. So the
6 information requested by Plaintiff, relate -- in some of those -- I've
7 reviewed everything. I know that there are different dates and
8 different -- I've reviewed the case; I know the case. So -- but some of
9 them have to do with information about the gubernatorial -- excuse me --
10 the governor's race; right? Okay. I mean, that was in the pleadings.
11 Okay?

12 And so given my nearly 30 years of friendship with Governor
13 Sisolak, we served on the Taxicab Authority together, I know -- I saw his
14 daughters grow up, you know, everything else. And further, because my
15 husband is part of his subcabinet -- Governor Sisolak's subcabinet, I
16 disqualify myself from this case. I think that anyone could, you know,
17 take a look at that and reasonably question my situation. Even if you
18 don't, and you know what I'm saying -- If the parties don't. So I -- what I
19 will do, is make sure this moves quickly. You know, I'll do everything,
20 today, possible to make sure it goes forward quickly. Yes --

21 MR. SCHRAGER: If it could just -- and --

22 THE COURT: -- of course.

23 MR. SCHRAGER: -- I understand. I mean, I'm not sure
24 whether either of the parties would have a comment about whether
25 that's disqualification worthy or that it would -- but I understand your

1 decision, Your Honor.

2 THE COURT: I think it is.

3 MR. SCHRAGER: Certainly.

4 THE COURT: Okay?

5 MR. SCHRAGER: And I understand that --

6 THE COURT: Because words are like, "any" -- "shall" and
7 "any." Even an appearance. So --

8 MR. SCHRAGER: -- I would actually, you know, I actually
9 applaud you for this because it should probably happen more often in
10 Nevada in the way you that you are taking --

11 THE COURT: It probably does. And -- It does. It's a very
12 small -- it's this big really; right?

13 MR. SCHRAGER: Yeah. No. That's exactly right.

14 THE COURT: And I've lived here -- I moved here from
15 Columbia when I was a year-and-a-half; I attended St. Viator, Bishop
16 Gorman. So, I mean, it's hard most of the time because, you know, I
17 grew up in this community, but this is a 30-year friendship. I know his
18 children --

19 MR. SCHRAGER: Yeah. No. I understand.

20 THE COURT: -- when they were little.

21 MR. SCHRAGER: And the political class, obviously, very
22 small in the State. Even much smaller than the others.

23 THE COURT: Right. But also as, presently, my husband is
24 part of his subcabinet -- Governor -- and I think that's in addition to -- I
25 think, frankly, the friendship is enough, but I think --

1 MR. SCHRAGER: Sure.

2 THE COURT: -- this other -- I should disclose this issue as

3 well.

4 MR. SCHRAGER: Yeah. I mean, look, --

5 THE COURT: And believe me, I serve on cases. I just take

6 them head on.

7 MR. SCHRAGER: Yeah.

8 THE COURT: You know, it is what it is.

9 MR. SCHRAGER: No. I don't think anyone in this courtroom

10 would think that you would rule one way or the other or be shaded on

11 the issue of law that's at stake here, but I understand exactly what you're

12 saying. What I, I mean, if I understand, sort of, the history of the last

13 week or so, this is -- this must be the reason why you were not acting on

14 the OST --

15 THE COURT: Yes.

16 MR. SCHRAGER: -- and the order of admittance.

17 THE COURT: Yes.

18 MR. SCHRAGER: Is, you know, that's a relative informality. If

19 that's something that the Court could do before, so that we don't have to

20 start over with a new, you know, just the order of admittance of Counsel

21 who has come here from Washington to --

22 THE COURT: Understood. Understood.

23 MR. SCHRAGER: -- represent her client.

24 THE COURT: Yes.

25 MS. NICHOLS: Given how fast this has moved, I will be

1 honest, I haven't had a chance to review. I would just ask that if I can
2 have a chance to review when I get back to the office to make sure
3 there's no reason for objection, and I will file a notice of non-opposition
4 today.

5 MR. SCHRAGER: That's --

6 THE COURT: Okay. But I also want you to include in that
7 that the parties have stipulated to my signing that, and because you
8 consider it not --

9 MR. SCHRAGER: -- Appellate counsel's -- okay. Sure.

10 THE COURT: -- because

11 MS. NICHOLS: Right. I -- yes.

12 THE COURT: -- that's important because honestly, --

13 MR. SCHRAGER: Certainly.

14 MS. NICHOLS: We will include that as well, Your Honor.

15 THE COURT: -- I actually signed the OST and then I start --
16 and then later when I was reading about what the information was, then I
17 thought, no, I can't do this because -- right?

18 MR. SCHRAGER: Yes. I think, sort of, the way to handle this,
19 if it's all right with Counsel, is that, you know, I just wanted to make sure
20 that if it was possible, we could get that done before the official -- for
21 removal of you from the case. And so --

22 THE COURT: I see.

23 MR. SCHRAGER: -- if we could do that and then you can --

24 THE COURT: Well, I mean, --

25 MR. SCHRAGER: -- enter whatever disqualification --

1 THE COURT: -- so please -- yes. So please be sure that it's
2 specific, that you understand the reasons why, you know, that I've
3 explained that to you, and that you've actually -- and it doesn't -- it's not
4 an ego thing but that you've requested, because of the -- how quickly
5 this needs to move, that I go ahead and then just write down what it is,
6 please. Because it can't really -- it can't be anything that's substantive;
7 right? Okay?

8 MS. NICHOLS: Yes, Your Honor. Absolutely.

9 THE COURT: All right.

10 MS. NICHOLS: I'll get that.

11 MR. SCHRAGER: I appreciate that very much.

12 MS. NICHOLS: Not a problem.

13 THE COURT: Okay, great. I'm sorry.

14 MR. SCHRAGER: No. That's fine, Your Honor.

15 THE COURT: I hardly ever recuse, rarely.

16 MR. SCHRAGER: Thank you.

17 THE COURT: Okay. Have a great day, Counsel.

18 MR. CHRISTIAN: You too, Judge.

19 [Proceedings concluded at 11:10 a.m.]

20 * * * * *

21
22 ATTEST: I do hereby certify that I have truly and correctly transcribed
23 the audio/video proceedings in the above-entitled case to the best of my
24 ability.

25

Stacey Ray
Court Recorder/Transcriber

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EXHIBIT 6

A-22-853953-W

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

July 14, 2022

A-22-853953-W Due Diligence Group LLC, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

July 14, 2022 10:00 AM All Pending Motions

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Kimberly Gutierrez

RECORDER: Stacey Ray

REPORTER:

PARTIES

PRESENT: Nichols, Jacqueline Attorney
 Schrager, Bradley S. Attorney

JOURNAL ENTRIES

MOTION FOR ORDER GRANTING PLAINTIFF'S APPLICATION FOR WRIT OF MANDAMUS PURSUANT TO NRS 239.011 ON AN ORDER SHORTENING TIME...DEFENDANT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S OPPOSITION TO PLAINTIFF DUE DILIGENCE GROUP, LLC'S MOTION FOR ORDER GRANTING PLAINTIFF'S APPLICATION FOR WRIT OF MANDAMUS PURSUANT TO NRS 239.011 AND COUNTERMOTION TO DISMISS PETITION

ALSO PRESENT: Matt Christian, a representative for Defendant; Maya Sequeira, Esq., pending Pro Hac Vice for Plaintiff.

Upon Court's calling of the case, Court DISCLOSED that pursuant to the Supreme Court Rule 2.11(A), Comment 1, it could not hear the case any further since the Court's impartiality would be questioned due to a personal connection to a party cited in the pleadings. Thus, Court stated to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random.

Colloquy regarding the pending Pro Hac Vice for Ms. Sequeira, to which Ms. Nichols stated she

PRINT DATE: 07/27/2022

Page 1 of 2

Minutes Date: July 14, 2022

would file a Notice of Non-opposition to same. COURT FURTHER ORDERED that verbiage be cited within said Non-opposition that speaks to Counsel acknowledging the Court's recusal. Court directed that it would not be hearing either of the motions on calendar, and further, it would sign the Notice of Non- Opposition to aid in moving the case forward.

CLERK'S NOTE: Subsequent to the hearing, COURT ORDERED the aforementioned recusal is pursuant to Supreme Court Rule 2.11(A), Comment 1. This minute order has been UPDATED and AMENDED to reflect the Court's updated ruling. This minute order was electronically served by Courtroom Clerk, Kimberly Gutierrez, to all registered parties for Odyssey File & Serve. /kg
07/27/2022

EXHIBIT 7

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REGISTER OF ACTIONS

CASE NO. A-22-853953-W

Due Diligence Group LLC, Plaintiff(s) vs. Las Vegas Metropolitan Police Department, Defendant(s)	§ § § § § §	Case Type: Writ of Mandamus Date Filed: 06/10/2022 Location: Department 9 Cross-Reference Case Number: A853953
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PARTY INFORMATION

Defendant	Las Vegas Metropolitan Police Department	Lead Attorneys Jacqueline Nichols <i>Retained</i> 702-382-0711(W)
Plaintiff	Due Diligence Group LLC	Bradley S. Schrager <i>Retained</i> 702-341-5200(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

06/10/2022 **Petition for Writ of Mandamus Doc ID# 1**
[1] Application for Order Compelling Disclosure of Public Records Pursuant to NRS 239.011/Petition for Writ of Mandamus

06/10/2022 **Initial Appearance Fee Disclosure Doc ID# 2**
[2] Initial Appearance Fee Disclosure

06/10/2022 **Summons Electronically Issued - Service Pending Doc ID# 3**
[3] Summons

06/15/2022 **Summons Doc ID# 4**
[4] Summons - Civil

06/17/2022 **Clerk's Notice of Nonconforming Document Doc ID# 5**
[5] Clerks Notice of Nonconforming Document

06/20/2022 **Order Shortening Time Doc ID# 6**
[6] Motion for Order Granting Plaintiff's Application for Writ of Mandamus Pursuant to NRS 239.011 on an Order Shortening Time

06/21/2022 **Clerk's Notice of Nonconforming Document and Curative Action Doc ID# 7**
[7] Clerks Notice of Nonconforming Document and Creative Action

06/23/2022 **Certificate of Service Doc ID# 8**
[8] Certificate of Service

06/29/2022 **Motion to Associate Counsel Doc ID# 9**
[9] Plaintiff's Motion for Association of Counsel Pursuant to Nevada Supreme Court Rule 42

06/29/2022 **Motion to Associate Counsel Doc ID# 10**
[10] Plaintiff's Motion for Association of Counsel Pursuant to Nevada Supreme Court Rule 42

06/29/2022 **Motion Doc ID# 11**
[11] Plaintiff's Motion for Association of Counsel Pursuant to Nevada Supreme Court Rule 42

06/30/2022 **Clerk's Notice of Hearing Doc ID# 12**
[12] Notice of Hearing

07/01/2022 **Opposition and Countermotion Doc ID# 13**
[13] Defendant Las Vegas Metropolitan Police Department's Opposition to Plaintiff Due Diligence Group, LLC's Motion for Order Granting Plaintiff's Application for Writ of Mandamus Pursuant to NRs 239.011 and Countermotion to Dismiss Petition

07/08/2022 **Motion to Associate Counsel Doc ID# 14**
[14] Plaintiff's Motion for Association of Counsel Pursuant to Nevada Supreme Court Rule 42

07/08/2022 **Clerk's Notice of Hearing Doc ID# 15**
[15] Notice of Hearing

07/08/2022 **Reply Doc ID# 16**
[16] Plaintiffs Reply In Support Of Its Nevada Public Records Act Application And Petition For Writ Of Mandamus And Memorandum Of Points And Authorities And Plaintiffs Opposition To Defendants Countermotion To Dismiss Petition

07/13/2022 **Reply in Support Doc ID# 17**
[17] Defendant Las Vegas Metropolitan Police Departments Reply in Support of Countermotion to Dismiss Petition

07/14/2022 **Motion for Order (10:00 AM) (Judicial Officer Escobar, Adriana)**
Motion for Order Granting Plaintiff's Application for Writ of Mandamus Pursuant to NRS 239.011 on an Order Shortening Time
Result: No Ruling

07/14/2022 **Opposition and Countermotion (10:00 AM) (Judicial Officer Escobar, Adriana)**
Defendant Las Vegas Metropolitan Police Department's Opposition to Plaintiff Due Diligence Group, LLC's Motion for Order Granting Plaintiff's Application for Writ of Mandamus Pursuant to NRs 239.011 and Countermotion to Dismiss Petition
Result: No Ruling

07/14/2022 **All Pending Motions (10:00 AM) (Judicial Officer Escobar, Adriana)**
Parties Present
Minutes
Result: Matter Heard

07/18/2022 **Opposition to Motion Doc ID# 18**
[18] Defendant Las Vegas Metropolitan Police Departments Opposition to Plaintiffs Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42

07/20/2022 **Reply in Support Doc ID# 19**
[19] Plaintiffs Reply In Support Of Its Motion To Associate Counsel

07/27/2022 **Notice of Department Reassignment Doc ID# 20**

	[20] Notice of Department Reassignment	
08/03/2022	Order Shortening Time Doc ID# 21	
	[21] Plaintiff's Request for Hearing On The Merits on an Order Shortening Time	
08/04/2022	Notice of Entry of Order Doc ID# 22	
	[22] Notice of Entry of Order Shortening Time	
08/04/2022	Court Recorders Invoice for Transcript Doc ID# 23	
	[23]	
08/05/2022	Recorders Transcript of Hearing Doc ID# 24	
	Recorder's Transcript of Hearing Re: Defendant's Opposition to Plaintiff's Motion for Order Granting Plaintiff's Application for Writ of Mandamus Pursuant to NRS 239.011 and Countermotion to dismiss Petition; Motion for Order granting Plaintiff's Application for writ of Mandamus Pursuant to NRS 239.011 on an Order Shortening Time July 14, 2022	
08/12/2022	Motion to Associate Counsel (3:00 AM) (Judicial Officer Gall, Maria)	
	Plaintiff's Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42	
	07/06/2022 Reset by Court to 08/03/2022	
	08/03/2022 Reset by Court to 08/12/2022	
08/12/2022	Motion to Associate Counsel (3:00 AM) (Judicial Officer Gall, Maria)	
	Plaintiff's Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42	
	08/03/2022 Reset by Court to 08/12/2022	
08/12/2022	Motion to Associate Counsel (3:00 AM) (Judicial Officer Gall, Maria)	
	Plaintiff's Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42	
	08/03/2022 Reset by Court to 08/12/2022	
08/12/2022	Motion to Associate Counsel (3:00 AM) (Judicial Officer Gall, Maria)	
	Plaintiff's Motion for Association of Counsel Pursuant to Nevada Supreme Court Rule 42 (Maya Sequeira, Esq.)	
	08/10/2022 Reset by Court to 08/12/2022	
08/17/2022	Motion (9:00 AM) (Judicial Officer Gall, Maria)	
	Plaintiff's Application for Order Compelling Disclosure of Public Records Pursuant to NRS 239.011/Petition For Writ of Mandamus	

 FINANCIAL INFORMATION

	Defendant Las Vegas Metropolitan Police Department		
	Total Financial Assessment		120.30
	Total Payments and Credits		0.00
	Balance Due as of 08/05/2022		120.30
08/04/2022	Transaction Assessment		120.30
	Plaintiff Due Diligence Group LLC		
	Total Financial Assessment		270.00
	Total Payments and Credits		270.00
	Balance Due as of 08/05/2022		0.00
06/13/2022	Transaction Assessment		270.00
06/13/2022	Efile Payment	Receipt # 2022-33211-CCCLK	Due Diligence Group, LLC (270.00)

EXHIBIT 8

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

January 22, 2019

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

January 22, 2019 3:30 PM Minute Order

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No parties present. Rule 2.11(a) Disqualification of the Nevada Code Of Judicial Conduct states, in relevant part, A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned... The defendant in this matter is the Las Vegas Metropolitan Police Department. The Police Protective Association, an entity closely affiliated with the Las Vegas Metropolitan Police Department, has endorsed Judge Escobar in her campaigns for judicial office. As such, the judge's impartiality might reasonably be questioned. Thus, the court must disqualify itself from this proceeding.

The Court ORDERS this case to be REASSIGNED at random and all future hearing dates be RESET in the new department.

CLERK'S NOTE: Counsel notified via email:

Joel E. Tasca (tasca@ballardspahr.com)
Justin A. Shiroff (shiroffj@ballardspahr.com)
Margaret A. McLetic (Maggie@nvlitigation.com)
Craig R. Anderson (canderson@maclaw.com)

PRINT DATE: 01/22/2019

Page 1 of 2

Minutes Date: January 22, 2019

A-17-764030-W

Nick D. Crosby (ncrosby@maclaw.com)
Jackie V. Nichols (jnichols@maclaw.com)

EXHIBIT 9

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Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-20-809924-W

**Las Vegas Review-Journal, Inc., Plaintiff(s) vs. Las Vegas
Metropolitan Police Department, Defendant(s)**

§
§
§
§
§
§

Case Type: **Writ of Mandamus**
Date Filed: **02/06/2020**
Location: **Department 24**
Cross-Reference Case **A809924**
Number:

PARTY INFORMATION

Defendant Las Vegas Metropolitan Police
Department

Lead Attorneys

Plaintiff Las Vegas Review-Journal, Inc.

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

EVENTS & ORDERS OF THE COURT

02/18/2020 **Minute Order** (2:00 PM) (Judicial Officer Escobar, Adriana)
Dept. 14 Recusal

Minutes

02/18/2020 2:00 PM

- No parties present. Rule 2.11(a) Disqualification of the Nevada Code Of Judicial Conduct states, in relevant part, A judge shall disqualify himself or herself in any proceeding in which the judge s impartiality might reasonably be questioned... The defendant in this matter is the Las Vegas Metropolitan Police Department. The Police Protective Association, an entity closely affiliated with the Las Vegas Metropolitan Police Department, has endorsed Judge Escobar in her campaigns for judicial office. As such, the judge s impartiality might reasonably be questioned. Thus, the court must disqualify itself from this proceeding. The Court ORDERS this case to be REASSIGNED at random and all future hearing dates be RESET in the new department. CLERK'S NOTE: This Minute Order has been electronically served to all registered parties through Odyssey File & Serve by Courtroom Clerk, Denise Husted. (2/18/20)

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