"[S]tatutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law." *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). Awarding fees is also a derogation of the common law, under the American Rule. Thus, it follows that any statutory scheme awarding fees must be construed narrowly, against fees. *Hardisty v. Astrue*, 592 F.3d 1072, 1077 (9th Cir. 2010). At the same time, "'[w]aivers of immunity,' of course, 'must be construed strictly in favor of the sovereign, and not enlarge[d] . . . beyond what the language requires." *Id.*, quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685-86 (1983).

The NPRA provides that if the requester prevails, it may recover reasonable attorney's fees and costs in a public record proceeding. *See* NRS 239.011(2); *U.S. Design & Const. Corp. v. Int'l Broth. Of Elec. Workers*, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002) (finding that the court retains discretion to award costs and fees despite a statute's mandatory language). The same statutory scheme, however, provides immunity for the public officer or employee and the employer from attorney's fees and costs if they exercised good faith in refusing to disclose the requested records. NRS 239.012. Specifically, NRS 239.012 provides:

> **Immunity for good faith disclosure or refusal to disclose information.**
>
> **A public officer or employee who acts in good faith in** disclosing or **refusing to disclose information** and the employer of the public officer or employee are **immune from liability for damages, either to the requester** or to the person whom the information concerns.

NRS 239.012 (emphasis added). The term "damages" in NRS 239.012 encompasses the terms "costs" and "attorney's fees" in NRS 239.011(2), such that LVMPD is immune from CIR's requested attorney's fees and costs. *See* Black's Law Dictionary, 471 (10th ed. 2014) (defining "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury"). Otherwise, NRS 239.012 would become a nullity. That is, the only "damages" a requester can seek is attorney's fees and costs.

"'Damages' is a broad term and includes special as well as general damages." *Taylor v. Neill*, 80 Idaho 90, 94, 326 P.2d 391, 393 (1958), citing 25 C.J.S. Damages § 2. Courts have

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found that the term "damages" must include "fees." For instance, under a statute that permitted a mortgagor to recover "damages" from a mortgagee who refused to discharge a mortgage, the Supreme Court of Utah considered the law of several other states then concluded that "damages" must include attorneys' fees. *Swaner v. Union Mortg. Co*, 99 Utah 298, 305, 105 P.2d 342, 345-46 (Sup. Ct. 1940). The Montana Supreme Court held that with regard to a petition for a writ of mandamus, a statute entitling the petitioner to damages necessarily included the fees incurred. *State ex rel. O'Sullivan v. Dist. Court*, 127 Mont. 32, 35, 256 P.2d 1076, 1078 (1953).

Indeed, Nevada law recognizes that "damages" may specifically encompass attorneys' fees in certain circumstances, even though the American Rule generally requires each party to pay his own fees, unless a statute, rule, or contract provides otherwise. *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957-58, 35 P.3d 964, 970 (2001), clarified by *Horgan v. Felton*, 123 Nev. 577, 584, 170 P.3d 982, 986 (2007). Nevada has also established where equitable relief is sought, just as in this case, an award of attorney's fees is proper if awarded as an item of damages. *Von Ehrensmann v. Lee*, 98 Nev. 335, 337-38, 647 P.2d 377, 378 (1982).

Other states addressing this very issue, *vis a vis* public or open records laws, have ruled that even a public entity who reasonably refuses, in good faith, to honor a public records request, is not required to pay attorney's fees and costs if it is later determined the records sought were, in fact, public records. *See B&S Utilities, Inc. v. Bakerville-Donovan, Inc.*, 988 So.2d 17, 23 (Fla. 1st DCA 2008)(finding private engineering firm did not unlawfully refuse to permit inspection and, therefore, not subject to award of fees and costs); *Putnam Cnty. Humane Soc'y, Inc. v. Woodward*, 740 So.2d 1238 (Fla. 5th DCA 1999)(attorney's fees inappropriate where party acted on good faith belief it was not subject to public records law); *Com., Cabinet for Health and Fam. Servs. v. Lexington H_L Servs., Inc.*, 382 S.W.3d 875, 882 (Ky. App. 2012)(refusal to provide records based upon good faith claim of exemption, later found to be incorrect, insufficient to establish violation of open records law); *KPNX-TV v. Sup. Court In and For Cnty. of Yuma*, 905 P.2d 598, 603 (Az. App. D1 1995)(requesting party not entitled to attorney's fees under public records law when state had good faith basis to deny public access to crime scene and surveillance

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camera videotapes); *Althouse v. Palm Beach Cnty. Sheriff's Office*, 92 So.3d 899, 901 (Fla. 4th DCA 2012(noting good faith exception to attorney's fees provision in public records law); *Friedmann v. Corrections Corp. of Amer.*, 310 S.W.3d 366, 380-81 (Tenn. App. 2009)(requesting party not entitled to attorney's fees when responding party acted in good faith in refusing to disclose records).

With respect to this case, if "damages" do not include "fees" and "costs," then NRS 239.012 is rendered meaningless in a case like this because there are no damages, other than fees and costs that a requester can obtain from a government entity. The only "money" CIR incurred as a "loss" caused by LVMPD's assertion of privileges and the balancing test favoring its interests in nondisclosure are its attorney fees and costs. There is no other monetary loss to CIR as a result of LVMPD's nondisclosure of records at the time the requests were made. Therefore, the Court should construe "damages" in NRS 239.012 to include "fees" and "costs." Any other construction of these terms would violate the rules of statutory construction by ignoring NRS 239.012, making it a nullity. The Legislature intended to provide immunity to governmental entities for good faith refusal to disclose information requested under the NPRA. See NRS 239.012. By definition, "immunity" is "[a]ny exemption from a duty, liability, or service of process; esp., such an exemption granted to a public official or governmental unit." Black's Law Dictionary, 867 (10th ed. 2014). Thus, LVMPD is immune from fees and costs.

2. <u>The Legislative History of NRS 239.012 Demonstrates that "Damages" Includes "Fees."</u>

In the alternative, the terms are ambiguous in the multiple statutes, such that a resort to the legislative history is necessary. The Nevada Supreme Court has clarified that multiple statutory provisions within a particular statutory scheme can create ambiguity when they cannot be harmonized, such that it is proper to look to the legislative history for clarification. *See, e.g., Nuleaf CLV Dispensary, LLC v. State, Dep't of Health and Human Servs.*, 134 Nev. Adv. Op. No. 17, at *8 (Mar. 29, 2018); *S. Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (stating that the provisions of a statutory scheme must be considered together,

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reconciled, and harmonized); *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 514 (2000) (courts must look to the entire statutory scheme for legislative intent).

"When interpreting a statute, legislative intent 'is the controlling factor." *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011), quoting *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). "The starting point for determining legislative intent is the statute's plain meaning; when a statute "is clear on its face, a court cannot go beyond the statute in determining legislative intent." *Id.*, quoting *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004). "But when 'the statutory language lends itself to two or more reasonable interpretations,' the statute is ambiguous, and we may then look beyond the statute in determining legislative intent." *Id.*, quoting *Catanio*, 120 Nev. at 1033, 102 P.3d at 590 (2004). "To interpret an ambiguous statute, we look to the legislative history and construe the statute in a manner that is consistent with reason and public policy." *Id.* (citation omitted).

Requestors of public records may seek their fees and costs, but only if the government actor acted in bad faith in denying the records. In this case, LVMPD did not act in bad faith in denying the request, nor has CIR produced any evidence that LVMPD acted in bad faith. Fees were part of a total overhaul of the NRPA which occurred in 1993. Prior thereto, the only way to enforce the public's right to access public records was through criminal penalties. In 1993, the Legislature made it easier on the requestor by enacting Assembly Bill 365 (AB 365).

Since the construction of NRS 239.011(2) together with NRS 239.012 creates an ambiguity, the legislative history must be consulted to determine the Legislature's intent. In reviewing the legislative history for AB 365 (1993) on May 3, 2003, the language of what is now codified as NRS 239.011 and NRS 239.012 is discussed at length. Prior to the legislative session, the Legislative Counsel Bureau ("LCB") published a bulletin that explained the overhaul of the NPRA. *See* LCB Bulletin attached hereto as **Exhibit A**, at pp. 25-26. The bulletin fully explained the benefits of the writ process, the purpose of the fee and cost-shifting provision, and the purpose of the immunity provision. *Id.* The subcommittee recommended repealing the criminal penalty and enacting legislation to provide an appeal process to the courts and allow the requester to recover court costs and fees if the requester prevails:

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> Testimony before the subcommittee and discussions in the advisory committee meetings raised the issue of whether criminal penalties are appropriate in public records cases. . . .
>
> One option suggested during the course of the hearings was that the criminal penalties should be replaced with civil penalties. As discussed in the section on access to records, the subcommittee elected to establish an expedited procedure in court that grants attorneys fees and court costs to a requesting party that prevails. Because of this provision, the subcommittee determined not to recommend civil penalties, and to repeal the criminal penalties. Therefore, the subcommittee recommended that the Legislature:
>
> Repeal the existing criminal penalty relative to the failure to disclose a public record. (BDR 19-393)
>
> Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide for court costs and attorneys' fees if the requester prevails. (BDR 19-393) (also discussed in Section IV regarding access.)

Id. As a result of the complexity associated with modern public records and the sensitive information contained within the records, the subcommittee determined a good faith standard for liability was appropriate:

> Because of the complexity associated with modern public records and the sensitive information that is contained in some records, the subcommittee determined a need for a liability standard that could be applied to the actions of government employees. The subcommittee elected to base the standard on "good faith." Therefore, the subcommittee recommended the following:
>
> Enact legislation providing that governmental entities and employees are immune from suit and liability if they act in good faith in disclosing or refusing to disclose information. (BDR 19-393).

Id. at 26. The preamble of the bill further supports a finding of immunity from attorney fees and costs:

> AN ACT relating to public information; substituting civil enforcement of access to public books and records for a criminal penalty for denial of access; conferring immunity upon public officers and employees for certain actions in good faith; and providing other matters properly relating thereto.

See Legislative Summary of AB 365 attached hereto as **Exhibit B**, at p. 3.

Third, the portion of the bill that provides immunity to governmental entities immediately follows the portion of the bill that provides for the civil writ process and for attorney fees. In other words, in the same bill, the two provisions appear back-to back:

> Sec. 2. If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in

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> the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, he is entitled to recover his costs and reasonable attorney's fees in the proceeding from the agency whose officer has custody of the book or record. [Now codified at NRS 239.011].
>
> Sec. 3. A public officer or employee who acts in good faith in disclosing or refusing to disclose information and his employer are immune from liability for damages, either to the requester or to the person whom the information concerns. [Now codified at NRS 239.012].

Id. While these provisions are now under separate statutes, it is important for the Court to recognize that the provisions were, nonetheless, part of the same bill. At the time A.B. 365 was enacted, there were several other bills before the Legislature that also pertained to the overhaul of the NPRA. If the statutes were wholly unrelated, and damages did not encompass attorney fees and costs, there would be no reason to draft and enact these statutes through the same bill.

The conversation on the good faith exception continually overlaps with the discussion on what is now NRS 239.011. Ande Englemen of the Nevada Press Association stated:

> Taxpayers were also paying the fees for the agency Mr. Bennett observed. The question was, should the taxpayers, in general, have to cover those costs when the suit might be rather frivolous. Ms. Engleman noted the bill did not grant court costs and attorneys' fees if a suit was over a record everyone had thought to be confidential. Court costs and attorneys' fees were granted only when it was a denial of what was clearly a public record [bad faith]. Therefore, she did not think there would be frivolous lawsuits.

Id. at p. 40.

If this is not clear enough, later in that same hearing, the Attorney General's office asked that that the bill's language make it clear that the district courts would merely have discretion to award fees. "Ms. Crossley ... said she thought Ms. Engleman's testimony went to giving the court that discretion." *Id.* at p. 41. Still later in the minutes, the following explanation of the AB 365 again links fees with good faith immunity:

> Dennis Nielander, Senior Research Analyst, Legislative Counsel Bureau, ... stated the existing public records law has not been amended significantly since 1911 and in the current provisions for enforcement it contains a criminal penalty which is a misdemeanor for an individual to release a public records in violation of the statute. He stated what this bill does is it removes the criminal penalty and replaces it with an expedited process procedure whereby if a person has been denied access to a public record, they have the opportunity to file in district court and the court is required to give that matter priority on the calendar. He explained if the requestor prevails they are entitled to reasonable attorney fees and costs.

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> Mr. Nielander stated in section 3 it grants immunity for good faith disclosure or nondisclosure as long as it is done in good faith the public employee is then immune from civil liability.

Id. at p. 56.

The legislative history certainly demonstrates that the replacement of the criminal penalty with an award of fees and costs to the requester is specifically exempted in cases of good faith. Fees can only be granted if the governmental entity initially denies the record in bad faith. This approach is fair, and it is consistent with other fee-shifting provisions in the law. A major exception under the American Rule for the recovery of attorney fees is bad faith. *See, e.g.*, NRS 7.085 (permitting award of fees when an attorney acts in bad faith); NRS 18.010(2)(b) (permitting award of fees when a litigant acts in bad faith); *see also* NRCP 68 and *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983) (granting courts the discretion to award fees when a party rejects an offer of judgment, but only after balancing the relative good faith of the parties). Certainly, the harmonization of these statutes requires the Court to look to the 1993 legislative history of both of these statutes, which supports the Coroner's reading of these statutes together. *See Nuleaf CLV Dispensary, LLC*, 134 Nev. Adv. Op. No. 17, at *8. Therefore, the Court should determine that LVMPD is immune from CIR's requested attorney fees and costs based upon NRS 239.012, as well as the legislative history.

3. <u>LVMPD Acted in Good Faith.</u>

LVMPD acted in good faith in refusing to disclose information. In opposing the Verified Petition, LVMPD asserted that there was an active criminal investigation and that the records contained personal and criminal history information. When LVMPD began producing records to CIR, it withheld over 1,800 pages in their entirety. *See* Privilege Log attached hereto at **Exhibit C**, at the highlighted documents. The un-highlighted documents within the log represent the documents that were given to CIR in a heavily redacted format. *Id.* LVMPD provided CIR with less than 400 pages, out of nearly 3,300 pages, completely unaltered. LVMPD asserted nine different privileges in claiming that information was confidential. *Id.* The number of pages completely withheld, along with those redacted, demonstrate that LVMPD's refusal to disclose such information initially was made on a good faith basis. LVMPD further acted in good faith

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by entering into an agreement with CIR to provide records. Because LVMPD acted in good faith in refusing to disclose information, it is immune from CIR's attorney fees and costs.

C. ALTERNATIVELY, THE FEES SOUGHT MUST BE APPORTIONED AND REDUCED.

If this Court somehow finds evidence that LVMPD acted in bad faith by producing redacted records in response to CIR's request, then the attorney fees and costs requested by CIR must be apportioned and reduced as set forth below.

1. The Character of the Work Performed was Not Difficult or Complex.

Before fees can be awarded, the Court must consider the well-established factors announced in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969): (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.[1] Contrary to what CIR stated in its motion, this is not a time consuming or complex case especially for the caliber and experience of CIR's attorneys. Additionally, this case was rather simple. There was no witness preparation, no evidentiary hearing, no testimony of witnesses. Thus, CIR has failed to meet the second *Brunzell* factor.

2. CIR Cannot Seek Pre-Litigation Fees and Costs.

NRS 239.011(2) specifically limits the fees and costs that can be recovered to those incurred "in the proceeding." Here, CIR seeks fees and costs incurred prior to It filing its Verified Petition, including fees for requesting the documents. Thus, the fees sought by CIR prior to commencement of the lawsuit, from March 26, 2018 through April 19, 2018 which consists of 11.8 hours and $5,310.00, cannot be recovered.

[1] This Court has already determined that CIR prevailed in this matter; however, LVMPD reserves its right to assert that CIR did not prevail because there was no Court order requiring production and CIR only retained less than 400 pages of unredacted information, compared to the 1,800 pages that were withheld in their entirety.

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3. The Rates Sought are Not Reasonable.

If the Court does find that CIR met the first factor of the *Brunzell* test, then the rates sought are unreasonable. A reasonable hourly rate should reflect the prevailing market rates of attorneys practicing in the forum community. *Webb v. Ada Cty.*, 285 F.3d 829, 840, n.6 (9th Cir. 2002); *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); applied in fraud and breach of contract case, *Archway Ins. Servs., LLC v. Harris*, No. 2: 1 l-CV-1173 JCM (CWH), 2014 U.S. Dist. LEXIS 107472 (D. Nev. Aug. 5, 2014). In *Archway*, decided in late 2014, the Court held an hourly rate of $275 was reasonable. *Archway Ins. Servs., LLC v. Harris*, No. 2:11-CV-1173 JCM (CWH), 2014 U.S. Dist. LEXIS 107472, at *10 (D. Nev. Aug. 5, 2014). In another 2014 District Court case, the court stated, "Based on the court's knowledge and experience, it finds that the requested hourly rates of $225.00 for partners, $200.00 for associates, and $70.00 for paralegàls are reasonable." *Conboy v. Wynn Las Vegas, LLC*, No. 2:11-CV-1649 JCM 17 (CWH), 2014 U.S. Dist. LEXIS 114330, at *7 (D. Nev. Aug. 18. 2014). In *Banks v. Robinson*, a case related to failure to pay overtime with fees paid related to an offer of judgment. the court found the requested fees were excessive, where senior counsel requested $450 per hour, and the associate requested $350 per hour. *Banks v. Robinson*, No. 2:11-CV-00441-RLH2 l PAL, 2012 U.S. Dist. LEXIS 39688, at *3 (D. Nev. Mar. 21, 2012). One of the senior counsel generally worked on a contingency fee basis but, in a declaration, stated he charges hourly between $75-350 on billable matters. *Id.* at *4. The court reduced the senior counsel bills to $300 per hour, and reduced the fees of the associate to rates of $250 "based on similar work billed by Defendant counsels' associate attorneys" [from Lionel Sawyer]. *Id.* at *4-5. Rates have not changed significantly from 2014 to 2018. In fact, they were less in a case where the Court found the hourly rate of $250 for a partner and $125 for an associate representing a surety was reasonable and within the prevailing rates of the Las Vegas legal market in a bankruptcy case. *Am. Contractors Indem. Co. v. Emerald Assets, L.P.*, No. 2:15-CV-01334-APG-PAL, 2016 U.S. Dist. LEXIS 120056, at *12-13 (D. Nev. Sept. 2, 2016), citing to *Next Gaming, LLC v. Glob. Gaming Crp., Inc.*, No 2:14-CV-0071-MMD-CWH, 4 2016 WL 3750651, at *5 (D. Nev. July 13, 2016) (granting fees at $350/hour and $255/hour for associate in intellectual property transaction) and *Boliba v.*

Camping World, Inc., No. 2:14-CV-01840-JAD-NJK, 2015 U.S. Dist. LEXIS 113780, 2015 WL 5089808 at *4 (D. Nev. Aug. 27, 2015) (granting fees at $250/hour for a partner and $200 per hour for an associate). Here, the Court is as familiar as the CIR's counsel and/or its declarants as to prevailing, reasonable rates. The law surrounding the NRPA is not particularly sophisticated or specialized. It entails a handful of Nevada Supreme Court cases and a relatively small chapter of the NRS. This is not a construction defect case, a case involving an intellectual property transaction, bankruptcy, surety or indemnity claim, class action or environmental tort. Based on the cases discussed above, a rate of $300 per hour for the senior attorney is far more reasonable than $450 for this particular matter. Moreover, the rate of $250 per hour for the second chair is more reasonable than $450.

4. CIR's Request for Costs Lacks Supporting Evidence.

CIR's table of claimed costs does not contain any supporting documentation, which fails as a matter of Nevada law. *See Bobby Berosini, Ltd.*, 114 Nev. at 1352, 971 P.2d at 385–386 (costs must be reasonable and properly documented to be recoverable); *Cadle Co. v. Woods & Erickson*, LLP, 345 P.3d 1049, 1054 (Nev. 2015) ("It is clear, then, that 'justifying documentation' must mean something more than a memorandum of costs."). Costs must be reasonable, necessary, and actually incurred *Cadle Co.*, 345 P.3d at 1054. A party must "demonstrate how such [claimed costs] were necessary to and incurred in the present action." *Bobby Berosini*, 114 Nev. at 1352–53, 971 P.2d at 386. A district court must have before it ***evidence*** that the costs were reasonable, necessary, and actually incurred. *Cadle Co.*, 345 P.3d at 1054 (emphasis added). There is no evidence supporting CIR's costs. Furthermore, the Court should not entertain any additional arguments or evidence submitted by CIR in its reply as such arguments could have, and should have, been made in its initial motion. *See Contreras v. American Family Mutual Ins. Co.*, 135 F.Supp.3d 1208, 1222 at fn.1 (D. Nev. 2015) (declining to consider the new evidence submitted on reply without giving the non-movant an opportunity to respond). As such, this Court should deny CIR's request for costs due to the absence of a memorandum of costs or any supporting documentation.

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D. IF THE COURT GRANTS CIR'S MOTION, IN WHOLE OR IN PART, LVMPD IS ENTITLED TO A STAY.

If the Court grants any attorney fees or costs to CIR, the LVMPD is entitled to a stay pending appeal as a matter of law. For its countermotion, the LVMPD asks this Court to enter a stay pursuant to NRCP 62(d)&(e) pending appeal of any award of attorney fees or costs to CIR. According to *Clark County Office of the Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. No. 24, at *2 (Apr. 12, 2018), LVMPD is "entitled to a stay of the money judgment without bond or other security as a matter of right." CIR has only sought a monetary award of attorney fees and costs in its motion. If the Court grants any of these requested amounts to CIR, the Court should also grant LVMPD a stay pending appeal.

IV. CONCLUSION

Based on the foregoing, CIR's request for attorney fees and costs should be denied. Alternatively, this Court must enter a stay pending appeal if any fees and costs are awarded.

Dated this 4th day of December, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S RESPONSE TO MOTION FOR ATTORNEYS' FEES AND COSTS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 4th day of December, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[2]

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

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[2] 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).

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EXHIBIT A

Study of Nevada Laws Governing Public Books and Records

Legislative Counsel Bureau

Bulletin No. 93-9

September 1992

STUDY OF NEVADA LAWS GOVERNING PUBLIC BOOKS AND RECORDS

BULLETIN NO. 93-9

SEPTEMBER 1992

TABLE OF CONTENTS

SUMMARY OF RECOMMENDATIONS

Following is a summary of the recommendations approved by the Legislative Commission's Subcommittee to Study the Laws Governing Public Books and Records.

A. DEFINITIONS RELATED TO PUBLIC RECORDS AND CATEGORIZATION OF SUCH RECORDS

1. **Enact legislation that provides for broad definitions of "public record" and "governmental entity." The definition should include electronic records as public records.** (BDR 19-398)

2. **Enact legislation that creates certain categories which, by example, lists those records that are always included as public records.** (BDR 19-399)

   In summary, records that are public include records regarding title to real property, contracts of government agencies, and certain job description information related to government employees.

3. **Enact legislation that creates a category which lists certain information that is not to be considered a public record.** (BDR 19-399)

   In summary, such information includes certain working drafts for personal use, material legally owned by an individual, copy-righted material and proprietyary software.

4. **Enact legislation that lists certain kinds of information that falls within the definition of public records, but notwithstanding that fact, must not be disclosed.** (BDR 19-399)

   In summary, this list includes information where access is restricted by a Federal or State statute, certain medical records, certain personnel files, information that is privileged, and information related to certain governmental investigations.

5. **Enact legislation addressing the category of non-disclosable public records which allows any record deemed non-disclosable to be disclosed if, with**

respect to the particular record, the general policy in favor of open records outweighs an expectation of privacy or a public policy justification. (BDR 19-399)

6. Adopt a resolution requiring a study of all exemptions to the public records laws to determine which exemptions should be repealed, amended, or remain the same. (BDR R-395)

B. PROCEDURES FOR ACCESS TO PUBLIC RECORDS

7. Enact legislation which provides a uniform method of requesting information, procedures to provide access to or deny that information, and time frames within which responses or other actions are required. (BDR 19-397)

In summary, the following elements were recommended:

- Each agency, upon request by any person, shall make public records available for inspection and copying during regular business hours. Provide that the request may be oral or written and may be made in person, by telephone or by mail.
- Unless information is readily retrievable by the agency in the form in which it is requested, an agency is not required to prepare a compilation or summary of its records.
- Each agency shall ensure reasonable access to facilities for duplicating records and for making memoranda or abstracts from them.
- If an agency is not immediately able to fulfill a request for a governmental record, does not intend to fulfill it or denies it, the agency must inform the requester of his right to make a formal written request.
- Within a reasonable time, but no later than 3 working days after receiving a written request

for access which reasonably identifies or describes a governmental record, the agency shall:

a. Make the record available to the requester;

b. Inform the requester that unusual circumstances (such as the volume of records which have been requested or the need to search for, consult with or obtain records from another office or agency) have delayed the handling of the request and specify a time and date, no later than 10 working days after the reply would otherwise be due, when the record will be available;

c. Inform the requester that the agency does not maintain the requested record and provide, if known, the name and location of the agency maintaining the record; or

d. Deny the request.

8. **Enact legislation which provides that where access is denied, the complaining party may directly appeal to a court of competent jurisdiction seeking an order compelling access and giving such proceedings priority on the court's calender. Provide that court costs and attorneys' fees are awardable if the requester prevails.** (BDR 19-393)

9. **Include in the final report a statement of the subcommittee's support for the concept of an intermediate appellate body that would have concurrent jurisdiction with the courts to consider appeals from the denial of a public record.**

10. **Enact legislation to establish that the fact that a record contains restricted and non-restricted information is not a reason for denying access to the non-restricted information.** (BDR 19-397)

11. **Enact legislation that prohibits a public body from inquiring about the intended use of requested public information or making any other inquiry of a person requesting to inspect or receive copies of public information, except to the extent necessary**

to clarify the request for information. Include an exception for information requested from the Department of Motor Vehicles and Public Safety because *Nevada Revised Statutes* 482.170 requires the department to make an inquiry as to the purpose for requesting certain information. (BDR 19-397)

C. THE TREATMENT OF ELECTRONIC RECORDS

12. Urge the Department of Data Processing, in cooperation with the Nevada State Library and Archives, to create and maintain an inventory of statewide hardware, software and information.

13. Urge the Division of Archives and Records to work with other State agencies to establish retention and disposition schedules for records when information systems are designed or redesigned. Furthermore, urge all State agencies to consider record retention/disposition requirements at the point of system design.

14. Urge the Division of Archives and Records to undertake a program to educate State officials about their responsibilities for retention, care, and preservation of government records with special emphasis on electronically-stored public records.

15. Include in the final report a statement of the subcommittee's support for the concept of creating a centralized information storage facility and developing procedures for maintaining information.

(These resolutions are all drafted as BDR R-394.)

D. COSTS ASSOCIATED WITH PUBLIC RECORDS

16. Enact legislation that allows only the cost of the materials and the equipment, not labor, regarding reproduction of records. (BDR 19-396)

17. Include in the final report support for the concept of government using a cost analysis formula to calculate a per copy price. The formula should consider the average number of copies per month, the purchase price of the copying equipment, and an amortized cost per month over the anticipated life

of the equipment to achieve a total machine cost per copy.

18. Enact legislation which authorizes, but does not require, a governmental entity to fill "custom" requests (such as re-formatting information) and to charge a reasonable fee for completing such requests. (BDR 19-396)

19. Enact legislation which provides that, when a requester wants information in a format which is different from the format used to maintain or store the information, the governmental entity is not required to re-format that data. (BDR 19-396)

E. ENFORCEMENT OF PUBLIC RECORDS LAWS

20. Repeal the existing criminal penalty relative to the failure to disclose a public record. (BDR 13-393)

21. Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide for court costs and attorneys' fees if the requester prevails. (Discussed in Section C regarding procedures for access.) (BDR 19-393)

22. Enact legislation providing that governmental entities and employees are immune from suit and liability if they act in good faith in disclosing or refusing to disclose information. (BDR 13-393)

REPORT TO THE 67TH SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE LAWS GOVERNING PUBLIC BOOKS AND RECORDS

I. INTRODUCTION

This report is submitted in compliance with Assembly Concurrent Resolution No. 90 (File No. 184, *Statutes of Nevada 1991*, pages 2643-2644) which directed the Legislative Commission to study Nevada's laws governing public books and records. The Legislative Commission appointed the following legislators to conduct the study:

Assemblyman Gene T. Porter, Chairman
Senator Ron Cook (resigned during the study)
Senator Joseph M. Neal, Jr. (appointed to replace Senator Cook)
Senator Dina Titus
Assemblywoman Jan Evans
Assemblyman James A. Gibbons

The resolution required the Governor to appoint at least five members to serve as a technical advisory group to assist the legislative subcommittee. The Governor responded by appointing the following 12 members representing various groups interested in the public records law:

Melanie Meehan-Crossley, Deputy Attorney General, Office of the Attorney General
Andrea K. Engleman, Nevada Press Association
Gentty Etcheverry, Executive Director, Nevada League of Cities
Robert S. Hadfield, Executive Director, Nevada Association of Counties
William E. Isaeff, Chairman, Public Lawyers Section, Nevada State Bar
Karen Kavanau, Director, Nevada's Department of Data Processing
Joan Kerschner, State Librarian, State Library and Archives
Donald Klasic, General Counsel, University of Nevada System
Dennis Myers, President, Society of Professional Journalists
Guy L. Rocha, State Archivist, Division of Archives and Records, State Library and Archives

Carl Scarbrough, Vice President, Las Vegas Chapter,
Society of Professional Journalists
Larry D. Struve, Director,
Department of Commerce

Legislative Counsel Bureau staff services for the study were provided by:

Dennis Neilander of the Research Division
Principal Staff

Kimberly Ann Morgan
and
Kerry Schomer
of the Legal Division
Legal Counsel

Lyndl Payne of the Research Division
Committee Secretary

SUBCOMMITTEE AND ADVISORY GROUP HEARINGS

A total of 11 meetings were held in association with the study. Four of the hearings were joint meetings with participation from both the legislative subcommittee and the advisory group, although the advisory group did not have any voting privileges.

At the first meeting of the subcommittee, various parties interested in the public records issue testified regarding the problems that exist with the law. The parties included representatives from:

1. A private company that exchanges information with public entities in Nevada;

2. The Health Division of Nevada's Department of Human Resources;

3. Nevada's Department of Motor Vehicles and Public Safety (DMV&PS);

4. The Central Repository for Nevada Records of Criminal History in the Nevada Highway Patrol Division (DMV&PS);

5. The Office of Court Administrator;

6. Nevada district judges;

7. The Office of the Secretary of State;

8. Local government; and

9. The public.

At the second meeting, staff presented a comparison with other state public records laws and an overview of the Federal Freedom of Information Act (FOIA). Presentations regarding computer records and the fraudulent use of information were also given. The Chairman directed the advisory group to consider all the information presented and submit proposals to the subcommittee for consideration at the third meeting.

The advisory group then held a meeting that identified five major areas to be addressed. Those areas were:

- The definition and categorization of public records;
- Procedures for access to public records;
- The treatment of electronic records;
- The costs associated with public records; and
- Enforcement of public records laws.

The advisory group divided into five subgroups to propose recommendations in each of these areas. These groups conducted meetings and reported to the advisory group as a whole. The advisory group subsequently met two additional times and developed recommendations to submit to the legislative subcommittee. The subcommittee considered these proposals at its third and fourth meetings. The subcommittee adopted a total of 22 recommendations.

This final report of the subcommittee contains a discussion of the current status of the public records law in Nevada and an explanation of the recommendations adopted by the members. The report is divided into the areas of concern identified by the advisory group and subcommittee.

II. CURRENT STATUS OF NEVADA'S PUBLIC RECORDS LAW AND PROBLEMS IDENTIFIED

In order to readily understand the recommendations adopted by the subcommittee, this section of the report provides relevant background information. The current status of the law is discussed for each of the five major areas addressed by the subcommittee.

A. THE DEFINITION AND CATEGORIZATION OF PUBLIC RECORDS

This area was the most controversial and received the greatest amount of discussion. The Nevada Public Records Law was enacted in 1911 and has remained largely unchanged since that period. It provides in relevant part:

> All public books and public records of the state * * * the contents of which are not otherwise declared confidential, shall be open at all times during office hours to inspection by any person, and the same may be fully copied * * *

While the law states that "all public books and records" shall be open to the public, it does not define the term. In the early 1900's, the lack of a specific definition was common among state laws. However, the complexion of records has changed dramatically over the years in both the characteristics and kind of records kept by government as well as the volume and manner in which they are maintained.

The lack of definitions has resulted in a constantly evolving body of law that includes related legislation, Attorney General opinions, and judicial decisions. With respect to legislation, the subcommittee discovered over 250 exemptions to the general law that public records be open to the public. These exemptions are contained in both the *Nevada Revised Statutes* (NRS) and the *Nevada Administrative Code*. Appendix A provides the general public records law and a list of the exemptions.

In 1965, the Nevada Legislature amended the law by inserting the term "public" when describing government records. The previous law declared that "all" books and records of the State were open to the public. In common law, the right of access to government records was restricted to public records; therefore, the 1911 law was actually an expansion of the right to access because of its failure to qualify the

records as public. That right was restricted in 1965 by adding the term "public." The 1965 amendment is the most significant change to the law since its enactment.

In an attempt to discern the meaning of the law, at least a dozen opinions interpreting the law have been issued by the Attorney General. Most of these opinions were initiated by various state agencies attempting to decide whether to release a record.

Only one Nevada Supreme Court case dealt squarely with the public records law. That case is attached as Appendix B (*Donrey of Nevada v. Bradshaw*, 106 Nev 630, 798 P.2d 144, [1990]). The case concerned the accessibility of certain criminal investigative records as public records. The party seeking the records argued for the application of a balancing test, which was announced and applied in various Attorney General opinions (although these opinions are not binding). This test balanced the interest and justification of the agency, or the public in general, in maintaining the confidentiality of the document against the interest or need of the public to review the document.

Nevada's Supreme Court agreed and proceeded to apply a balancing test. It held that there were no pending or anticipated criminal proceedings regarding the records at issue, no confidential source or investigative technique to protect, no potential jeopardy to law enforcement personnel, and no possibility of denying someone a fair trial. The court ordered the records to be released.

In so doing, the court weighed the absence of any privacy or policy justifications for nondisclosure and the general policy in favor of open government. The test favors open government, but recognizes the existence of policy or privacy reasons for nondisclosure of public records.

This case has provided some guidance in determining the scope of the term "public record," but state agency officials and others in possession of public records testified that the balancing test is difficult to apply.

B. PROCEDURES FOR ACCESS TO PUBLIC RECORDS

The next area of concern identified by the subcommittee involves access to public records. Even if a definition of a public record is adopted and clarified, the current law is

void of any procedures governing access to such records. The method for agencies to respond to requests and the procedures that should be followed in the granting or denying of a request is not addressed. If a dispute arises, there is no direction regarding the method of resolving it.

C. THE TREATMENT OF ELECTRONIC RECORDS

The subcommittee received testimony indicating that electronic records are generally treated as public records as a matter of practice; however, the law is not specific to electronic records. Because of the unique and technologically advancing means of storing records electronically, it was suggested that any amendments to the law consider and include reference to the treatment of electronic records.

D. THE COSTS ASSOCIATED WITH PUBLIC RECORDS

The law is currently vague about the costs of providing access to and copies of public records. The law does not address the issue of whether an agency or local government may recoup the costs of equipment in addition to copies or the costs of computer equipment that may be necessary to provide equitable access. The law also does not address the issue of the government generating a profit by providing access to certain records.

E. THE ENFORCEMENT OF PUBLIC RECORDS LAWS

The public records law provides that all public records be open to the public for inspection and copying. The current mechanism of enforcement is codified at NRS 239.010 (2) and provides that:

> Any officer having custody of any of the public books and records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

Testimony indicated that the law is not substantive without some means of enforcement; however, due to the lack of definitions and other ambiguities in the statute, public officials could potentially be criminally liable for failing to release a record in good faith. It was suggested during the hearings that the criminal penalty be repealed and replaced with a civil mechanism of enforcement. On the other hand, it was suggested that, if some of the ambi-

guities in the law were clarified, the criminal penalty may be appropriate.

III. DISCUSSION OF RECOMMENDATIONS RELATED TO THE DEFINITION AND CATEGORIZATION OF PUBLIC RECORDS

Because the current law is void of a definition, the subcommittee recommended the adoption of a definition. In addition, it recommended a categorization scheme for public records.

A. THE DEFINITION OF PUBLIC RECORDS

In an effort to define public records in Nevada, the subcommittee and the advisory group looked to other states' definitions. Appendix C is a summary of the public records laws in the 50 states. An examination of the right to access in other states reveals that, although almost every state guarantees some right of access, the definitions and procedures for such access vary considerably. Parties interested in public records issues represent significant competing interests. Among these interests are the need for government efficiency, the right of the public to know, and the protection of confidential and private information.

After examining the various definitions, there appeared to be consensus among the subcommittee members and the advisory group regarding the basic definition of "public record." (A minority position preferred to use the term "government record" while the majority favored the term "public record.")

Therefore, the subcommittee recommends that the Nevada Legislature:

> **Enact legislation that provides for broad definitions of "public record" and "governmental entity." The definition should include electronic records as public records.** (BDR 19-398)

During the work session, the subcommittee adopted the following language as a model for drafting the definition:

> *"Governmental entity" means the State, its officers, agencies, political subdivisions, and any office, board or commission thereof which is funded, at least in*

part, by public money, or is established by the government to carry out the public's business.

"Public record" means a book, letter, document, paper, final budget, proposed budget and supporting information, map, plan, photograph, film, card, tape, recording or other material and electronic data, regardless of physical form or characteristics, which is prepared, owned, used, received, retained or maintained by a governmental entity in connection with the transaction of public business, the expenditure of public money or the administration of public property.

This model language was derived from Chapter 259, *Laws of Utah 1991*. The previous Utah public records law was similar to Nevada's as it was somewhat ambiguous. The Utah Legislature rewrote the law after studying the issue for over 2 years. The definition is very broad and inclusive.

B. RECORDS THAT ARE PUBLIC

The subcommittee and advisory group determined that, in addition to the basic definition, the law should be amended to include a categorization scheme that, by example, lists what is a record and which records are disclosable and which are not.

Therefore, the subcommittee recommended that the Nevada Legislature:

Enact legislation that creates certain categories which, by example, lists those records that are always included as public records. (BDR 19-399)

The subcommittee adopted the following language as a model to be used in drafting this category. The list identifies those records that are commonly recognized as public and should always be available for public inspection:

"Public record" includes, but is not limited to:
(a) Records maintained by a county recorder, clerk, treasurer, surveyor, the State Land Registrar, the State Engineer and other governmental entities which evidence:
(1) The title or encumbrances to real property;
(2) Any restrictions on the use of real property;
(3) The capacity of a person to take or convey title to real property; or

(4) The amount of any tax assessed to real or personal property, and the status of the account.
(b) Any contract entered into by a governmental entity.
(c) The name, gender, gross compensation, job title, job description, job qualification, business address, business telephone number, number of hours worked per pay period, amount of annual and sick leave taken and date of employment and termination of any former or present officer or employee other than law enforcement officers or investigative personnel if such a disclosure would impair the effectiveness of an investigation or endanger any person's safety.
(d) A draft that has never been made final but was relied upon by the governmental entity in carrying out action or policy.

C. RECORDS THAT ARE NOT PUBLIC

The subcommittee then determined that a list should be created to name those records that should not be deemed public even though the government may have possession of them.

Therefore, the subcommittee recommended that the Legislature:

Enact legislation that creates a category which lists certain information that is not to be considered a public record. (BDR 19-399)

This category contains information not normally considered "public". Access to this information would not be available to the public because it would not be deemed a public record. The subcommittee adopted the following language as a model to be used in drafting this category.

"Public record" does not include:
(a) Except as otherwise provided in this subsection, a temporary draft or similar material which is prepared for the originator's personal use or use by a person for whom the originator is working. A draft of a proposed budget and the supporting information for that proposal are not temporary, for the purposes of this subsection, if the originating department or entity submits that version of the proposal for final approval or adoption.

(b) Any material which is legally owned by a person in his private capacity.
(c) Any material to which access is limited by the laws of copyright or patent, unless the copyright or patent is owned by a governmental entity. This subsection does not grant the right of a governmental entity to obtain a copyright or patent.
(d) Proprietary software.
(e) Junk mail or commercial publications which are received by a governmental entity, officer or employee.
(f) Books, governmental publications or other materials which are:
(1) Cataloged, indexed or inventoried; and
(2) Contained, in the collections of public libraries.
(g) Property acquired by a library or museum for exhibition.
(h) Artifacts and nondocumentary tangible property.

D. PUBLIC RECORDS THAT SHOULD NOT BE DISCLOSED

The subcommittee also determined that a list should be created that categorized certain records and conditions related to those records and provided that, although they may fit the definition of public records, they should not be disclosed.

Therefore, the subcommittee recommended that the Legislature:

Enact legislation that lists certain kinds of information that falls within the definition of public record, but not withstanding that fact, must not be disclosed. (BDR 19-399)

The following list of such records was adopted by the subcommittee, with general agreement among the advisory group, to be used as a model to assist in the drafting of this category. If a record contains one of the following characteristics, it would not be available for public inspection.

1. *Access is restricted by a specific Federal statute or regulation or by a specific statute of this State.*

2. *It contains information of a governmental agency relating to an ongoing or planned audit, unless the final report of the audit has been released.*
3. *Disclosure would jeopardize the physical security of governmental property, juvenile facilities, detentional facilities or correctional institutions.*
4. *The information is related to a governmental investigation, unless the investigation has been closed, or to the identity of a confidential informant.*
5. *The information is privileged from disclosure pursuant to a statute of this State or a rule of the Nevada Supreme Court.*
6. *It is material in a library, archive or museum which has been donated by a private person and the period of limitation on disclosure has not passed. If no period is specifically agreed upon by the donor and the custodian of the material, the period of nondisclosure must be the period of the donor's life or 30 years after the receipt of the material, whichever is longer.*
7. *It contains questions or answers used in, or prepatory information relating to, an academic examination or an examination to determine fitness for licensure, certification or employment, and if:*
   (a) Disclosure would compromise the security, fairness or objectivity of the examination; or
   (b) A contract governing the use of the examination provides for the confidentiality of the questions or answers.
8. *It is information which is in the custody of a governmental entity that performs data processing, microfilming or similar services, but which belongs to another agency that is using those services.*

E. DISPUTED ITEMS

The following possible additions to the list were debated. There was disagreement on some of these issues among the members and the advisory group. Where an addition was made for each of the following various subheadings, the language in italics was adopted as a model to be used in drafting the remainder of this category.

Access Conditionally Restricted

9. *Access is restricted as a condition of participation in a State or Federal program or for receiving State or Federal money.*

There was some discussion of inserting the word "indirectly" to modify "participation." However, it was argued that the omission of the word would cover both indirect and direct participation.

Exemptions by Regulation

Some members of the advisory group favored adding a provision that would exclude records declared confidential by State agency regulations. The subcommittee elected not to include such records in the list, arguing that the responsibility to exempt records should remain with the Legislature.

Information Related to Benefits

Some members of the advisory group favored adding a provision that would protect information concerning eligibility for unemployment insurance benefits, social services, and welfare benefits. The subcommittee chose not to provide any additional protection than is already provided by law.

Personnel Files

After discussions regarding the merit of protecting certain information in personnel files, the subcommittee proposed the following model language:

10. *It is a personnel file of a governmental entity which contains information relating to the preemployment application or a postemployment evaluation, retention or promotion of the employee, to the extent that such information would reveal the person's home phone number, address, medical history or information of a personal or familial nature and not related to compensation or benefits received or to be received by the employee or his or her beneficiaries.*

Medical Files

The subcommittee debated the merits of allowing some medical records to be released as public records. The members determined that medical information of a personal nature should not be public, but such information of a general statistical nature should be public. Therefore, the subcommittee recommended that the following model language be included in the BDR.

> 11. *Access to a record is restricted if it contains information regarding a person's medical, psychiatric or psychological history, diagnosis, condition, treatment, evaluation, or similar data, to the extent that the information would reveal the person's identity.*

Auditing Techniques

The subcommittee adopted the following model language to protect against the disclosure of information that could facilitate embezzlement activity with government money by circumventing an audit.

> 12. *It contains information that would disclose auditing techniques, procedures or policies if disclosure would risk circumvention of an audit.*

Licensing Boards

Some members of the advisory group suggested a provision to protect information within the possession of licensing boards regarding a person's criminal history. It was argued that this information is already addressed by other state statutes, and such a provision was not included.

Government Appraisal and Procurement

It was also suggested that a provision be added to protect real estate appraisal information as the publication of this data may make future negotiations by the government for real property more difficult. The subcommittee determined that such publication did not create an unfair advantage and elected not to include such a provision.

A similar argument was made based on governmental procurement and the creation of an advantage in contracting, but

the subcommittee dismissed the notion for the same reasons stated earlier.

Litigation

The subcommittee adopted the following model language to protect certain information related to court cases.

> 13. *It contains material directly related to an existing lawsuit prepared in anticipation of or during litigation which has not been filed with a court or which would not be discoverable in accordance with the rules of Federal or State courts in which the matter is being litigated and which has been specifically determined by that court to be privileged for good cause shown under the standards of rule 26(c) of Nevada Rules of Civil Procedure by the Parties seeking nondisclosure.*

Trade Secrets

The subcommittee adopted model language to protect trade secrets. There appeared to be consensus among the advisory group and the members on the following language:

> 14. *The information contains trade secrets as defined in NRS 600A.030.*

Record Keeping Systems

The subcommittee recommended the following model language to protect the security of certain record keeping systems:

> 15. *It contains non-substantive administrative or technical information, including that contained in computer systems and programs, operating procedures or manuals, whose disclosure would jeopardize the security of a record keeping system.*

Balancing Test

One of the major points of contention during the study involved the balancing test adopted by Nevada's Supreme Court in *Donrey v. Bradshaw*. The majority of the advisory group argued that this balancing test is imperative because

it is impossible to define the universe of public records, and judgment calls will always be necessary. Even with a comprehensive definition and categorization of records, some information will inevitably be missed by the law. Also, some information collected by governments in the future may not be contemplated by the current law. This position also argued that the balancing test originates in the privacy protections guaranteed by the *United States Constitution* and cannot be altered by the State Legislature.

Another position argued that the balancing test was instituted because no statutory definition of public record and a definition would eliminate the need for the test. This position also argued that the balancing test is inconsistently applied by various agencies that and it is improper for an Executive Branch employee to conduct what is essentially a judicial test.

During the course of the hearings, it was also suggested that a different balancing test be adopted. The new test would be applied only to a record deemed nondisclosable. Some members of the advisory group argued that this use of the test was the intent of Nevada's Supreme Court in *Bradshaw* and that the case has been misconstrued. The balancing test should be applied to records deemed nondisclosable to determine if they should be disclosed, rather than applying them to public records to determine if they should not be disclosed.

After much debate, the subcommittee chose the latter approach and retained the balancing test but amended its application. The model language adopted by the subcommittee follows:

> **Enact legislation addressing the category of nondisclosable public records which allows any record deemed nondisclosable to be disclosed if, with respect to the particular record, the general policy in favor of open records outweighs an expectation of privacy or a public policy justification. (BDR 19-399)**

F. EXEMPTIONS

The advisory group determined that, due to the number of exemptions in Nevada law, it would be impossible to review them adequately within the budget and time constraints of

this legislative interim period. Thus, it was suggested that the exemptions remain as they are and be examined during the next interim.

Therefore, the subcommittee recommends that the 1993 Legislature:

> Adopt a resolution requiring a study of all exemptions to the public records laws to determine which exemptions should be repealed, amended, or remain the same. (BDR R-395)

IV. DISCUSSION OF RECOMMENDATIONS RELATED TO PROCEDURES FOR ACCESS TO PUBLIC RECORDS

The subcommittee determined that the final report should recommend rules of access to records and procedures for the denial of access and an appeal of such denial. The current law is void of any such guidelines.

The subcommittee and advisory group examined the Federal FOIA's provisions in this regard and utilized the concept of providing a uniform means of requesting information and responding to such requests. Appendix D provides an explanation of the FOIA.

The subcommittee and advisory group also examined the results of a previous study and relied on that study in establishing procedures for access to public records. The results of that study are reported in Legislative Counsel Bureau Bulletin No. 83-2, *Access to Government Records*.

A. INITIAL PROCEDURES REGARDING ACCESS TO PUBLIC RECORDS

Based primarily on the analysis of the 1983 recommendations and relevant provisions in the FOIA, the subcommittee recommended that the 1993 Legislature:

> Enact legislation which provides a uniform method of requesting information, procedures to provide access to or deny that information, and time frames within which responses or other actions are required. (BDR 19-397)

Following is the model language adopted by the subcommittee regarding the procedures for access to public records:

1. Except as otherwise provided, each agency upon request by any person shall make public records available for inspection and copying during regular business hours. The request may be oral or written and may be made in person, by telephone or by mail.

2. Unless information is readily retrievable by the agency in the form in which it is requested, an agency is not required to prepare a compilation or summary of its records.

3. Each agency shall ensure reasonable access to facilities for duplicating records and for making memoranda or abstracts from them.

4. If an agency is not immediately able to fulfill a request for a governmental record, does not intend to fulfill it or denies it, the agency shall inform the requester of his right to make a written request.

5. Within a reasonable time, but no later than 3 working days after receiving a written request for access which reasonably identifies or describes a governmental record, the agency shall:

(a) Make the record available to the requester, including, if necessary, an explanation of any code readable by machine or any other code or abbreviation;

(b) Inform the requester that unusual circumstances, such as the volume of records which have been requested or the need to search for, consult with or obtain records from another office or agency, have delayed the handling of the request and specify a time and date, no later than 10 working days after the reply would otherwise be due, when the record will be available;

(c) Inform the requester that the agency does not maintain the requested record and provide, if known, the name and location of the agency maintaining the record; or

(d) Deny the request.

B. PROCEDURES UPON DENIAL OF ACCESS TO PUBLIC RECORDS

There appeared to be consensus among both the subcommittee and the advisory group on the initial procedures and rules regarding access. The subcommittee addressed the issue of denial of a request for information at the agency level.

The advisory group initially recommended that the subcommittee establish an intermediate appeals committee or panel that could review the agency decision to deny access. Some members of the advisory group preferred an ombudsman approach rather than an appellate panel. Other members of the advisory group did not support the concept of an appellate body but preferred to create a mechanism for appeals to be advanced directly to the courts in an expedited manner.

After much debate, the subcommittee recommended that the Legislature:

> Enact legislation which provides that where access is denied, the complaining party may directly appeal to a court of competent jurisdiction seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide that court costs and attorneys' fees are awardable if the requester prevails. (BDR 19-393)

C. ADMINISTRATIVE PANEL FOR APPEALS

As discussed earlier, some members of the subcommittee supported the concept of an intermediate panel and proposed that it be further explored. Testimony revealed that the State Library and Archives was requesting a bill draft separate from the interim study that would establish a committee for the approval of records and retention schedules. A similar bill was requested in 1991 but never introduced. The suggested committee was similar to the Utah public records committee which was considered by the advisory group and the subcommittee as a model during the course of the hearings. Chairman Porter directed the staff of the State Library and Archives to include the appellate board proposal in the bill draft as discussed by the advisory group. Thus, the subcommittee recommended to:

> Include in the final report a statement of the subcommittee's support for the concept of an intermediate appealate body that would have concurrent jurisdiction with the courts to consider appeals from the denial of a public record.

Although the subcommittee did not recommend specifically the establishment of an appellate committee, it did support the concept and directed that this report include a

discussion of the various alternatives. Following is a description of the alternatives considered by the advisory group and the subcommittee throughout the course of the hearings.

The majority of the advisory group supported the creation of an administrative level committee or panel to decide appeals when access has been denied. Some members of the advisory group supported an "ombudsman" approach similar to that used in New York. That state has a Policymaking Committee and an Executive Director that hears appeals in these matters.

The group did not agree on the membership of the committee but agreed it should be broad based and ad hoc. The group analyzed Utah's approach and determined it could be used as a model. The group agreed that the Office of the Attorney General should not be on the panel, but should act as counsel to the panel.

Some examples of approaches used in other states follow.

New York

The New York Committee on Open Government is made up of 11 members that set policy and serve staggered 4-year terms. Six members are from the news media and the public. The remaining five are from government agencies. The committee establishes policy and the Executive Director actually hears the individual appeals.

Connecticut

The Connecticut Freedom of Information Commission actually hears the appeals and consists of five part-time commissioners. Two are from the media, two are from agencies and one is a lay person. No more than three may be from one political party.

Utah

Since the advisory group and subcommittee studied the Utah scheme closely, the following description of the Utah program is included in the report.

1. The State Records Committee was created within the Utah Department of Administrative Services. The committee is made up of the following individuals:

   a. The State Archivist;

   b. The State Librarian;

   c. One citizen member appointed to a four year term by the governor upon the recommendation of the records committee;

   d. One individual representing the news media appointed by the Governor to a 4-year term;

   e. The Director of the Division of History;

   f. One individual representing political subdivisions appointed by the Governor for a 4-year term; and

   g. The State Auditor.

2. The Records Committee is required to take the following actions:

   a. Meet at least once every 3 months to review and approve rules and programs for the collection, classification, and disclosure of records;

   b. Review and approve retention and disposal of records;

   c. Hear appeals from determinations of access; and

   d. Appoint a chairman from among its members.

3. The Records Committee is authorized to:

   a. Make rules to govern its own proceedings; and

   b. Reassign classification for any record series by a governmental entity if that classification is inconsistent with the law.

4. The State Archivist is the Executive Secretary to the committee.

5. The State Archivist provides staff and supportive services for the records committee.

6. Unless otherwise reimbursed, the citizen member and the representative of the news media receive a per diem.

7. If the records committee reassigns the classification of a record, the governmental entity may appeal the re-classification to the district court.

The Utah law allows appeals to the records committee with the following being the major procedural and substantive provisions:

1. Appeal requested within 30 days after denial by the agency, or within 35 days after an agency has failed to act.

2. Records Committee schedules hearing no later than 5 days after notice of appeal and holds hearing within 30 days of the notice.

3. Records Committee provides notice to relevant parties.

4. Records Committee holds hearing allowing testimony and evidence and must issue an order within 3 days following the hearing.

5. The statute describes the requirements of the order and notice of right to appeal to district court.

D. OTHER PROVISIONS REGARDING ACCESS TO PUBLIC RECORDS

Testimony indicated that at times public information may be withheld because it is mixed with confidential information. The current law does not address this issue. Thus, the subcommittee recommended to:

Enact legislation to establish that the fact that a record contains both restricted and non-restricted information is not a reason for denying access to the non-restricted information. (BDR 19-397)

It was argued that once information is declared to be public and accessible, the government should not have an interest in attempting to determine the intended purpose of the information.

The members adopted the following recommendation in that regard:

> Enact legislation that prohibits a public body from inquiring about the intended use of requested public information or making any other inquiry of a person requesting to inspect or receive copies of public information, except to the extent necessary to clarify the request for information. Include an exception for information requested from the Department of Motor Vehicles and Public Safety because *Nevada Revised Statutes* 482.170 requires the department to make an inquiry as to the purpose for requesting certain information. (BDR 19-397)

An exception to this rule would exist for information requested from the DMV&PS because NRS 482.170 requires the department to make an inquiry as to the purpose for requesting certain information. The department is entitled to deny the information if it appears that it will be used for an illegal purpose.

V. DISCUSSION OF RECOMMENDATIONS RELATED TO THE TREATMENT OF ELECTRONIC RECORDS

The advisory group determined that any recommendations, in providing definitions, should address the status of the record storage medium. This includes micrographic, audio, video, digital and optical formats, and how these forms of information storage, when deemed public records, should be preserved and managed.

There appeared to be consensus among the advisory group and the subcommittee regarding the adoption of the five major recommendations made by a consultant, Margaret Hedstrom, in her December 1990 report to the Nevada State Historical Records Advisory Board entitled: "Management and Preservation of Nevada's Electronic Public Records." A summary of the report is attached as Appendix E. This study was done pursuant to executive order, and the recommendations address the concerns expressed during the course of the hearings.

These recommendations are listed below. The subcommittee recommended that they be in the form of resolutions urging action rather than mandates. This is due in part, to the budget constraints and uncertainties related to the economy. The subcommittee recommended the following:

- The Department of Data Processing, in cooperation with the Nevada State Library and Archives is urged to create and maintain an inventory of statewide hardware, software and information.

- The Division of Archives and Records is urged to work with other State agencies to establish retention and disposition schedules for records when information systems are designed or redesigned. All State agencies are urged to consider record retention/disposition requirements at the point of system design.

- The Division of Archives and Records is urged to undertake a program to educate State officials about their responsibilities for retention, care, and preservation of government records with special emphasis on electronically-stored public records.

- Include in the final report support for the concept that the State should create an information storage facility and develop procedures for maintaining information.

(These resolutions are all drafted as BDR R-394.)

VI. DISCUSSION OF RECOMMENDATIONS RELATED TO THE COSTS ASSOCIATED WITH PUBLIC RECORDS

The subcommittee determined that the costs of providing access to public records is primarily a part of the government "doing business". The members supported the concept that government agencies should be allowed to recoup the costs associated with reproduction of records. Some members of the advisory group suggested a flat copying fee be enacted into law. However, local governments objected to this approach as it would require amendment by the Legislature for any changes in the fees. Also, they argued that a flat fee may not be appropriate in rural areas of Nevada as the costs of copying may be higher because of service fees and other pertinent charges.

Therefore, the subcommittee recommended that the Legislature:

> **Enact legislation that allows only the cost of the materials and the equipment, not labor, regarding reproduction of records. (BDR 19-396)**

The advisory group and subcommittee examined the Idaho Public Records Law with respect to costs for copying information. The subcommittee based its recommendations, in part, on that law. The members directed that information relative to the Idaho law be included in this report, although it did not mandate the use of the exact formula. Appendix F is a letter from the Idaho Attorney General that explains the Idaho law, including the provisions addressing the costs of providing copies. Therefore, the subcommittee recommended the following:

> **Include in the final report support for the concept of government using a cost analysis formula to calculate a per copy price. The formula should consider the average number of copies per month, the purchase price of the copying equipment, and an amortized cost per month over the anticipated life of the equipment to achieve a total machine cost per copy.**

There was discussion among the advisory group and the subcommittee concerning "custom requests." These requests involve such things as personalized searches for records. The subcommittee recommended that agencies should not be mandated to conduct such searches, but if an agency determines to fulfill such a request, it may charge a reasonable fee for the search. The fee may take into account personnel time in additional to costs related to equipment.

The subcommittee, therefore, recommended that the Legislature:

> **Enact legislation which authorizes, but does not require, a governmental entity to fill "custom requests" (such as re-formatting information) and to charge a reasonable fee for completing such requests. (BDR 19-396)**

Some members of the advisory group raised the issue of requests for information in a format that is not normally

used by a government entity. The existing law does not provide guidance in this regard.

The subcommittee determined that re-formatting data to comply with such a request should not be mandatory, but should be permissive. Such requests are "custom requests" and should be governed by the preceding recommendation. Therefore, the subcommittee recommended the following:

> Enact legislation which provides that, when a requester wants information in a format which is different from the format used to maintain or store the information, the government entity is not required to re-format the data. (BDR 19-396)

VII. DISCUSSION OF RECOMMENDATIONS RELATED TO THE ENFORCEMENT OF PUBLIC RECORDS LAWS

Testimony before the subcommittee and discussions in the advisory committee meetings raised the issue of whether criminal penalties are appropriate in public records cases. Various agency directors argued that the current Nevada law, which makes it a misdemeanor to withhold a public record, is inappropriate since there is no definition of public record. It has also been argued that the statute may have constitutional deficiencies because it is vague. Others have argued that the use of penalties is not an issue since the statute has never been used to charge a government official.

The enforcement of the public records laws is discussed last because its provisions were dependent upon the amendments and other additions to the law regarding access.

One option suggested during the course of the hearings was that the criminal penalties should be replaced with civil penalties. As discussed in the section on access to records, the subcommittee elected to establish an expedited procedure in court that grants attorneys fees and court costs to a requesting party that prevails. Because of this provision, the subcommittee determined not to recommend civil penalties, and to repeal the criminal penalties. Therefore, the subcommittee recommended that the Legislature:

> Repeal the existing criminal penalty relative to the failure to disclose a public record. (BDR 19-393)

Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide for court costs and attorneys' fees if the requester prevails. (BDR 19-393) (Also discussed in Section IV regarding access.)

Because of the complexity associated with modern public records and the sensitive information that is contained in some records, the subcommittee determined a need for a liability standard that could be applied to the actions of government employees. The subcommittee elected to base the standard on "good faith."

Therefore, the subcommittee recommended the following:

Enact legislation providing that governmental entities and employees are immune from suit and liability if they act in good faith in disclosing or refusing to disclose information. (BDR 19-393)

VIII. APPENDICES

A P P E N D I X A

GENERAL STATUTE REGARDING PUBLIC RECORDS AND EXCEPTIONS THERETO

GENERAL STATUTE REGARDING PUBLIC RECORDS:

239.010 Public books and records open to inspection; penalty.

1. All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

[1:149:1911; RL § 3232; NCL § 5620]--(NRS A 1963, 26; 1965, 69)

PRELIMINARY LIST OF NRS SECTIONS DECLARING RECORDS CONFIDENTIAL:

Explanation--Matter included in brackets [ ] is for informational purposes only.

JUDICIAL DEPARTMENT GENERALLY

Section. 1. 1.400 Regulations. The commission on judicial selection may adopt regulations for the operation of the commission and for maintaining the confidentiality of its proceedings and records.

(Added to NRS by 1977, 410)

ACTIONS FOR MEDICAL MALPRACTICE

Sec. 2. 41A.053 Early disclosure of medical records prohibited; penalty.

1. Upon the request of the department [Department of Insurance] or counsel for a patient, a custodian of any medical records shall not allow anyone to review any of those records relevant to a complaint filed with the department before those records are transferred to a requesting party or the authority issuing the subpena.

2. A violation of this subsection is punishable as a misdemeanor.

(Added to NRS by 1985, 2009; A 1989, 425; 1991, 1612)

ADMISSIBILITY GENERALLY

Sec. 3. 48.109 Closure of meeting held to further resolution of dispute; exclusion of admission, representation or statement made during mediation proceedings; confidentiality of matter discussed during mediation proceeding. [Expires by limitation on June 30, 1995.]

1. A meeting held to further the resolution of a dispute may be closed at the discretion of the mediator.

2. The proceedings of the mediation session must be regarded as settlement negotiations, and no admission, representation or statement made during the session, not otherwise discoverable or obtainable, is admissible as evidence or subject to discovery.

3. A mediator is not subject to civil process requiring the disclosure of any matter discussed during the mediation proceedings.

(Added to NRS by 1991, 919)

PRIVILEGES

Sec. 4. 49.275 News media. No reporter, former reporter or editorial employee of any newspaper, periodical or press association or employee of any radio or television station may be required to disclose any published or unpublished information obtained or prepared by such person in such person's professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

1. Before any court, grand jury, coroner's inquest, jury or any officer thereof.
2. Before the legislature or any committee thereof.
3. Before any department, agency or commission of the state.
4. Before any local governing body or committee thereof, or any officer of a local government.

(Added to NRS by 1971, 786; A 1975, 502)

Sec. 5. 49.335 Privilege to refuse disclosure of identity of informer. The state or a political subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished to a law enforcement officer information purporting to reveal the commission of a crime.

(Added to NRS by 1971, 787)

Sec. 6. 49.375 Legality of obtaining evidence.

1. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable, he may require the identity of the informer to be disclosed.

2. The judge may permit the disclosure to be made in camera or make any other order which justice requires. All counsel shall be permitted to be present at every stage at which any counsel is permitted to be present.

3. If disclosure of the identity of the informer is made in chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal.

(Added to NRS by 1971, 787)

JUVENILE COURTS

Sec. 7. 62.120 Duties and powers of probation officers in counties whose population is less than 100,000.

1. In counties whose population is less than 100,000, the probation officer under the general supervision of the judge or judges and with the advice of the probation committee shall organize, direct and develop the administrative work of the probation department and detention home, including the social, financial and clerical work, and he shall perform such other duties as the judge directs. All information obtained in discharge of official duty by an officer or other employee of the court is privileged and must not be disclosed to anyone other than the judge and others entitled under this chapter to receive that information, unless otherwise ordered by the judge.

2. Probation officers and assistant probation officers who are required to be certified by NRS 481.054 have the same powers as peace officers when performing duties pursuant to this chapter, NRS 213.220 to 213.290, inclusive, or chapter 432B of NRS, including the power to arrest an adult criminal offender encountered while in the performance of those duties.

3. Every effort must be made by a county to provide sufficient personnel for the probation department to uphold the concept of separation of powers in the court process.

[11:63:1949; 1943 NCL § 1038:11]--(NRS A 1969, 993, 1545; 1973, 1342; 1979, 505; 1989, 7, 69; 1991, 139)

Sec. 8. 62.122 Duties and powers of probation officers serving under director of juvenile services.

1. The probation officer under the general supervision of the director of juvenile services and with the advice of the probation committee shall organize, direct and develop the administrative work of the probation department and detention home, including the social, financial and clerical work, and he shall perform such other duties as the director of juvenile services directs. All information obtained in discharge of official duty by an officer or other employee of the court is privileged and must not be disclosed to anyone other than the director of juvenile services and others entitled under this chapter to receive such information, unless otherwise permitted by the director of juvenile services.

2. Probation officers and assistant probation officers who are required to be certified by NRS 481.054 have the same powers as peace officers when performing duties pursuant to this chapter, NRS 213.220 to 213.290, inclusive, or chapter 432B of NRS, including the power to arrest an adult criminal offender encountered while in the performance of those duties.

(Added to NRS by 1969, 996; A 1989, 7; 1991 139)

Sec. 9. 62.193 Proceedings not criminal in nature; judicial procedure; advising parties of rights; period for final disposition; disclosure to victim.

1. Proceedings concerning any child alleged to be delinquent, in need of supervision or in need of commitment to an institution for the mentally retarded are not criminal in nature and must be heard separately from the trial of cases against adults, and without a jury. The hearing may be conducted in an informal manner and may be held at a juvenile detention facility or elsewhere at the discretion of the judge. Stenographic notes or other transcript of the hearing are not required unless the court so orders. The general public must be excluded and only those persons having a direct interest in the case may be admitted, as ordered by the judge, or, in case of a reference, as ordered by the referee.

2. The court shall provide written notice of any hearing after the initial detention hearing to the parent, guardian or custodian of the child together with a copy of a notice which the parent, guardian or custodian may provide to his employer. The employer's copy of the notice must set forth the date and time of the hearing and the provisions of NRS 62.410. The employer's copy of the notice must not set forth the name of the child or the offense alleged.

3. The parties must be advised of their rights in their first appearance at intake and before the court. They must be informed of the specific allegations in the petition and given an opportunity to admit or deny those allegations.

4. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court shall record its findings on whether the acts ascribed to the child in the petition were committed by him. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and order the child discharged from any detention or temporary care theretofore ordered in the proceedings, unless otherwise ordered by the court.

5. If the court finds on the basis of an admission or a finding on proof beyond a reasonable doubt, based upon competent, material and relevant evidence, that a child committed the acts by reason of which he is alleged to be delinquent, it may, in the absence of objection, proceed immediately to make a proper disposition of the case.

6. In adjudicatory hearings all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties or their counsel must be afforded an opportunity to examine and controvert written reports so received and to cross- examine persons making reports when reasonably available.

7. On its motion or that of a party, the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition. The court shall make an appropriate order for detention or temporary care of the child subject to supervision of the court during the period of the continuance.

8. If the court finds by preponderance of the evidence that the child is in need of supervision or is in need of commitment to an institution for the mentally retarded, the court may proceed immediately, or at a postponed hearing, to make proper disposition of the case.

9. Unless the court by written order extends the time for disposition of the case and sets forth specific reasons for the extension, the court shall make its final disposition no later than 60 days after the petition was filed.

10. The district attorney may disclose to the victim of an act committed by a child the disposition of the child's case regarding that act. The victim shall not disclose to any other person the information so disclosed by the district attorney.

(Added to NRS by 1973, 1348; A 1985, 1393; 1987, 832; 1989, 62, 1812)

Sec. 10. 62.360 Records: Maintenance and inspection; release of child's name for use in civil action.

1. The court shall make and keep records of all cases brought before it.

2. The records may be opened to inspection only by order of the court to persons having a legitimate interest therein except that a release without a court order may be made of any:

(a) Records of traffic violations which are being forwarded to the department of motor vehicles and public safety; and

(b) Records which have not been sealed and are required by the department of parole and probation for preparation of presentence reports pursuant to NRS 176.135.

3. The clerk of the court shall prepare and cause to be printed forms for social and legal records and other papers as may be required.

4. Whenever the conduct of a juvenile with respect to whom the jurisdiction of the juvenile court has been invoked may be the basis of a civil action, any party to the civil action may petition the court for release of the child's name, and upon satisfactory showing to the court that the purpose in obtaining the information is for use in a civil action brought or to be brought in good faith, the court shall order the release of the child's name and authorize its use in the civil action.

[26:63:1949; 1943 NCL § 1038.26]--(NRS A 1968, 60; 1973, 1533; 1981, 1209; 1985, 1974)

Sec. 11. 62.370 Records: Procedure for sealing and unsealing.

1. In any case in which a child is taken into custody by a peace officer, is taken before a probation officer, or appears before a judge or master of a juvenile court, district court, justice's court or municipal court, the child or a probation officer on his behalf may petition for the sealing of all records relating to the child, including records of arrest, but not including records relating to misdemeanor traffic violations, in the custody of the juvenile court, district court, justice's court or municipal court, probation officer, law enforcement agency, or any other agency or public official, if:

(a) Three years or more have elapsed after termination of the jurisdiction of the juvenile court; or

(b) Three years or more have elapsed since the child was last referred to the juvenile court and the child has never been declared a ward of the court.

2. The court shall notify the district attorney of the county and the probation officer, if he is not the petitioner. The district attorney, probation officer, any of their deputies or any other persons having relevant evidence may testify at the hearing on the petition.

3. If, after the hearing, the court finds that, since such termination of jurisdiction, the child has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers and exhibits in the juvenile's case in the custody of the juvenile court, district court, justice's court, municipal court, probation officer, law enforcement agency or any other agency or public official sealed. Other records relating to the case, in the custody of such other agencies and officials as are named in the order, must also be ordered sealed. All juvenile records must be automatically sealed when the person reaches 24 years of age.

4. The court shall send a copy of the order to each agency and official named therein. Each agency and official shall, within 5 days after receipt of the order:

(a) Seal records in its custody, as directed by the order.

(b) Advise the court of its compliance.

(c) Seal the copy of the court's order that it or he received.

As used in this section, "seal" means placing the records in a separate file or other repository not accessible to the general public.

5. If the court orders the records sealed, all proceedings recounted in the records are deemed never to have occurred and the minor may properly reply accordingly to any inquiry concerning the proceedings and the events which brought about the proceedings.

6. The person who is the subject of records sealed pursuant to this section may petition the court to permit inspection of the records by a person named in the petition and the court may order the inspection.

7. The court may, upon the application of a district attorney or an attorney representing a defendant in a criminal action, order an inspection of the records for the purpose of obtaining information relating to persons who were involved in the incident recorded.

8. The court may, upon its own motion and for the purpose of sentencing a convicted adult who is under 21 years of age, inspect any records of that person which are sealed pursuant to this section.

9. An agency charged with the medical or psychiatric care of a person may petition the court to unseal his juvenile records.

(Added to NRS by 1971, 861; A 1973, 1346; 1977, 1276; 1981, 2002)—(Substituted in revision for NRS 62.275)

SECURITIES (Uniform Act)

Sec. 12. 90.730 Public information and confidentiality.

1. Except as otherwise provided in subsection 2, information and documents filed with or obtained by the administrator [administrator of the securities division of the office of the Secretary of State] are public information and are available for public examination.

2. Except as otherwise provided in subsections 3 and 4, the following information and documents do not constitute public information under subsection 1 and are confidential:

(a) Information or documents obtained by the administrator in connection with an investigation concerning possible violations of this chapter; and

(b) Information or documents filed with the administrator in connection with a registration statement filed under this chapter or a report under NRS 90.390 which constitute trade secrets or commercial or financial information of a person for which that person is entitled to and has asserted a claim of privilege or confidentiality authorized by law.

3. The administrator may submit any information or evidence obtained in connection with an investigation to the attorney general or appropriate district attorney for the purpose of prosecuting a criminal action under this chapter.

4. The administrator may disclose any information obtained in connection with an investigation pursuant to NRS 90.620 to the agencies and administrators specified in subsection 1 of NRS 90.740 but only if disclosure is provided for the purpose of a civil, administrative or criminal investigation or proceeding, and the receiving agency or administrator represents in writing that under applicable law protections exist to preserve the integrity, confidentiality and security of the information.

5. This chapter does not create any privilege or diminish any privilege existing at common law, by statute, regulation or otherwise.

(Added to NRS by 1987, 2184; A 1989, 160; 1991, 609)

COMMODITIES

Sec. 13. 91.160 Administration.

1. This chapter must be administered by the administrator of the securities division of the office of the secretary of state.

2. It is unlawful for the administrator or any employee of the administrator to use for personal benefit any information which is filed with or obtained by the administrator and which is not made public. It is unlawful for the administrator or any employee of the administrator to conduct any dealings regarding a security or commodity based upon any such information, even though made public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

3. Except as otherwise provided in subsection 4, all information and materials collected, assembled or maintained by the administrator are public records.

4. The following information is confidential:

(a) Information obtained in private investigations pursuant to NRS 91.300; and

(b) Information obtained from federal agencies which may not be disclosed under federal law.

5. The administrator in his discretion may disclose any information made confidential under subsection 4 to persons identified in subsection 1 of NRS 91.170.

6. No provision of this chapter either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpena directed to the administrator or any employee of the administrator.

(Added to NRS by 1987, 1289)

SALE OF SUBDIVIDED LAND

Sec. 14. 119.280 Powers of administrator [chief of the real estate division of the Department of Commerce] to take testimony, administer oaths, issue subpenas and classify confidential records.

1. The administrator may:

(a) Take testimony and other evidence concerning all matters within the jurisdiction of the division under this chapter.

(b) Administer oaths.

(c) Certify to all official acts.

(d) For cause, issue subpenas for attendance of witnesses and the production of books and papers.

2. The administrator shall classify as confidential certain records and information obtained by the division when such matters are trade secrets, including but not limited to lists of prospective purchasers and lists of purchasers with whom a sale has been consummated. This power is subject to the limitations and protective measures in NRS 49.325.

(Added to NRS by 1973, 1761)

TIME SHARES

Sec. 15. 119A.280 Developers: Order to cease; hearing; agreement in lieu of order.

1. The administrator [chief of the real estate division of the Department of Commerce] may issue an order directing a developer to cease engaging in activities for which the developer has not received a permit under this chapter or conducting activities in a manner not in compliance with the provisions of this chapter or the regulations adopted pursuant thereto.

2. The order to cease must be in writing and must state that, in the opinion of the administrator, the developer has not been issued a permit for the activity or the terms of the permit do not allow the developer to conduct the activity in that manner. The developer shall not engage in any activity regulated by this chapter after he receives such an order.

3. Within 30 days after receiving such an order, a developer may file a verified petition with the administrator for a hearing. The administrator shall hold a hearing within 30 days after the petition has been filed. If the administrator fails to hold a hearing within 30 days, or does not render a written decision within 45 days after the final hearing, the cease and desist order is rescinded.

4. If the decision of the administrator after a hearing is against the person ordered to cease and desist, he may appeal that decision by filing, within 30 days after the date on which the decision was issued, a petition in the district court for the county in which he conducted the activity. The burden of proof in the appeal is on the appellant. The court shall consider the decision of the administrator for which the appeal is taken and is limited solely to a consideration and determination of the question of whether there has been an abuse of discretion on the part of the administrator in making the decision.

5. In lieu of the issuance of an order to cease such activities, the administrator may enter into an agreement with the developer in which the developer agrees to:

(a) Discontinue the activities that are not in compliance with this chapter;

(b) Pay all costs incurred by the division in investigating the developer's activities and conducting any necessary hearings; and

(c) Return to the purchasers any money or property which he acquired through such violations.

The terms of such an agreement are confidential unless violated by the developer.

(Added to NRS by 1983, 994; A 1985, 1140)

MEMBERSHIPS IN CAMPGROUNDS

Sec. 16. 119B.370 Order to cease activities conducted without permit; hearing; agreement in lieu of order.

1. The administrator [chief of the real estate division of the Department of Commerce] may issue an order directing a developer to cease engaging in activities for which the developer has not received a permit under this chapter or conducting activities in a manner not in compliance with the terms of his permit.

2. The order to cease must be in writing and must state that, in the opinion of the administrator, the developer has not been issued a permit for the activity or the terms of the permit do not allow the developer to conduct the activity in that manner. The developer shall not engage in any activity regulated by this chapter after he receives such an order.

3. Within 30 days after receiving such an order, a developer may file a verified petition with the administrator for a hearing. The administrator shall hold a hearing within 30 days after the petition is filed. If the administrator fails to hold a hearing within 30 days, or does not render a written decision within 45 days after the final hearing, the order to cease is rescinded.

4. If the decision of the administrator after a hearing is against the person ordered to cease, he may obtain judicial review from that decision by filing, within 30 days after the date on which the decision was issued, a petition in the district court for the county in which he conducted the activity. The burden of proof is on the petitioner. The court shall consider the decision of the administrator which is being reviewed and shall consider and determine solely whether there has been an abuse of discretion on the part of the administrator in making the decision.

5. In lieu of the issuance of an order to cease such activities, the administrator may enter into an agreement with the developer in which the developer agrees to:

(a) Discontinue the activities that are not in compliance with this chapter;

(b) Pay all costs incurred by the administrator in investigating the developer's activities and conducting any necessary hearings; and

(c) Return to the purchasers any money or property which he acquired through such violations.

The terms of such an agreement are confidential unless violated by the developer.

(Added to NRS by 1985, 1670)

DISPOSITION OF UNCLAIMED PROPERTY (Uniform Act)

Sec. 17. 120A.145 Information to remain confidential. The administrator or any officer, agent or employee of the division shall not use or disclose any information received by the administrator [chief of the division of unclaimed property in the Department of Commerce] in the course of carrying out the provisions of this chapter which is confidential or which is provided to the division on the basis that the information is to remain confidential, unless the use or disclosure of the information is necessary to locate the owner of unclaimed or abandoned property.

(Added to NRS by 1983, 1462)

DISSOLUTION OF MARRIAGE

Sec. 18. 125.110 What pleadings and papers open to public inspection; written request of party for sealing.

1. In any action for divorce, the following papers and pleadings in the action shall be open to public inspection in the clerk's office: [county clerk's]

(a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.

(b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.

2. All other papers, records, proceedings and evidence, including exhibits and transcript of the testimony, shall, upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding.

([1:222:1931; 1931 NCL § 9467.03]--(NRS A 1963, 544)

OBLIGATION OF SUPPORT

Sec. 19. 125B.150 Assistance by district attorney to establish parentage and obligation of support and to enforce payment of support; confidentiality; regulations of welfare division.

1. The district attorney of the county of residence of the child or a nonsupporting parent shall take such action as is necessary to establish parentage of the child and locate and take legal action against a deserting or nonsupporting parent of the child when requested to do so by the custodial parent or a public agency which provides assistance to the parent or child.

If the court for cause transfers the action to another county, the clerk of the receiving court shall notify the district attorney of that county, and that district attorney shall proceed to prosecute the cause of action and take such further action as is necessary to establish parentage and the obligation of support and to enforce the payment of support pursuant to this chapter or chapter 31A, 126, 130 or 425 of NRS.

2. In a county where the district attorney has deputies to aid him in the performance of his duties, the district attorney shall designate himself or a particular deputy as responsible for performing the duties imposed by subsection 1.

3. The district attorney and his deputies do not represent the parent or the child in the performance of their duties pursuant to this chapter and chapter 31A, 126, 130 or 425 of NRS, but are rendering a public service as representatives of the state.

4. Except as otherwise provided in subsections 5 and 6, a privilege between lawyer and client arises between the parent or child to whom the public service is rendered and the district attorney.

5. Officials of the welfare division of the department of human resources are entitled to access to the information obtained by the district attorney if that information is relevant to the performance of their duties. The district attorney or his deputy shall inform each person who provides information pursuant to this section concerning the limitations on the privilege between lawyer and client under these circumstances.

6. Disclosures of criminal activity by a parent or child are not privileged.

7. The district attorney shall inform each parent who applies for his assistance in this regard that a procedure is available to collect unpaid support from any refund owed to the deserting or nonsupporting parent because an excessive amount of money was withheld to pay his federal income tax. The district attorney shall submit to the welfare division all documents and information it requires to pursue such a collection if:

(a) The applicant is not receiving public assistance.

(b) The district attorney has in his records:

(1) A copy of the order of support for a child and any modifications of the order which specify their date of issuance and the amount of the ordered support;

(2) A copy of a record of payments received or, if no such record is available, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(3) The current address of the custodial parent.

(c) From the records in his possession, the district attorney has reason to believe that the amount of unpaid support is not less than $500.

Before submitting the documents and information to the welfare division, the district attorney shall verify the accuracy of the documents submitted relating to the amount claimed as unpaid support and the name and social security number of the deserting or nonsupporting parent. If the district attorney has verified this information previously, he need not reverify it before submitting it to the welfare division.

8. The welfare division shall adopt such regulations as are necessary to carry out the provisions of subsection 7.

(Added to NRS by 1969, 589; A 1979, 1281; 1981, 1574; 1987, 2252; 1989, 670, 1642)

Sec. 20. 125B.170 Disclosure of information by enforcing authority; fee; regulations.

1. The enforcing authority shall release information concerning a responsible parent's failure to pay support for a child to an agency of the kind defined in 15 U.S.C. § 1681a(f) at its request, except that:

(a) If the amount of the delinquent payment is less than $1,000, the release of the information is at the discretion of the enforcing authority; and

(b) The information may be given to the agency only after notice of the proposed disclosure has been sent to the responsible parent and he has had 20 days to correct the information.

2. The enforcing authority shall collect from the requesting agency a fee not to exceed the actual cost of providing the information.

3. The welfare division shall adopt regulations prescribing the content of the notice of the proposed disclosure and establishing procedures for the responsible parent to correct any of the information to be disclosed.

4. As used in this section, "enforcing authority" means the welfare division of the department of human resources or the district attorney.

(Added to NRS by 1985, 1428; A 1987, 2247)--(Substituted in revision for NRS 31A.200)

Sec. 21. 126.051 Presumptions of paternity; acknowledgment.

1. A man is presumed to be the natural father of a child if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 285 days after the marriage is terminated by death, annulment, declaration of invalidity or divorce, or after a decree of separation is entered by a court.

(b) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit through the period of conception.

(c) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce; or

(2) If the attempted marriage is invalid without a court order, the child is born within 285 days after the termination of cohabitation.

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

(e) At any time he acknowledges or admits his paternity of the child in a writing filed with the state registrar of vital statistics.

2. The state registrar of vital statistics shall promptly inform the natural mother of the filing of an acknowledgment, and the presumption is nullified if she disputes the acknowledgment in a writing filed with the registrar within 60 days after this notice is given. Each acknowledgment filed must be maintained by the registrar in a sealed **confidential** file until it is consented to by the mother and any other presumed father. This does not preclude access by an appropriate state official incident to his official responsibility concerning the parentage of the child. The acknowledgment must not be made public unless the mother affirmatively consents to the acknowledgment or a court adjudicates parentage. Each acknowledgment must be signed by the person filing it, and contain:

(a) The name and address of the person filing the acknowledgment;

(b) The name and last known address of the mother of the child; and

(c) The date of birth of the child, or, if the child is unborn, the month and year in which the child is expected to be born.

If another man is presumed under this section to be the child's father, acknowledgment of paternity may be effected only with the written consent of the presumed father or after the presumption has been rebutted by a court decree. Acknowledgment by both parents as to the parentage of a child makes the child legitimate from birth, and the birth must be documented as provided in chapter 440 of NRS.

3. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

(Added to NRS by 1979, 1270; A 1983, 1868)

Sec. 22. 126.061 Artificial insemination.

1. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the health division of the department of human resources, where it must be kept **confidential** and in a sealed file. The physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

2. The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

(Added to NRS by 1979, 1271)

Sec. 23. 126.141 Pretrial recommendations.

1. On the basis of the information produced at the pretrial hearing, the judge, master or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement must be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice.

(b) That the matter be compromised by an agreement among the alleged father, the mother and the child, in which the father and child relationship is not determined but in which a defined economic obligation, fully secured by payment or otherwise, is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge, master or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge, master or referee conducting the hearing shall consider the best interest of the child, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

(c) That the alleged father voluntarily acknowledge his paternity of the child.

2. If the parties accept a recommendation made in accordance with subsection 1, judgment may be entered accordingly.

3. If a party refuses to accept a recommendation made under subsection 1 and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge, master or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action must be set for trial.

4. The guardian ad litem may accept or refuse to accept a recommendation under this section.

5. The pretrial hearing may be terminated and the action set for trial if the judge, master or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection 1 or 3.

(Added to NRS by 1979, 1274; A 1983, 1871; 1989, 860)

Sec. 24. 126.211 Hearings and records: Confidentiality. Any hearing or trial held under this chapter must be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the welfare division of the department of human resources or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

(Added to NRS by 1979, 1276)

Sec. 25. 126.371 Promise to furnish support for child: Enforcement; confidentiality.

1. Any promise in writing to furnish support for a child, growing out of a supposed or alleged parent and child relationship, does not require consideration and is enforceable according to its terms.

2. In the best interest of the child or the custodial parent, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

(Added to NRS by 1979, 1276; A 1983, 1875)

Sec. 26. 127.057 Consent to adoption: Copy to be furnished welfare division of department of human resources within 48 hours; recommendations; penalty.

1. Any person to whom a consent to adoption executed in this state or executed outside this state for use in this state is delivered shall, within 48 hours after receipt of the executed consent to adoption, furnish a true copy thereof to the welfare division of the department of human resources, together with a report of the permanent address of the person in whose favor the consent was executed.

2. Any person recommending in his professional or occupational capacity, the placement of a child for adoption in this state shall immediately notify the welfare division of the impending adoption.

3. All information received by the welfare division pursuant to the provisions of this section is confidential and must be protected from disclosure in the same manner that information concerning recipients of public assistance is protected under NRS 422.290.

4. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

(Added to NRS by 1961, 737; A 1963, 890; 1967, 1147; 1973, 1406, 1588; 1987, 2050)

Sec. 27. 127.130 Confidentiality of reports; petitioner may rebut adverse report. The report of either the welfare division of the department of human resources or the licensed child- placing agency designated by the court shall not be made a matter of public record, but shall be given in writing and in confidence to the district judge before whom the matter is pending. If the recommendation of the welfare division or the designated agency is adverse, the district judge, before denying the petition, shall give the petitioner an opportunity to rebut the findings and recommendation of the report of the welfare division or the designated agency.

[13:332:1953]--(NRS A 1963, 891; 1965, 36; 1967, 1148; 1973, 1406)

Sec. 28. 127.140 Confidentiality of hearings, files and records.

1. All hearings held in proceedings under this chapter are confidential and must be held in closed court, without admittance of any person other than the petitioners, their witnesses, the director of an agency, or their authorized representatives, attorneys and persons entitled to notice by this chapter, except by order of the court.

2. The files and records of the court in adoption proceedings are not open to inspection by any person except upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor or if a natural parent and the child are eligible to receive information from the state register of adoptions.

[14:332:1953]--(NRS A 1979, 1283)

PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT

Sec. 29. 172.075 Officers of grand jury. The jury shall elect one of its members to be foreman, another to be deputy foreman and a third to be secretary. The foreman shall have power to administer oaths and affirmations and shall sign all presentments and indictments. The secretary shall keep a record of the number of jurors concurring in the finding of every presentment or indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreman, the deputy foreman shall act as foreman, and if both are absent, the jury shall elect a temporary foreman.

(Added to NRS by 1967, 1408)

Sec. 30. 172.225 Transcripts: Preparation; public record.

1. If an indictment has been found or accusation presented against a defendant, the stenographic reporter shall certify and file with the county clerk an original transcription of his notes and a copy thereof and as many additional copies as there are defendants.

2. The reporter shall complete the certification and filing within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time.

3. The county clerk shall:

(a) Deliver a copy of the transcript so filed with him to the district attorney immediately upon his receipt thereof;

(b) Retain one copy for use only by judges in proceedings relating to the indictment or accusation; and

(c) Deliver a copy of the transcript to each defendant who is in custody or has given bail or to his attorney.

4. Any defendant to whom a copy has not been delivered is entitled upon motion to a continuance of his arraignment until a date 10 days after he actually receives a copy.

5. If several criminal charges against a defendant are investigated on one investigation and thereafter separate indictments are returned or accusations presented upon the several charges, the delivery to the defendant or his attorney of one copy of the transcript of the investigation is a compliance with this section as to all of the indictments or accusations.

6. Upon the filing of such a transcript with the county clerk, the transcript and any related physical evidence exhibited to the grand jury become a matter of public record unless the court:

(a) Orders that the presentment or indictment remain secret until the defendant is in custody or has been given bail; or

(b) Upon motion, orders the transcript and evidence to remain secret until further order of the court.

(Added to NRS by 1967, 1410; A 1975, 910; 1983, 359)

Sec. 31. 172.245 Secrecy of proceedings of grand jury; permitted disclosures; penalty.

1. The disclosure of:

(a) Evidence presented to the grand jury;

(b) Information obtained by the grand jury;

(c) The results of an investigation made by the grand jury; and

(d) An event occurring or a statement made in the presence of the grand jury other than its deliberations and the vote of a juror,

may be made to the district attorney for use in the performance of his duties.

2. Except as otherwise provided in subsection 3, the attorney general or a member of his staff, a grand juror, district attorney or member of his staff, peace officer, clerk, stenographer, interpreter, witness or other person invited or allowed to attend the proceedings of a grand jury shall not disclose:

(a) Evidence presented to the grand jury;

(b) An event occurring or a statement made in the presence of the grand jury;

(c) Information obtained by the grand jury; or

(d) The results of an investigation made by the grand jury.

3. A person may disclose his knowledge concerning the proceedings of a grand jury:

(a) When so directed by the court preliminary to or in connection with a judicial proceeding;

(b) When permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the presentment or indictment because of matters occurring before the grand jury;

(c) If he was a witness before the grand jury and is disclosing his knowledge of the proceedings to his own attorney; or

(d) As provided in NRS 172.225.

4. No obligation of secrecy may be imposed upon any person except in accordance with this section. The court may direct that a presentment or indictment be kept secret until the defendant is in custody or has been given bail, and the clerk shall seal the presentment or indictment. It is unlawful for any person to disclose the finding of the secret presentment or indictment except when necessary for the issuance and execution of a warrant or summons.

5. A person who violates any of the provisions of this section is guilty of a gross misdemeanor and contempt of court.

6. The attorney general or district attorney shall investigate and prosecute a violation of this section.

7. The grand jury shall inform each person who appears before the grand jury of the provisions of this section and the penalties for its violation.

(Added to NRS by 1967, 1410; A 1985, 552)

JUDGMENT AND EXECUTION

Sec. 32. 176.156 Disclosure of report and recommendations.

1. The court shall disclose to the district attorney, the counsel for the defendant and the defendant the factual content of the report of the presentence investigation and the recommendations of the department of parole and probation and afford an opportunity to each party to object to factual errors and comment on the recommendations.

2. Except for the disclosures required by subsection 1, the report and its sources of information are confidential and must not be made a part of any public record.

(Added to NRS by 1967, 1434; A 1969, 405; 1975, 576; 1981, 1209; 1985, 149)

GENERAL PROVISIONS (Criminal Procedure)

Sec. 33. 178.5696 Separate waiting area; disposition of personal property; fees for testifying.

1. A court trying a criminal case shall provide victims and witnesses a secure waiting area which is not used by the members of the jury or the defendant and his family and friends.

2. A court or law enforcement agency which has custody of any stolen or other personal property belonging to such a victim or witness shall:

(a) Upon the written request of the victim or witness, make available to him a list describing the property held in custody, unless it is shown that the disclosure of the identity or nature of the property would seriously impede the investigation of the crime; or

(b) Return the property to him expeditiously when it is no longer needed as evidence.

3. The prosecuting attorney shall inform each such witness of the fee to which he is entitled for testifying and how to obtain the fee.

(Added to NRS by 1983, 890)

SPECIAL PROCEEDINGS OF A CRIMINAL NATURE; SEALING RECORDS OF CRIMINAL PROCEEDINGS; REWARDS; FORMS

Sec. 34. 179.1173 Proceedings for forfeiture: Priority over other civil matters; motion to stay; standard of proof; conviction of claimant not required; confidentiality of informants; return of property to claimant.

1. The district court shall proceed as soon as practicable to a trial and determination of the matter. A proceeding for forfeiture is entitled to priority over other civil actions which are not otherwise entitled to priority.

2. At a proceeding for forfeiture, the plaintiff [the law enforcement agency which has commenced forfeiture proceedings] or claimant [the person claiming an interest in or possession of the property subject to forfeiture] may file a motion for an order staying the proceeding and the court shall grant that motion if a criminal action which is the basis of the proceeding is pending trial. The court shall, upon a motion made by the plaintiff, lift the stay upon a satisfactory showing that the claimant is a fugitive.

3. A party to a proceeding for forfeiture must establish proof by a preponderance of the evidence.

4. In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply.

5. The plaintiff is not required to plead or prove that a claimant has been charged with or convicted of any criminal offense. If proof of such a conviction is made, and it is shown that the judgment of conviction has become final, the proof is, as against any claimant, conclusive evidence of all facts necessary to sustain the conviction.

6. The plaintiff has an absolute privilege to refuse to disclose the identity of any person, other than a witness, who has furnished to a law enforcement officer information purporting to reveal the commission of a crime. The privilege may be claimed by an appropriate representative of the plaintiff.

7. If the court determines that the property is not subject to forfeiture, it shall order the property returned to the claimant found to be entitled to the property. If the court determines that the property is subject to forfeiture, it shall so decree. The property must be forfeited to the plaintiff, subject to the right of any claimant who establishes a protected

interest. Any such claimant must, upon the sale or retention of the property, be compensated for his interest in the manner provided in NRS 179.118.

(Added to NRS by 1987, 1382)

Sec. 35. 179.245 Sealing record after conviction: Petition; notice; hearing; order.

1. Except as other times and procedures are provided in NRS 453.3365, a person who has been convicted of:

(a) Any felony may, after 15 years from the date of his conviction or, if he is imprisoned, from the date of his release from actual custody;

(b) Any gross misdemeanor may, after 10 years from the date of his conviction or release from custody;

(c) A violation of NRS 484.379 other than a felony may, after 7 years from the date of his conviction or release from custody; or

(d) Any other misdemeanor may, after 5 years from the date of his conviction or release from custody,

petition the court in which the conviction was obtained for the sealing of all records relating to the conviction.

2. The court shall notify the district attorney of the county in which the conviction was obtained, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after the hearing the court finds that, in the period prescribed in subsection 1, the petitioner has not been arrested, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, but not limited to, the Federal Bureau of Investigation, the California identification and investigation bureau, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

(Added to NRS by 1971, 955; A 1983, 1088; 1991, 303)

Sec. 36. 179.255 Sealing records after dismissal or acquittal: Petition; notice; hearing; order.

1. A person who has been arrested for alleged criminal conduct, where the charges were dismissed or such person was acquitted of the charge, may after 30 days from the date the charges were dismissed or from the date of the acquittal petition the court in and for the county where such arrest was made for the sealing of all records relating to the arrest.

2. The court shall notify the district attorney of the county in which the arrest was made, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after hearing the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

(Added to NRS by 1971, 955)

Sec. 37. 179.275 Order sealing record: Distribution; compliance. Where the court orders the sealing of a record pursuant to NRS 179.245, 179.255 or 453.3365, a copy of the order must be sent to each public or private company, agency or official named in the order, and that person shall seal the records in his custody which relate to the matters contained in the order, shall advise the court of his compliance, and shall then seal the order.

(Added to NRS by 1971, 956; A 1991, 304)

Sec. 38. 179.465 Disclosure or use of intercepted communications.

1. Any investigative or law enforcement officer who, by any means authorized by NRS 179.410 to 179.515, inclusive, or 704.195 or 18 U.S.C. §§ 2510 to 2520, inclusive, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose the contents to another investigative or law enforcement officer or use the contents to the extent that the disclosure or use is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. Any person who has received, by any means authorized by NRS 179.410 to 179.515, inclusive, or 704.195 or 18 U.S.C. §§ 2510 to 2520, inclusive, or by a statute of another state, any information concerning a wire or oral communication, or

evidence derived therefrom intercepted in accordance with the provisions of NRS 179.410 to 179.515, inclusive, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court or before any grand jury in this state, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.

3. An otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of NRS 179.410 to 179.515, inclusive, or 18 U.S.C. §§ 2510 to 2520, inclusive, does not lose its privileged character.

4. When an investigative or law enforcement officer engaged in intercepting wire or oral communications as authorized by NRS 179.410 to 179.515, inclusive, intercepts wire or oral communications relating to offenses other than those specified in the order provided for in NRS 179.460, the contents of the communications and the evidence derived therefrom may be disclosed or used as provided in subsection 1. The direct evidence derived from the communications is inadmissible in a criminal proceeding, but any other evidence obtained as a result of knowledge obtained from the communications may be disclosed or used as provided in subsection 2 when authorized or approved by a justice of the supreme court or district judge who finds upon application made as soon as practicable that the contents of the communications were intercepted in accordance with the provisions of NRS 179.410 to 179.515, inclusive, or 18 U.S.C. §§ 2510 to 2520, inclusive.

(Added to NRS by 1973, 1743; A 1983, 117; 1989, 658)

Sec. 39. 179.490 Sealing of applications and orders; disclosure.

1. Applications made and orders granted under this statute shall be sealed by the judge. Custody of the applications and orders shall be placed with whomever the judge orders. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of a court of competent jurisdiction and shall not be destroyed except on order of the judge who issued or denied the order, and in any event shall be kept for 10 years.

2. Any violation of the provisions of this section may be punished as contempt of court.

(Added to NRS by 1973, 1747)

Sec. 40. 179.495 Notice to parties to intercepted communications.

1. Within a reasonable time but not later than 90 days after the termination of the period of an order or any extension thereof, the judge who issued the order shall cause to be served on the chief of the investigation division of the department of motor vehicles and public safety, persons named in the order and any other parties to intercepted communications, an inventory which must include notice of:

(a) The fact of the entry and a copy of the order.

(b) The fact that during the period wire or oral communications were or were not intercepted.

The inventory filed pursuant to this section is confidential and must not be released for inspection unless subpenaed by a court of competent jurisdiction.

2. The judge, upon receipt of a written request from any person who was a party to an intercepted communication or from the person's attorney, shall make available to the person or his counsel those portions of the intercepted communications which contain his conversation. On an ex parte showing of good cause to a district judge, the serving of the inventory required by this section may be postponed for such time as the judge may provide.

(Added to NRS by 1973, 1747; A 1975, 1520; 1983, 119; 1985, 1976)

Sec. 41. 179.500 Contents of intercepted communications inadmissible in evidence unless transcript provided to parties before trial. The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized and a transcript of any communications intercepted. Such 10-day period may be waived by the judge if he finds that it was not possible to furnish the party with such information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(Added to NRS by 1973, 1747)

Sec. 42. 179A.100 Records which may be disseminated without restriction; persons to whom records must be disseminated upon request; permission required for dissemination of information relating to sexual offenses.

1. The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

(a) Any which reflect records of conviction only; and

(b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

2. Without any restriction pursuant to this chapter, a record of criminal history or the absence of such a record may be:

(a) Disclosed among agencies which maintain a system for the mutual exchange of criminal records.

(b) Furnished by one agency to another to administer the system of criminal justice, including the furnishing of information by a police department to a district attorney.

(c) Reported to the central repository.

3. An agency of criminal justice shall disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee or volunteer which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the prospective employee or volunteer is currently within the system of criminal justice, including parole or probation.

4. The central repository [central repository for Nevada records of criminal history] shall disseminate to a prospective or current employer, upon request, information relating to sexual offenses concerning an employee, prospective employee, volunteer or prospective volunteer who gives his written consent to the release of that information.

5. Records of criminal history must be disseminated by an agency of criminal justice upon request, to the following persons or governmental entities:

(a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.

(b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial, administrative, licensing, disciplinary or other proceeding to which the information is relevant.

(c) The gaming control board.

(d) The private investigator's licensing board to investigate an applicant for a license.

(e) A public administrator to carry out his duties as prescribed in chapter 253 of NRS.

(f) A public guardian to investigate a ward or proposed ward or persons who may have knowledge of assets belonging to a ward or proposed ward.

(g) Any agency of criminal justice of the United States or of another state or the District of Columbia.

(h) Any public utility subject to the jurisdiction of the public service commission of Nevada when the information is necessary to conduct a security investigation of an employee or prospective employee, or to protect the public health, safety or welfare.

(i) Persons and agencies authorized by statute, ordinance, executive order, court rule, court decision or court order as construed by appropriate state or local officers or agencies.

(j) Any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice relating to the administration of criminal justice, if authorized by the contract, and if the contract also specifies that the information will be used only for stated purposes and that it will be otherwise confidential in accordance with state and federal law and regulation.

(k) Any reporter for the electronic or printed media in his professional capacity for communication to the public.

(l) Prospective employers if the person who is the subject of the information has given written consent to the release of that information by the agency which maintains it.

(m) For the express purpose of research, evaluative or statistical programs pursuant to an agreement with an agency of criminal justice.

6. Agencies of criminal justice in this state which receive information from sources outside the state concerning transactions involving criminal justice which occur outside Nevada shall treat the information as confidentially as is required by the provisions of this chapter.

(Added to NRS by 1979, 1852; A 1985, 913; 1987, 1765; 1989, 5, 560, 562, 991; 1993, 130)

Sec. 43. 179A.120 Disclosures to victims of crime.

1. Agencies of criminal justice may disclose to victims of a crime, members of their families or their guardians the identity of persons suspected of being responsible for the crime, including juveniles who have been certified to stand trial as adults, together with information, including dispositions, which may be of assistance to the victim in obtaining redress for his injury or loss in a civil action. This disclosure may be made regardless of whether charges have been filed, and even if a prosecuting attorney has declined to file charges or the charge has been dismissed.

2. Disclosure of investigative information pursuant to this section does not establish a duty to disclose any additional information concerning the same incident or make any disclosure of information obtained by an investigation, except as compelled by legal process.

(Added to NRS by 1979, 1853; A 1981, 2025)

CRIMES AGAINST PUBLIC JUSTICE

Sec. 44. 199.520 Disclosure of information to subject of investigation. Any officer or employee of a court or law enforcement agency who, with the intent to obstruct a criminal investigation, directly or indirectly:

1. Notifies any person who is the subject of the investigation about the existence of the investigation; or

2. Discloses to any such person any information obtained in the course of the investigation,

shall be punished by imprisonment in the state prison for not less than 1 year nor more than 5 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

(Added to NRS by 1991, 212)

CRIMES AGAINST THE PERSON

Sec. 45. 200.5095 Reports and records confidential; when disclosure permitted or required.

1. Reports made pursuant to NRS 200.5093 and 200.5094 [these provisions address the abuse, neglect and exploitation of older persons] are confidential.

2. Any person, law enforcement agency or public or private agency, institution or facility who willfully releases data or information concerning the reports and investigation of the abuse, neglect or exploitation of older persons, except:

(a) Pursuant to criminal prosecution under the provisions of NRS 200.5092 to 200.5099, inclusive; and

(b) To persons or agencies enumerated in subsection 3 of this section,

is guilty of a misdemeanor.

3. Data or information concerning the reports and investigations of the abuse, neglect or exploitation of an older person is available only to:

(a) A physician who has in his care an older person who he reasonably believes may have been abused, neglected or exploited;

(b) An agency responsible for or authorized to undertake the care, treatment and supervision of the older person;

(c) A district attorney or other law enforcement official who requires the information in connection with an investigation of the abuse, neglect or exploitation of the older person;

(d) A court which has determined, in camera, that public disclosure of such information is necessary for the determination of an issue before it;

(e) A person engaged in bona fide research, but the identity of the subjects of the report must remain confidential;

(f) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(g) Any comparable authorized person or agency in another jurisdiction;

(h) A legal guardian of the older person, if the identity of the person who was responsible for reporting the alleged abuse, neglect or exploitation to the public agency is protected, and the legal guardian is not the person suspected of the abuse, neglect or exploitation; or

(i) The person named in the report as allegedly being abused, neglected or exploited, if that person is not legally incompetent.

4. If the person who is reported to have abused, neglected or exploited an older person is the holder of a license or certificate issued pursuant to chapters 630 to 640, inclusive, or chapter 641 or 641A of NRS, information contained in the report must be submitted to the board which issued the license.

(Added to NRS by 1981, 1335; A 1983, 1654)

Sec. 46. 200.620 Interception and attempted interception of wire or radio communication prohibited; exceptions.

1. Except as otherwise provided in NRS 179.410 to 179.515, inclusive, 209.419 and 704.195, it is unlawful for any person to intercept or attempt to intercept any wire communication unless:

(a) The interception or attempted interception is made with the prior consent of one of the parties to the communication; and

(b) An emergency situation exists and it is impractical to obtain a court order as required by NRS 179.410 to 179.515, inclusive, before the interception, in which event the interception is subject to the requirements of subsection 3. If the application for ratification is denied, any use or disclosure of the information so intercepted is unlawful, and the person who made the interception shall notify the sender and the receiver of the communication that:

(1) The communication was intercepted; and

(2) Upon application to the court, ratification of the interception was denied.

2. This section does not apply to any person, or to the officers, employees or agents of any person, engaged in the business of providing service and facilities for wire communication where the interception or attempted interception is to construct, maintain, conduct or operate the service or facilities of that person.

3. Any person who has made an interception in an emergency situation as provided in paragraph (b) of subsection 1 shall, within 72 hours of the interception, make a written application to a justice of the supreme court or district judge for ratification of the interception. The interception must not be ratified unless the applicant shows that:

(a) An emergency situation existed and it was impractical to obtain a court order before the interception; and

(b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.

4. NRS 200.610 to 200.690, inclusive, do not prohibit the recording, and NRS 179.410 to 179.515, inclusive, do not prohibit the reception in evidence, of conversations on wire communications installed in the office of an official law enforcement or fire- fighting agency, or a public utility, if the equipment used for the recording is installed in a facility for wire communications or on a telephone with a number listed in a directory, on which emergency calls or requests by a person for response by the law enforcement or fire-fighting agency or public utility are likely to be received. In addition, those sections do not prohibit the recording or reception in evidence of conversations initiated by the law enforcement or fire-fighting agency or public utility from such a facility or telephone in connection with responding to the original call or request, if the agency or public utility informs the other party that the conversation is being recorded.

(Added to NRS by 1957, 334; A 1973, 1748; 1975, 747; 1983, 120, 681; 1989, 659)

CRIMES AGAINST PROPERTY

Sec. 47. 205.4765 Unlawful acts: Generally.

1. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Modifies;

(b) Damages;

(c) Destroys;

(d) Discloses;

(e) Uses;

(f) Transfers;

(g) Conceals;

(h) Takes;

(i) Retains possession of;

(j) Copies;

(k) Obtains or attempts to obtain access to, permits access to or causes to be accessed; or

(l) Enters,

data, a program or any supporting documents which exist inside or outside a computer, system or network is guilty of a misdemeanor.

2. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Modifies;

(b) Destroys;

(c) Uses;

(d) Takes;

(e) Damages;

(f) Transfers;

(g) Conceals;

(h) Copies;

(i) Retains possession of; or

(j) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

equipment or supplies that are used or intended to be used in a computer, system or network is guilty of a misdemeanor.

3. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Destroys;

(b) Damages;

(c) Takes;

(d) Alters;

(e) Transfers;

(f) Discloses;

(g) Conceals;

(h) Copies;

(i) Uses;

(j) Retains possession of; or

(k) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

a computer, system or network is guilty of a misdemeanor.

4. Except as otherwise provided in subsection 5, a person who knowingly, willingly and without authorization:

(a) Obtains and discloses;

(b) Publishes;

(c) Transfers; or

(d) Uses,

a device used to access a computer, network or data is guilty of a misdemeanor.

5. If the violation of any provision of this section:

(a) Was committed to devise or execute a scheme to defraud or illegally obtain property;

(b) Caused damage in excess of $500; or

(c) Caused an interruption or impairment of a public service, such as a governmental operation, system of public communication or transportation or supply of water, gas or electricity,

the person shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than $100,000.

(Added to NRS by 1983, 1203; A 1991, 50)

Sec. 48. 207.120 Statements and fingerprints confidential; dissemination of information.

1. The statements and fingerprints provided for in NRS 207.090, 207.100 and 207.110 must at all times be kept by the sheriff or chief of police in a file separate and apart from other files and records maintained and kept by the sheriff or chief of police, and must not be open to inspection by the public, or by any person other than a regular law enforcement officer.

2. Copies of those statements and fingerprints may be transmitted to:

(a) The sheriff of any county in this state;

(b) The head of any organized police department of any municipality in this state;

(c) The head of any department of the State of Nevada engaged in the enforcement of any criminal law of this state;

(d) The Nevada gaming commission and state gaming control board or any successor thereto;

(e) The head of any federal law enforcement agency;

(f) Any sheriff or chief of police of a municipality; or

(g) The head of any other law enforcement agency in any state or territory outside of this state, if a request is made in writing by such sheriff or other head of a law enforcement agency asking for the record of a certain person named therein, or for the record of a person whose fingerprints reasonably correspond with fingerprints submitted with the request, and stating that the record is deemed necessary for the use of that law enforcement officer or agency in or concerning the investigation of any crime, or any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for that purpose.

3. A sheriff or chief of police shall, upon the written request of a county clerk or registrar of voters, furnish him with a list containing the name and current address of the residence of each person required to register pursuant to NRS 207.090 and 207.100.

[5:123:1955]--(NRS A 1965, 1031; 1989, 2173)

DEPARTMENT OF PRISONS

Sec. 49. 209.419 Interception of offender's communications by telephone: Notice; exceptions.

1. Communications made by an offender on any telephone in an institution or facility to any person outside the institution or facility may be intercepted if:

(a) The interception is made by an authorized employee of the department; and

(b) Signs are posted near all telephones in the institution or facility indicating that communications may be intercepted.

2. The director [director of the Department of Prisons] shall provide notice or cause notice to be provided to both parties to a communication which is being intercepted pursuant to subsection 1, indicating that the communication is being intercepted. For the purposes of this section, a periodic sound which is heard by both parties during the communication shall be deemed notice to both parties that the communication is being intercepted.

3. The director shall adopt regulations providing for an alternate method of communication for those communications by offenders which are confidential.

4. A communication made by an offender is confidential if it is made to:

(a) A federal or state officer.

(b) A local governmental officer who is at some time responsible for the custody of the offender.

(c) An officer of any court.

(d) An attorney who has been admitted to practice law in any state or is employed by a recognized agency providing legal assistance.

(e) A reporter or editorial employee of any organization that reports general news including, but not limited to, any wire service or news service, newspaper, periodical, press association or radio or television station.

(f) The director.

(g) Any other employee of the department whom the director may, by regulation, designate.

5. Reliance in good faith on a request or order from the director or his authorized representative constitutes a complete defense to any action brought against any public utility intercepting or assisting in the interception of communications made by offenders pursuant to subsection 1.

(Added to NRS by 1983, 682; A 1985, 253)

PARDONS AND PAROLES; REMISSIONS OF FINES AND COMMUTATIONS OF PUNISHMENTS

Sec. 50. 213.1098 Information obtained by parole and probation officers and employees privileged; nondisclosure. All information obtained in the discharge of official duty by a parole and probation officer or employee of the board [state board of parole commissioners] shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, the judge, district attorney or others entitled to receive such information, unless otherwise ordered by the board or judge or unless necessary to perform the duties of the department.

(Added to NRS by 1959, 799; A 1975, 179)

AID TO CERTAIN VICTIMS OF CRIME

Sec. 51. 217.105 Confidentiality of information. Any information which a compensation officer [compensation officer of the hearings division of the Department of Administration] obtains in the investigation of a claim for compensation pursuant to NRS 217.090 or which is submitted pursuant to NRS 217.100 is confidential and must not be disclosed except:

1. Upon the request of the applicant or his attorney;
2. In the necessary administration of this chapter; or
3. Upon the lawful order of a court of competent jurisdiction,

unless the disclosure is otherwise prohibited by law.

(Added to NRS by 1989, 1509; A 1991, 765)

STATE LEGISLATURE

Sec. 52. 218.5391 Records and reports of district attorneys and public defenders to be prescribed by legislative commission; use.

1. The legislative commission shall prescribe by regulation:

(a) The kinds of records to be kept by each district attorney and public defender for the information of the legislature, and may classify such requirements by population of the county if appropriate.

(b) The reports to be made of the contents of such records, including the period to be covered and the date of submission of each report.

2. Each report prescribed pursuant to this section is for the use of the legislature, the legislative commission and the staff of the legislative counsel bureau only. Statistical summaries may be published, but information upon the qualifications or salary of any particular person shall not be disclosed outside the legislative department.

(Added to NRS by 1977, 331)

Sec. 53. 218.625 Officers and employees not to oppose or urge legislation; restrictions upon disclosure; public inspection of records of expenses of travel.

1. The director, other officers and employees of the legislative counsel bureau shall not:

(a) Oppose or urge legislation, except as the duties of the director, the legislative auditor, the legislative counsel, the research director and the fiscal analysts require them to make recommendations to the legislature.

(b) Except as otherwise provided in this section, NRS 218.2475, 218.2477 and 353.211, disclose to any person outside the legislative counsel bureau the contents or nature of any matter, unless the person entrusting the matter to the legislative counsel bureau so requests or consents.

2. Except as the legislative auditor and his staff are further restricted by this chapter, the nature or content of any work previously done by the personnel of the legislative counsel bureau may be disclosed to a legislator or public agency if or to the

extent that the disclosure does not reveal the identity of the person who requested it or include any material submitted by the requester which has not been published or publicly disclosed.

3. When a statute has been enacted or a resolution adopted, the legislative counsel shall upon request disclose to any person the state or other jurisdiction from whose law it appears to have been adopted.

4. The records of the travel expenses of legislators and officers and employees of the legislative counsel bureau are available for public inspection at such reasonable hours and under such other conditions as the legislative commission prescribes.

5. If a legislator asks whether a request for proposed legislation relating to a specific topic has been submitted to the legislative counsel for preparation, the legislative counsel shall disclose to that legislator whether such a request has been submitted.

6. Upon receipt of a request for the preparation of a measure to be submitted to the legislature which duplicates or closely resembles a request previously submitted for the same legislative session, the legislative counsel shall, to the extent practicable, notify the person submitting the duplicative request of that fact and, except as otherwise provided in this subsection, ask the person to withdraw the request. If the request is not withdrawn, the legislative counsel shall inform the previous requester of the fact that a duplicative request has been made. If the request is submitted by a legislator on his own behalf, and the previous request was submitted by a legislator who is a member of the other house of the legislature, the legislative counsel shall inform the second requester of the fact that the request is duplicative.

(Added to NRS by 1977, 340; A 1979, 1327; 1985, 1131; 1987, 1167; 1989, 267; 1991, 462, 1835, 2447)

Sec. 54. 218.823 Audits: Presentation and distribution of final report; restriction on disclosure.

1. The legislative auditor shall present a final written report of each audit to the legislative commission and furnish copies to all members of the legislature, other appropriate state officers and the head of the agency audited.

2. The legislative commission may by regulation provide for the:

(a) Presentation of the final written report of each audit to the audit subcommittee before the report is presented to the legislative commission.

(b) Distribution of copies of the final written report of an audit to each member of the legislative commission or audit subcommittee, or both, before the report is presented to the legislative commission.

(c) Distribution of copies of the final written report or a summary of the final report to all members of the legislature, other appropriate state officers and the head of the agency audited after the final report is presented to the audit subcommittee.

3. Except as otherwise provided by this chapter, the legislative auditor shall not disclose the content of any audit before it is presented to the:

(a) Audit subcommittee, if the final written report is presented to the audit subcommittee pursuant to regulations adopted by the legislative commission.

(b) Legislative commission, if the final written report is not presented to the audit subcommittee pursuant to regulations adopted by the legislative commission.

(Added to NRS by 1977, 756; A 1989, 264; 1991, 393)

Sec. 55. 218.870 Legislative auditor to keep file of reports and releases; confidentiality of working papers from audit.

1. The legislative auditor shall keep or cause to be kept a complete file of copies of all reports of audits, examinations, investigations and all other reports or releases issued by him.

2. All working papers from an audit are confidential and may be destroyed by the legislative auditor 5 years after the report is issued, except that the legislative auditor:

(a) Shall release such working papers when subpenaed by a court; or

(b) May make such working papers available for inspection by an authorized representative of any other governmental entity for a matter officially before him or by any other person authorized by the legislative commission.

[16:205:1949; 1943 NCL § 7345.16]—(NRS A 1963, 1021; 1969, 497; 1973, 1664; 1977, 6; 1979, 291; 1985, 854)

Sec. 56. 218.893 Audits to ensure compliance with federal regulations: Selection of firm to perform audit; performance of audit; submission, presentation and distribution of report.

1. The audit subcommittee shall confer with the legislative auditor to establish standards of performance to be required of a firm chosen to perform an audit. The audit subcommittee shall conduct negotiations with each of the firms recommended for consideration by the legislative auditor and shall select the firm or firms which, in the judgment of the audit subcommittee, are best qualified to meet the standards of performance established. During the negotiations and in making its selection, the audit subcommittee shall consider:

(a) The competency of the firms being considered;

(b) The estimated cost of the services required to conduct the audit; and

(c) The scope and complexity of the services required.

2. Each contract for an audit must be signed by the legislative auditor and an authorized representative of the firm selected to perform the audit. The legislative auditor shall periodically inspect the performance of the firm performing the audit to ensure that the terms of the contract are being complied with.

3. Except as otherwise provided in NRS 218.891 and 218.892 and in this section, the officers and employees of a firm performing an audit shall keep information disclosed by an audit in strict confidence and shall not disclose the contents of an audit before it is presented to the audit subcommittee. The officers and employees of the firm have the same rights of access to books, accounts, records, files, correspondence or other documents that the legislative auditor has.

4. At the conclusion of the audit, the firm or firms which have performed the audit shall submit a written report of the audit to the legislative auditor. The legislative auditor shall follow the procedures set forth in NRS 218.821, concerning preliminary audit reports and shall attend, or have a member of his staff attend, the discussion held pursuant to that section.

5. The legislative commission may by regulation provide for the distribution of copies of the written report submitted to the legislative auditor pursuant to subsection 4, to each member of the audit subcommittee before the report is presented to the audit subcommittee pursuant to subsection 6.

6. The legislative auditor shall present the final audit report to the audit subcommittee and thereafter distribute the report or a summary of the report to members of the legislature, other appropriate state officers and the head of the agency audited.

(Added to NRS by 1981, 1177; A 1983, 162; 1991, 394)

ECONOMIC DEVELOPMENT AND TOURISM

Sec. 57. 231.069 Confidentiality of records and documents submitted by client.

1. If so requested by a client, the commission on economic development shall keep confidential any record or other document in its possession concerning the initial contact with and research and planning for that client. If such a request is made, the executive director shall attach to the file containing the record or document a certificate signed by him stating that a request for confidentiality was made by the client and the date of the request.

2. Records and documents that are confidential pursuant to subsection 1 remain confidential until the client:

(a) Initiates any process regarding the location of his business in Nevada which is within the jurisdiction of a state agency other than the commission; or

(b) Decides to locate his business in Nevada.

(Added to NRS by 1987, 1671; A 1989, 554)

COMMISSION ON EQUAL RIGHTS

Sec. 58. 233.190 Confidentiality of information. All information gathered by the commission in the course of its investigation of an alleged unlawful discriminatory practice in housing, employment or public accommodations is confidential until the commission has determined to conduct a hearing on the matter or applies for a temporary restraining order or an injunction. If the commission's attempts at mediating or conciliating the cause of the grievance succeed, the information shall remain confidential. If the commission proceeds with a hearing or applies for injunctive relief, confidentiality concerning any information except negotiations for a settlement is no longer required.

(Added to NRS by 1977, 1606)

PUBLIC RECORDS

Sec. 59. 239.013 Confidentiality of records of library which identify user with property used. Any records of a public library or other library which contain the identity of a user and the books, documents, films, recordings or other property of the library which he used are confidential and not public books or records within the meaning of NRS 239.010. Such records may be disclosed only in response to an order issued by a court upon a finding that the disclosure of such records is necessary to protect the public safety or to prosecute a crime.

(Added to NRS by 1981, 182)

MEETINGS OF STATE AND LOCAL AGENCIES

Sec. 60. 241.030 Exceptions to requirement for open and public meetings.

1. Nothing contained in this chapter prevents a public body from holding a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

2. A public body may close a meeting upon a motion which specifies the nature of the business to be considered.

3. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

4. The exception provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

(Added to NRS by 1960, 25; A 1977, 1100; 1983, 331)

Sec. 61. 241.035 Public meetings: Minutes; aural and visual reproduction.

1. Each public body shall keep written minutes of each of its meetings, including:

(a) The date, time and place of the meeting.

(b) Those members of the body who were present and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) The substance of remarks made by any member of the general public who addresses the body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

(e) Any other information which any member of the body requests to be included or reflected in the minutes.

2. Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken. The minutes must be retained by the public body for at least 5 years. Minutes of meetings closed pursuant to NRS 241.030 become public records when the body determines that the matters discussed no longer require confidentiality and the person whose character, conduct, competence or health was discussed has consented to their disclosure. That person is entitled to a copy of the minutes upon request whether or not they become public records.

3. All or part of any meeting of a public body may be recorded on audiotape or any other means of sound or video reproduction by a member of the general public if it is a public meeting so long as this in no way interferes with the conduct of the meeting.

4. Each public body may record on audiotape or any other means of sound reproduction each of its meetings, whether public or closed. If a meeting is so recorded:

(a) The record must be retained by the public body for at least 1 year after the adjournment of the meeting at which it was recorded.

(b) The record of a public meeting is a public record and must be made available for inspection by the public during the time the record is retained.

Any record made pursuant to this subsection must be made available to the attorney general upon request.

(Added to NRS by 1977, 1099; A 1989, 571)

Sec. 62. 244.335 Powers of commissioners and county license boards; application for certain licenses: license tax as lien; confidential information.

1. Except as otherwise provided in subsection 2, the board of county commissioners may:

(a) Regulate all character of lawful trades, callings, industries, occupations, professions and business conducted in its county outside of the limits of incorporated cities and towns.

(b) Except as otherwise provided in NRS 244.3359, fix, impose and collect a license tax for revenue or for regulation, or for both revenue and regulation, on such trades, callings, industries, occupations, professions and business.

2. The county license boards have the exclusive power in their respective counties to regulate entertainers employed by an entertainment by referral service and the business of conducting a dancing hall, escort service, entertainment by referral service or gambling game or device permitted by law, outside of an incorporated city. The county license boards may fix, impose and collect license taxes for revenue or for regulation, or for both revenue and regulation, on such employment and businesses.

3. No license to engage in any type of business may be granted unless the applicant for the license signs an affidavit affirming that the business has complied with the provisions of chapter 364A of NRS. The county license board shall provide upon request an application for a business license pursuant to chapter 364A of NRS.

4. No license to engage in business as a seller of tangible personal property may be granted unless the applicant for the license presents written evidence that:

(a) The department of taxation has issued or will issue a permit for this activity, and this evidence clearly identifies the business by name; or

(b) Another regulatory agency of the state has issued or will issue a license required for this activity.

5. Any license tax levied for the purposes of NRS 244.3358 or 244A.597 to 244A.655, inclusive, constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. The lien must be enforced in the following manner:

(a) By recording in the office of the county recorder, within 90 days following the date on which the tax became delinquent, a notice of the tax lien containing the following:

(1) The amount of tax due and the appropriate year;

(2) The name of the record owner of the property;

(3) A description of the property sufficient for identification; and

(4) A verification by the oath of any member of the board of county commissioners or the county fair and recreation board; and

(b) By an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien, commenced within 2 years after the date of recording of the notice of the tax lien, and accompanied by appropriate notice to other lienholders.

6. The board of county commissioners may delegate the authority to enforce liens from taxes levied for the purposes of NRS 244A.597 to 244A.655, inclusive, to the county fair and recreation board. Except as otherwise provided in NRS 244.3357, all information concerning license taxes levied by an ordinance authorized by this section or other information concerning the business affairs or operation of any licensee obtained as a result of the payment of such license taxes or as the result of any audit or examination of the books by any authorized employee of a county fair and recreation board of the county for any license tax levied for the purpose of NRS 244A.597 to 244A.655, inclusive, is confidential and must not be disclosed by any member, officer or employee of the county fair and recreation board or the county imposing the license tax unless the disclosure is authorized by the affirmative action of a majority of the members of the appropriate county fair and recreation

board. Continuing disclosure may be so authorized under an agreement with the department of taxation for the exchange of information concerning taxpayers.

[Part 8:80:1865; A 1871, 47; 1931, 52; 1933, 203; 1953, 681]--(NRS A 1959, 220; 1961, 364; 1963, 794; 1971, 497; 1973, 324; 1977, 818; 1979, 727; 1983, 759; 1985, 386; 1987, 2306; 1989, 242, 906, 1970; 1991, 27, 165, 2461)

POWERS AND DUTIES COMMON TO CITIES AND TOWNS INCORPORATED UNDER GENERAL OR SPECIAL LAWS

Sec. 63. 268.095 Powers of governing body; application for certain licenses; uses of proceeds of tax; license tax as lien; confidential information.

1. The city council or other governing body of each incorporated city in the State of Nevada, whether organized under general law or special charter, may:

(a) Except as otherwise provided in NRS 268.0968, fix, impose and collect for revenues or for regulation, or both, a license tax on all character of lawful trades, callings, industries, occupations, professions and businesses conducted within its corporate limits.

(b) Assign the proceeds of any one or more such license taxes to the county within which the city is situated for the purpose or purposes of making the proceeds available to the county:

(1) As a pledge as additional security for the payment of any general obligation bonds issued pursuant to NRS 244A.597 to 244A.655, inclusive;

(2) For redeeming any general obligation bonds issued pursuant to NRS 244A.597 to 244A.655, inclusive;

(3) For defraying the costs of collecting or otherwise administering any such license tax so assigned, of the county fair and recreation board and of officers, agents and employees hired thereby, and of incidentals incurred thereby;

(4) For operating and maintaining recreational facilities under the jurisdiction of the county fair and recreation board;

(5) For improving, extending and bettering recreational facilities authorized by NRS 244A.597 to 244A.655, inclusive; and

(6) For constructing, purchasing or otherwise acquiring such recreational facilities.

(c) Pledge the proceeds of any tax imposed on the revenues from the rental of transient lodging pursuant to this section for the payment of any general obligations issued by the city for a purpose authorized by the City Bond Law, NRS 268.672 to 268.740, inclusive.

(d) Use the proceeds of any tax imposed pursuant to this section on the revenues from the rental of transient lodging:

(1) To pay the principal, interest or any other indebtedness on any general or special obligations issued by the city pursuant to the City Bond Law, NRS 268.672 to 268.740, inclusive;

(2) For the expense of operating or maintaining, or both, any facilities of the city; and

(3) For any other purpose for which other money of the city may be used.

2. The proceeds of any tax imposed pursuant to this section that are pledged for the repayment of general obligations may be treated as "pledged revenues" for the purposes of NRS 350.020.

3. No license to engage in any type of business may be granted unless the applicant for the license signs an affidavit affirming that the business has complied with the provisions of chapter 364A of NRS. The city licensing agency shall provide upon request an application for a business license pursuant to chapter 364A of NRS.

4. No license to engage in business as a seller of tangible personal property may be granted unless the applicant for the license presents written evidence that:

(a) The department of taxation has issued or will issue a permit for this activity, and this evidence clearly identifies the business by name; or

(b) Another regulatory agency of the state has issued or will issue a license required for this activity.

5. Any license tax levied under the provisions of this section constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. The lien must be enforced in the following manner:

(a) By recording in the office of the county recorder, within 90 days following the date on which the tax became delinquent, a notice of the tax lien containing the following:

(1) The amount of tax due and the appropriate year;

(2) The name of the record owner of the property;

(3) A description of the property sufficient for identification; and

(4) A verification by the oath of any member of the board of county commissioners or the county fair and recreation board; and

(b) By an action for foreclosure against such property in the same manner as an action for foreclosure of any other lien, commenced within 2 years after the date of recording of the notice of the tax lien, and accompanied by appropriate notice to other lienholders.

6. The city council or other governing body of each incorporated city may delegate the power and authority to enforce such liens to the county fair and recreation board. Except as otherwise provided in NRS 268.0966, all information concerning license taxes levied by an ordinance authorized by this section or other information concerning the business affairs or operation of any licensee obtained as a result of the payment of those license taxes or as the result of any audit or examination of the books of the city by any authorized employee of a county fair and recreation board for any license tax levied for the purpose of NRS 244A.597 to 244A.655, inclusive, is **confidential** and must not be disclosed by any member, official or employee of the county fair and recreation board or the city imposing the license tax unless the disclosure is authorized by the affirmative action of a majority of the members of the appropriate county fair and recreation board. Continuing disclosure may be so authorized under an agreement with the department of taxation for the exchange of information concerning taxpayers.

7. The powers conferred by this section are in addition and supplemental to, and not in substitution for, and the limitations imposed by this section do not affect the powers conferred by, any other law. No part of this section repeals or affects any other law or any part thereof, it being intended that this section provide a separate method of accomplishing its objectives, and not an exclusive one.

(Added to NRS by 1957, 643; A 1960, 179; 1963, 794; 1971, 497; 1973, 325; 1983, 761; 1987, 1712; 1989, 908; 1991, 31, 2327, 2462)

Sec. 64. 268.490 Records; confidentiality. The municipality shall cause to be kept proper records of all license taxes which become due or which are collected, or both, including, without limiting the generality of the foregoing, records of delinquent taxes, interest thereon and penalties therefrom, which records shall be deemed **confidential** and shall not be revealed in whole or in part to anyone except in the necessary administration of NRS 268.460 to 268.510, inclusive, or as otherwise provided by law.

(Added to NRS by 1960, 115)

GENERAL PROVISIONS
(Public Officers and Employees)

Sec. 65. 281.511 Commission to hold public hearings, render advisory opinions and publish abstracts; confidentiality; notice and hearing.

1. The commission [Commission on Ethics] shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances, upon request, from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. He may also request the commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the commission is:

(a) Binding upon the requester as to his future conduct; and

(b) Final and subject to judicial review pursuant to NRS 233B.130; except that any proceeding regarding this review must be held in closed court without admittance of any person other than those necessary to the proceeding, unless this right to **confidential** proceedings is waived by the requester.

2. The commission may render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances:

(a) Upon request from a specialized or local ethics committee;

(b) Upon request from any person, if the requester submits all related evidence deemed necessary by the commission for it to make a preliminary determination of whether it desires to take jurisdiction over the matter; or

(c) Upon the commission's own motion regarding the propriety of conduct by a public officer or employee, if the commission first determines in an adopted motion that there is just and sufficient cause to render an opinion concerning the conduct of that public officer or employee,

on the condition that any public officer or employee about whom an opinion is requested or authorized must be notified immediately by certified mail that an opinion has been requested or authorized and that he has a right to appear before the commission and present evidence and argument. The commission shall not issue an opinion nor determine that just and sufficient cause exists to render an opinion without extending him an opportunity to appear before the commission and present evidence and argument.

3. The commission shall render the opinion requested pursuant to this section as expeditiously as possible in light of the circumstances of the public officer or employee about whom the opinion is requested, so as to minimize any adverse consequences to him that may result from any delay in issuing the opinion.

4. Each opinion rendered by the commission and any motion relating to the opinion is confidential unless:

(a) The public officer or employee acts in contravention of the opinion, in which case the commission may disclose the contents of the opinion and any motion related thereto;

(b) It is an opinion requested pursuant to subsection 1 and the requester discloses the content of the opinion;

(c) It is an opinion requested or issued pursuant to paragraph (b) or (c) of subsection 2 and the person about whom the opinion was requested discloses the content of the opinion, the request or any motion or action related thereto;

(d) It is an opinion requested pursuant to subsection 2, the commission determines that there is insufficient basis to render an opinion and the person about whom the opinion was requested has asked the commission to make public the reasons for not rendering the opinion;

(e) It is a motion or preliminary determination relating to an opinion requested pursuant to paragraph (b) of subsection 2 that the commission determines should be made public; or

(f) It is an opinion relating to the propriety of past conduct that the commission determines should be made public.

5. If an opinion is requested and a motion that there is just and sufficient cause to render an opinion has been adopted by the commission, the commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the commission's hearing on the matter;

(b) Allow him to be represented by counsel; and

(c) Allow him to hear the evidence presented to the commission and to respond and present evidence on his own behalf.

The commission's hearing may be held no sooner than 2 weeks after the notice is given.

6. If any person requesting an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the commission; and

(b) Declare by oath or affirmation that he will testify truthfully,

the commission may decline to render an opinion.

7. For the purposes of NRS 41.032, the members of the commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking any action related to the rendering of an opinion pursuant to this section.

8. Except as otherwise provided in this subsection, the commission shall publish hypothetical opinions which are abstracted from the opinions rendered under subsection 1 or 2, for the future guidance of all persons concerned with ethical standards in government. The commission need not publish a hypothetical opinion regarding issues covered by an opinion which was made public in accordance with subsection 4.

9. A meeting held by the commission to receive information concerning the propriety of the conduct of any public officer or employee is not subject to any provision of chapter 241 of NRS.

(Added to NRS by 1977, 1107; A 1985, 2124; 1987, 2095; 1991, 1598)

Sec. 66. 281.541 Specialized or local ethics committee: Establishment; functions; confidentiality.

1. Any department, board, commission or other agency of the state or the governing body of a county or an incorporated city may establish a specialized or local ethics committee to complement the functions of the commission. Such a committee may:

(a) Establish a code of ethical standards suitable for the particular ethical problems encountered in its sphere of activity. The standards may not be less restrictive than the statutory ethical standards.

(b) Render an opinion upon the request of any public officer or employee of its own organization or level seeking an interpretation of its ethical standards on questions directly related to the propriety of his own future official conduct or refer the request to the commission. Any public officer or employee under such a committee shall direct his inquiry to that committee instead of the commission.

2. Such a committee shall not attempt to interpret or render an opinion regarding the statutory ethical standards.

3. Each request submitted to a local ethics committee, each opinion rendered by a committee and any motion relating to the opinion is confidential unless:

(a) The public officer or employee acts in contravention of the opinion; or

(b) The requester discloses the content of the opinion.

(Added to NRS by 1977, 1107; A 1985, 2126; 1991, 105)

STATE PERSONNEL SYSTEM

Sec. 67. 284.4068 Screening tests: Results confidential; admissibility of results; security; disclosure. The results of a screening test taken pursuant to NRS 284.4061 to 284.407, inclusive, are confidential and:

1. Are not admissible in a criminal proceeding against the person tested;

2. Must be securely maintained by the appointing authority or his designated representative separately from other files concerning personnel; and

3. Must not be disclosed to any person, except:

(a) Upon the written consent of the person tested;

(b) As required by medical personnel for the diagnosis or treatment of the person tested, if he is physically unable to give his consent to the disclosure;

(c) As required pursuant to a properly issued subpena;

(d) When relevant in a formal dispute between the appointing authority and the person tested; or

(e) As required for the administration of a plan of benefits for employees.

(Added to NRS by 1991, 1351)

PUBLIC EMPLOYEES' RETIREMENT

Sec. 68. 286.110 Public employees' retirement system: Establishment; review of system; use of state services; public inspection of records; liability of public employers.

1. An actuarially funded system of retirement providing benefits for the retirement, disability or death of employees of public employers is hereby established and shall be known as the public employees' retirement system. The system is a public agency supported by administrative fees transferred from the retirement funds. The executive and legislative departments of the state government shall regularly review the system.

2. The system is entitled to use any services provided to state agencies, and shall use the services of the purchasing division of the department of general services, but is not required to use any other service. The purpose of this subsection is to provide to the board [public employees' retirement board] the necessary autonomy for an efficient and economic administration of the system and its program.

3. The official correspondence and records, other than the files of individual members or retired employees, and the minutes and books of the system are public records and are available for public inspection.

4. The respective participating public employers are not liable for any obligation of the system.

[3:181:1947; 1943 NCL § 5230.03]--(NRS A 1975, 1030; 1977, 1576)

Sec. 69. 286.686 Authorized investments: Real property; mortgages and leases of real property; confidentiality of records.

1. The board [Public Employees Retirement Board] may invest the money in its funds in real property, real property mortgages and leases of real property if the board first obtains appraisals and other studies by professionally qualified persons establishing the value of the property and the probable return on such a proposed investment.

2. The board may invest in real property mortgages or deeds of trust up to 80 percent of the appraised value of the real property if the mortgage or deed of trust is secured by a first lien on the property.

3. The board may enter into contracts as it deems necessary to execute and manage investments made pursuant to this chapter. Reimbursements to employees for their expenses incurred in evaluations of real estate investments must be paid from commitment fees or service charges paid to the system by borrowers.

4. The board shall keep applications under this section confidential until it finally approves the investment. Documents related to the investment then become public records, except for:

(a) Wills and trust agreements;

(b) Financial statements and copies or excerpts of income tax returns;

(c) Legal and financial evaluations; and

(d) Such other documents as the board determines contain information whose disclosure would invade the legitimate personal or financial privacy of the applicant.

(Added to NRS by 1975, 1062; A 1979, 759; 1981, 458; 1983, 490)

PROGRAMS FOR PUBLIC EMPLOYEES

Sec. 70. 287.0438 Records of the plan [plan of self-insurance] are public records; exception. Except for the files of individual members and former members, the correspondence, files, minutes and books of the plan [plan of self-insurance] are public records.

(Added to NRS by 1987, 326)

ELECTIONS

Sec. 71. 293.315 Limitation on time to apply for absent ballot; inspection of applications; issuance of absent ballot.

1. A registered voter referred to in NRS 293.313 may, at any time before 5 p.m. on the Tuesday preceding any election, make an application to that clerk [the clerk in the voter's precinct or district] for an absent voter's ballot. The application is not available for public inspection except by:

(a) The voter named in the application;

(b) A candidate whose name appears on the ballot for that election; or

(c) The candidate's official designee who possesses a letter signed under penalty of perjury which states that the person is the representative of the candidate.

When the voter, candidate or candidate's official designee, as the case may be, has identified himself to the satisfaction of the clerk, he is entitled to inspect the application.

2. When the voter has identified himself to the satisfaction of the clerk, he is entitled to receive the appropriate ballot or ballots, but only for his own use.

(Added to NRS by 1960, 256; A 1961, 289; 1967, 849; 1987, 342; 1989, 2166)

MECHANICAL VOTING SYSTEMS

Sec. 72. 293B.135 Filing before election; inspection.

1. A copy of each election computer program certified by the accuracy certification board for an election in the state must be filed with the secretary of state at least 1 week before the election. Copies of any subsequent alterations in the program must be filed in the same manner before the election.

2. The copies of the programs filed pursuant to subsection 1 are not public records and are not available for inspection by the public.

3. A copy of a program may be inspected:

(a) By the judge, body or board before whom an election is being contested;

(b) Jointly by the parties to the contest if ordered by the judge, body or board; or

(c) By any other person who is authorized by a court of competent jurisdiction.

(Added to NRS by 1975, 1523; A 1989, 2171)

LANDS UNDER CAREY ACT

Sec. 73. 324.080 Report of state registrar of lands under Carey Act; pending proceedings not made public.

1. Before September 1 of each even-numbered year, for the biennium ending June 30 of such year, the state registrar of lands under the Carey Act shall prepare a detailed report of the transactions concerning Carey Act lands and file one copy of the report with the secretary of state.

2. All pending proceedings before the division [division of state lands of the State Department of Conservation and Natural Resources] and the state engineer, except applications for permits for water rights, must not be made public or be open to public inspection until the application for segregation is filed in the Bureau of Land Management.

[29:76:1911; RL § 3092; NCL § 5503]--(NRS A 1969, 1456; 1975, 108; 1977, 1193; 1979, 228)

PURCHASING: STATE

Sec. 74. 333.335 Proposals: Factors to be considered before making an award; relative weight of factors.

1. After receiving proposals and before making an award, the chief [chief of purchasing division] shall consider:

(a) The best interests of the State of Nevada;

(b) The experience and financial stability of the person submitting a proposal;

(c) Whether the proposal conforms with the terms of the request for proposals;

(d) The price of the proposal; and

(e) Any other factor disclosed in the request for proposals.

2. The chief shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the purchasing division.

(Added to NRS by 1991, 619)

Sec. 75. 333.350 Contracts for separate items or portions or groups of items or for portions or groups of portions of a project; rejection of all bids or proposals; necessary open market purchases; withdrawal of bid or proposal; records of bids and proposals.

1. A contract may be awarded for separate items or portions or groups of items, or for separate portions or groups of portions of a project, as the best interest of the state requires.

2. If, in the judgment of the chief, [chief of the purchasing division] no satisfactory:

(a) Bid has been received, he may reject all bids and shall promptly advertise for new bids as provided in this chapter. Until a satisfactory contract is awarded, he may make as many open market purchases of the commodities involved as are urgently needed to meet the requirements.

(b) Proposal has been received, he may reject all proposals and may advertise for new proposals as provided in this chapter.

3. The chief may allow a person to withdraw his bid or proposal without penalty if:

(a) The chief believes that an obvious error has been made by the person which would cause him financial hardship; and

(b) The contract has not yet been awarded.

4. Each bid or proposal and the name of the person making the bid or proposal must be entered on a record. The record, with the name of the successful bidder or proposer indicated thereon, must, after the award of the contract, be open to public inspection.

[24:333:1951]--(NRS A 1963, 1057; 1985, 44; 1991, 622)

REGISTRATION OF PUBLIC SECURITIES

Sec. 76. 348.420 Records of transferees and pledgees not subject to inspection or copying as public record; maintenance of records of issuer.

1. Records of the transferees and pledgees of public securities and their addresses are not subject to inspection or copying under any law of this state relating to the inspection or copying of public records.

2. Registration records of the issuer may be maintained at such locations within or without the state as the issuer determines.

(Added to NRS by 1983, 609)

STATE OBLIGATIONS

Sec. 77. 349.775 Confidentiality of information concerning exporter. Any information submitted to or compiled by, the director [director of the Department of Commerce] regarding the identity, background, finances, marketing plans, trade secrets or any other commercially sensitive affairs of the exporter is confidential, unless the exporter consents to its disclosure.

(Added to NRS by 1985, 2016)

STATE FINANCIAL ADMINISTRATION

Sec. 78. 353.205 Parts of state budget. The state budget for each fiscal year must be set up in three parts:

1. Part 1 must consist of a budget message by the governor which outlines the financial policy of the executive department of the state government for the next 2 fiscal years, describing in connection therewith the important features of the financial plan. It must also embrace a general budget summary setting forth the aggregate figures of the budget in such a manner as to show the balanced relations between the total proposed expenditures and the total anticipated revenues, together with the other means of financing the budget for the next 2 fiscal years, contrasted with the corresponding figures for the last completed fiscal year and fiscal year in progress. The general budget summary must be supported by explanatory schedules or statements, classifying the expenditures contained therein by organizational units, objects and funds, and the income by organizational units, sources and funds.

2. Part 2 must embrace the detailed budget estimates both of expenditures and revenues as provided in NRS 353.150 to 353.246, inclusive. The information must be presented in a manner which sets forth separately the cost of continuing each program at the same level of service as the current year and the cost, by budget issue, of any recommendations to enhance or reduce that level of service. Revenues must be summarized by type and expenditures must be summarized by category of expense. Part 2 must include a mission statement and measurement indicators for each program. It must also include statements of the bonded indebtedness of the state government, showing the requirements for redemption of debt, the debt authorized and unissued, and the condition of the sinking funds, and any statements relative to the financial plan which the governor may deem desirable, or which may be required by the legislature.

3. Part 3 must include the general appropriation bill authorizing, by departments, institutions and agencies, and by funds, all expenditures of the executive department of the state government for the next 2 fiscal years, and may include complete drafts of such other bills as may be required to provide the income necessary to finance the budget and to give legal sanction to the financial plan if adopted by the legislature.

As soon as each part is prepared, a copy of the part must be transmitted to the fiscal analysis division of the legislative counsel bureau for confidential examination and retention.

[10:299:1949; 1943 NCL § 6995.10]--(NRS A 1959, 210; 1961, 389; 1963, 491; 1973, 1857; 1977, 347; 1979, 609; 1987, 1323, 1325; 1991, 2443)

PROPERTY TAX

Sec. 79. 361.877 Disclosure of personal or confidential information prohibited. No person may publish, disclose or use any personal or confidential information contained in a claim except for purposes connected with the administration of the Senior Citizens' Property Tax Assistance Act.

(Added to NRS by 1973, 1333; A 1975, 491)

BUSINESS TAX

Sec. 80. 364A.100 Confidentiality of records and files of department.

1. Except as otherwise provided in subsection 2, the records and files of the department [Department of Taxation] concerning the administration of this chapter are confidential and privileged. The department, and any employee engaged in the administration of this chapter, or charged with the custody of any such records or files, shall not disclose any information obtained from the department's records or files or from any examination, investigation or hearing authorized by the provisions of this chapter. Neither the department nor any employee of the department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the department concerning the administration of this chapter are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the department and production of records, files and information on behalf of the department or a taxpayer in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any return or other document filed by the taxpayer pursuant to this chapter.

(c) Publication of statistics so classified as to prevent the identification of a particular business or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the governor or his agent in the exercise of the governor's general supervisory powers, or to any person authorized to audit the accounts of the department in pursuance of an audit, or to the attorney general or other legal representative of the state in connection with an action or proceeding pursuant to this chapter or to any agency of this or any other state charged with the administration or enforcement of laws relating to workers' compensation, unemployment compensation, public assistance, taxation, labor or gaming.

(Added to NRS by 1991, 2455)

TAX ON SPECIAL FUEL

Sec. 81. 366.160 Public and confidential records.

1. All records of mileage operated, origin and destination points within this state, equipment operated in this state, gallons or cubic feet consumed, and tax paid must at all reasonable times be open to the public.

2. All supporting schedules, invoices and other pertinent papers relative to the business affairs and operations of any special fuel dealer or special fuel user, and any information obtained by an investigation of the records and equipment of any special fuel dealer or special fuel user, shall be deemed confidential and must not be revealed in whole or in part to anyone except in the necessary administration of this chapter or as otherwise provided by law.

[25:364:1953]--(NRS A 1987, 1388)

Sec. 82. 366.180 Unlawful disclosure of information; penalty.

1. It shall be unlawful for the department [Department of Motor Vehicles and Public Safety] or any person having an administrative duty under this chapter to divulge or to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any report, or to permit any report or copy thereof to be seen or examined by any person except as provided by NRS 366.160 and 366.170.

2. Any violation of the provisions of this section shall be a gross misdemeanor.

[27:364:1953]--(NRS A 1957, 601; 1967, 562)

SALES AND USE TAXES

Sec. 83. 372.750 Disclosure of information unlawful; exceptions.

1. Except as otherwise provided in this section, it is a misdemeanor for any member of the Nevada tax commission or officer or employee of the department [Department of Taxation] to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular of them, set forth or disclosed in any return, or to permit any return or copy of a return, or any book containing any abstract or particulars of it to be seen or examined by any person not connected with the department.

2. The commission [Nevada tax commission] may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

3. The governor may, by general or special order, authorize examination of the records maintained by the department under this chapter by other state officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.

4. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

5. Relevant information may be disclosed as evidence in an appeal by the taxpayer from a determination of tax due.

6. At any time after a determination, decision or order of the executive director [executive director of the Department of Taxation] or other officer of the department imposing upon a person a penalty pursuant to NRS 372.420 or 372.450 for fraud or intent to evade the tax imposed by this chapter on the sale, storage, use or other consumption of any vehicle, vessel or aircraft becomes final or is affirmed by the tax commission, any member of the tax commission or officer or employee of the department may publicly disclose the identity of that person and the amount of tax assessed and penalties imposed against him.

(Added to NRS by 1979, 430; A 1983, 316, 763; 1989, 1160)

TAX ON CONTROLLED SUBSTANCES

Sec. 84. 372A.080 Information and records concerning dealer confidential; limitations on use and admissibility of information; penalty for disclosure.

1. All information which is submitted to the department [Department of Taxation] by or on behalf of a dealer in controlled substances pursuant to this chapter and all records of the department which contain the name, address or any other identifying information concerning a dealer are confidential.

2. No criminal prosecution may be initiated on the basis of:

(a) Information which was submitted to the department; or

(b) Evidence derived from information submitted to the department, pursuant to this chapter or any regulation adopted pursuant thereto.

3. No information described in paragraph (a) or (b) of subsection 2 is admissible in a criminal prosecution, unless the prosecution shows that the information:

(a) Was independently discovered; or

(b) Inevitably would have been discovered based on independent information.

4. This section does not prohibit the department from publishing statistics that do not disclose the identity of a dealer or the contents of a particular return or report submitted to the department by a dealer.

5. Any person who releases or reveals confidential information in violation of this section is guilty of a gross misdemeanor.

(Added to NRS by 1987, 1738)

LOCAL SCHOOL SUPPORT TAX

Sec. 85. 374.755 Disclosure of information unlawful; exceptions.

1. Except as otherwise provided in this section, it is a misdemeanor for any member of the Nevada tax commission or official or employee of the department [Department of Taxation] to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the department.

2. The commission [Nevada tax commission] may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

3. The governor may, however, by general or special order, authorize examination of the records maintained by the department under this chapter by other state officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the governor may not be made public except to the extent and in the manner that the order may authorize that it be made public.

4. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

5. Relevant information may be disclosed as evidence in an appeal by the taxpayer from a determination of tax due.

6. At any time after a determination, decision or order of the executive director [executive director of the Department of Taxation] or other officer of the department imposing upon a person a penalty pursuant to NRS 374.425 or 374.455 for fraud or intent to evade the tax imposed by this chapter on the sale, storage, use or other consumption of any vehicle, vessel or aircraft becomes final or is affirmed by the tax commission, any member of the tax commission or officer or employee of the department may publicly disclose the identity of that person and the amount of tax assessed and penalties imposed against him.

(Added to NRS by 1967, 919; A 1975, 1738; 1983, 317, 764; 1989, 1161)

TAX ON ESTATES

Sec. 86. 375A.835 Information and records confidential; disclosure prohibited. All information and records acquired by the department [Department of Taxation] or any of its employees pursuant to this chapter are confidential in nature, and except insofar as may be necessary for the enforcement of this chapter or as may be permitted by this chapter, must not be disclosed.

(Added to NRS by 1987, 2110)

GENERATION-SKIPPING TRANSFER TAX

Sec. 87. 375B.450 Confidentiality of information and records; exceptions. All information and records acquired from the Internal Revenue Service of the United States Department of the Treasury by the Nevada tax commission, the department [Department of Taxation] or any of their employees pursuant to this chapter are confidential in nature and, except insofar as may be necessary for the enforcement of this chapter, as an employee of the department has a need to know the information or as may be permitted by this chapter, must not be disclosed.

(Added to NRS by 1989, 1500)

STATE LIBRARY AND ARCHIVES

Sec. 88. 378.290 Records of governor's office: Transfer to division before governor leaves office; availability for public inspection.

1. The records of the governor's office, which include correspondence sent or received by the governor or employees of his office in the performance of governmental duties, are the property of the State of Nevada and must be transferred to the division before the governor leaves office.

2. The division shall make the records of a former governor available for inspection, except:

(a) If that correspondence identifies or can be readily associated with the identity of any person other than a public officer or employee acting in his official capacity, the name and facts which identify that person must be deleted before the correspondence is disclosed, unless the person so named or identified is deceased or gives his prior written permission for the disclosure.

(b) Any agreement between a former governor and the division made before the passage of this act which provides for a period of confidentiality, is unaffected by the provisions of this section.

(c) Records of the governor's office which are transferred to the division during the governor's term of office remain in the custody of the governor and are not subject to the provisions of subsection 2 until after he leaves office.

(Added to NRS by 1983, 1302)

STATE ADMINISTRATIVE ORGANIZATION

Sec. 89. 385.355 Tests of general educational development: Disclosure of questions and answers prohibited; exceptions. It is unlawful to disclose the questions contained in tests of general educational development and the approved answers used for grading the tests except:

1. To the extent that disclosure is required in the department's [Department of Education] administration of the tests.

2. That a disclosure may be made to a state officer who is a member of the executive or legislative branch to the extent that it is related to the performance of that officer's duties.

(Added to NRS by 1983, 768)

COURSES OF STUDY

Sec. 90. 389.015 Achievement and proficiency examinations: Requirements; effect of failure to demonstrate adequate achievement or to pass; disclosure of questions and answers prohibited; exceptions.

1. The board of trustees of each school district shall administer examinations in all public schools within its district to determine the achievement and proficiency of pupils in:

(a) Reading;

(b) Writing; and

(c) Mathematics.

The examinations must be administered before the completion of grades 3, 6, 9 and 12.

2. Different standards of proficiency may be adopted for pupils with diagnosed learning disabilities.

3. If a pupil fails to demonstrate adequate achievement on the examination administered before the completion of grade 3, 6 or 9, he may be promoted to the next higher grade, but the results of his examination must be evaluated to determine what remedial study is appropriate. If a pupil fails to pass the high school proficiency examination administered before the completion of grade 11, he must not be graduated until he is able, through remedial study, to pass the high school proficiency examination, but he may be given a certificate of attendance, in place of a diploma, if he has reached the age of 17 years.

4. The state board [state board of education] shall prescribe standard examinations of achievement and proficiency to be administered pursuant to subsection 1. The questions contained in the examinations and the approved answers used for grading them are confidential, and disclosure is unlawful except:

(a) To the extent necessary for administering and evaluating the examinations.

(b) That a disclosure may be made to a state officer who is a member of the executive or legislative branch to the extent that it is related to the performance of that officer's duties.

(Added to NRS by 1977, 474; A 1983, 769; 1987, 616)

PERSONNEL (Education)

Sec. 91. 391.035 Confidentiality of application.

1. An application to the superintendent of public instruction for a license as a teacher or to perform other educational functions and all documents in the department's [Department of Education] file relating to the application, including:

(a) The applicant's health records;

(b) His fingerprints and any report from the Federal Bureau of Investigation;

(c) Transcripts of his record at colleges or other educational institutions;

(d) His scores on the examinations administered pursuant to the regulations adopted by the commission;

(e) Any correspondence concerning the application; and

(f) Any other personal information,

are confidential.

2. It is unlawful to disclose or release the information in an application or any related document except pursuant to the applicant's written authorization.

3. The department shall, upon request, make available the applicant's file for his inspection during regular business hours.

(Added to NRS by 1983, 769; A 1987, 998)

PUPILS

Sec. 92. 392.468 Provision of information to certain employees regarding unlawful conduct of pupil.

1. The board of trustees of a county school district, or its designee, shall inform each employee of the district, including teachers, other licensed employees, drivers of school buses, instructional aides and office managers, who may have consistent contact with a pupil if that pupil has, within the preceding 3 years, unlawfully caused or attempted to cause serious bodily injury to any person. The district shall provide this information based upon any written records that the district maintains or which it receives from a law enforcement agency. The district need not initiate a request for such information from any source.

2. A school district and the members of its board of trustees are not liable for failure strictly to comply with this section if a good faith effort to comply is made.

3. Any information received by an employee pursuant to this section is confidential and must not be further disseminated by the employee.

(Added to NRS by 1991, 981)

PRIVATE EDUCATIONAL INSTITUTIONS
AND ESTABLISHMENTS

Sec. 93. 394.447 Accreditation as evidence of compliance with minimum standards. Accreditation may be accepted as evidence of compliance with the minimum standards established by the commission, [commission on postsecondary education] or the administrator [administrator of the commission of the postsecondary education] may require further evidence and make further investigation as in his judgment or the judgment of the commission are necessary. Accreditation may be accepted as evidence of compliance only as to the portion or program of an institution accredited by the agency if the institution as a whole is not accredited. Upon request by the administrator, the institution shall submit copies of all written materials in its possession relating to its accreditation. The administrator shall keep the materials confidential.

(Added to NRS by 1985, 989; A 1989, 1460)

Sec. 94. 394.460 License: Application; issuance; provisional license; term; change in ownership or location; addition to facilities; renewal.

1. Each person required to be licensed as a postsecondary educational institution by the commission or each postsecondary educational institution requesting to add a new program or degree or to renew a license must apply to the administrator, upon forms provided by him. The application must be accompanied by the required fees. The institution's curriculum and financial statement are confidential unless, in the opinion of the commission, they militate against the issuance of a license.

2. After review of the application, any other information required by the administrator and the report of the panel of evaluators, and an investigation of the applicant if necessary, the commission shall grant or deny a license or grant a provisional license for a term specified by the commission. Before the expiration of a provisional license, the administrator shall inspect the institution, or the commission may require the appointment of a panel of evaluators to inspect the institution, and recommend whether to revoke or continue the provisional license or to grant an unqualified license. The commission may accept or reject the recommendation.

3. The license must state at least the following information:

(a) The date of issuance, effective date and term of the license.

(b) The correct name, address and owner of the institution.

(c) The approved degrees or occupational subjects.

(d) Any limitation considered necessary by the commission.

4. The term for which a license is given must not exceed 2 years. The license must be posted in a conspicuous place.

5. The license must be issued to the owner or governing body of the institution and is nontransferable. If a change in ownership of the institution occurs, the owner to whom the license was issued shall inform the administrator, and the new owner or governing body must, within 10 days after the change in ownership, apply for an approval of the change of ownership. If it fails to do so, the license terminates.

6. Within 10 days after a change of location or an addition of buildings or other facilities, the institution must file a notice of the change with the administrator.

7. At least 60 days before the expiration of a license, the institution must complete and file with the administrator an application for renewal of its license.

(Added to NRS by 1975, 1511; A 1977, 126; 1979, 1631; 1985, 996; 1989, 1462)

Sec. 95. 394.465 Certification or investigation of certain employees and agents of postsecondary educational institution.

1. Except as otherwise provided in subsection 4, before a postsecondary educational institution employs or contracts with a person to occupy:

(a) An instructional position or to act as an agent for the institution, the applicant must arrange with the sheriff of the county in which the institution is located for an investigation of the applicant's background, limited to a photograph, history of residences, employment, education and criminal history, and the submission of his fingerprints to the central repository for Nevada records of criminal history and the Federal Bureau of Investigation.

(b) An administrative or financial position, including a position as school director, personnel officer, counselor, admission representative, solicitor, canvasser, surveyor, financial aid officer or any similar position, the applicant must arrange with the sheriff of the county in which the institution is located for an investigation of the applicant's background, including but not limited to, the items set forth in paragraph (a) of this subsection.

2. The sheriff shall retain one copy of the application and results of the investigation and forward one copy to the administrator. The administrator shall keep the results of the investigation confidential, except that if the investigation discloses that the applicant has been convicted of any felony, the administrator shall notify the applicant and the hiring institution of the conviction and the nature of the offense.

3. The applicant shall pay the cost of the investigation.

4. An applicant is not required to arrange for an investigation of his background if he is:

(a) Licensed by the superintendent of public instruction;

(b) An employee of the United States Department of Defense; or

(c) A member of the faculty of an accredited postsecondary educational institution in another state who is domiciled in a state other than Nevada and is present in Nevada for a temporary period to teach at a branch of that accredited institution.

(Added to NRS by 1985, 987; A 1987, 409, 1013, 1441; 1989, 1463)

UNIVERSITY OF NEVADA SYSTEM

Sec. 96. 396.100 Meetings; records open to public inspection.

1. The board of regents may hold at least four regular meetings in each year, and may hold special meetings at the call of the chairman of the board.

2. At all times, the records of all proceedings of the board are open to public inspection except records of a closed meeting which have not become public.

[Part 4:37:1887; C § 1393; RL § 4642; NCL § 7729] + [5:37:1887; C § 1394; RL § 4643; NCL § 7730] + [1:244:1947; 1943 NCL § 7737.01]--(NRS A 1960, 27; 1977, 1102; 1981, 898; 1983, 1442)

Sec. 97. 396.525 Genetics program: Confidentiality of records and information.

1. Except as otherwise provided in subsection 2, the records of the genetics program concerning the clients and families of clients are confidential.

2. The genetics program may share information in its possession with the University of Nevada School of Medicine and the health division of the department of human resources, if the confidentiality of the information is otherwise maintained in accordance with the terms and conditions required by law.

(Added to NRS by 1991, 2066)

HIGHWAYS AND ROADS

Sec. 98. 408.215 Duties of director: Records; index of deeds; regulations.

1. The director [of the department of transportation] has charge of all the records of the department, keeping records of all proceedings pertaining to the department and keeping on file information, plans, specifications, estimates, statistics and records prepared by the department, except those financial statements described in NRS 408.333, which must not become matters of public record.

2. The director may photograph, microphotograph or film or dispose of the records of the department referred to in subsection 1 as provided in NRS 239.051, 239.080 and 239.085.

3. The director shall maintain an index or record of deeds or other references of title or interests in and to all lands or interests in land owned or acquired by the department.

4. The director shall adopt such regulations as may be necessary to carry out and enforce the provisions of this chapter.

(Added to NRS by 1957, 669; A 1959, 490; 1963, 576; 1979, 1768; 1981, 602)

EMERGENCIES CONCERNING WATER OR ENERGY

Sec. 99. 416.070 Confidentiality of information furnished at request of governor; protective order; penalty for disclosure.

1. Any information furnished under NRS 416.040 [this provision gives the governor the authority to request information concerning the use, supply, source, allocation or distribution of water or energy] and designated as confidential by the person providing the information shall be maintained as confidential by the governor and any other person who obtains information which he knows to be confidential under this section.

2. The governor shall not make known in any manner any particulars of the information to any person other than those he designates in writing as having a need to know such information.

3. No subpena or other judicial order may be issued compelling the governor or any other person to divulge or make known the confidential information, except when the information is relevant to proceedings under subsection 6.

4. Nothing in this section prohibits use of confidential information to prepare statistics or other general data for publication in such a manner that the identity of particular persons or business establishments is protected.

5. Any person or business establishment who is served with a subpena to give oral testimony or to produce any book, paper, correspondence, memorandum, account, agreements or other document or record pursuant to this chapter may apply to any district court for a protective order as provided by Rule 26 of the Nevada Rules of Civil Procedure.

6. In addition to any other penalties provided by law, a person who willfully discloses confidential information in violation of this section is subject to removal from office or immediate dismissal from public employment.

(Added to NRS by 1977, 550)

STATE WELFARE ADMINISTRATION

Sec. 100. 422.290 Custody, use, preservation and confidentiality of records, files and communications concerning applicants for and recipients of public assistance and services for children.

1. For the purpose of restricting the use or disclosure of any information concerning applicants for and recipients of public assistance or child welfare services to purposes directly connected to the administration of this chapter, and to provide safeguards therefor, under the applicable provisions of the Social Security Act, the welfare division [welfare division of the Department of Human Resources] shall establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, files and communications filed with the welfare division.

2. Wherever, under provisions of law or regulations of the welfare division, names and addresses of, or information concerning, applicants for and recipients of assistance are furnished to or held by any other agency or department of government, such agency or department of government is bound by the rules and regulations of the department [Department of Human Resources] prohibiting the publication of lists and records thereof or their use for purposes not directly connected with the administration of this chapter.

3. Except for purposes directly connected with the administration of this chapter, no person may publish, disclose or use, or permit or cause to be published, disclosed or used, any confidential information pertaining to a recipient of assistance under the provisions of this chapter.

[12:327:1949; 1943 NCL § 5146.12]--(NRS A 1959, 518; 1963, 906; 1991, 1052)

Sec. 101. 422.2993 Information obtained in investigation of provider of services under plan for assistance to medically indigent confidential; exception.

1. Except as otherwise provided in NRS 288.410 and 422.2345 and subsection 2 of this section, any information obtained by the welfare division in an investigation of a provider of services under the plan for assistance to the medically indigent is confidential.

2. The information presented as evidence at a hearing:

(a) To enforce the provisions of NRS 422.450 to 422.580, inclusive; or

(b) To review an action by the welfare division against a provider of services under the plan for assistance to the medically indigent,is not confidential, except for the identity of any recipient of the assistance.

(Added to NRS by 1987, 1670; A 1991, 1053)

BENEFITS AND PRIVILEGES FOR HANDICAPPED PERSONS

Sec. 102. 426.573 Disclosure of information concerning applicant for or recipient of services to blind. Information with respect to any individual applying for or receiving services to the blind shall not be disclosed by the bureau [bureau of services to the blind in the rehabilitation division of the Department of Human Resources] or any of its employees to any person, association or body unless such disclosure is related directly to carrying out the provisions of NRS 426.520 to 426.610, inclusive, or upon written permission of the applicant or recipient.

(Added to NRS by 1967, 805; A 1973, 1390)

SERVICES TO AGING PERSONS

Sec. 103. 427A.1236 Confidentiality of records. All records in the possession of the specialist for the rights of elderly persons relating to his counseling or representation of an elderly person are confidential and must not be released to any other person except upon order of a court of competent jurisdiction.

(Added to NRS by 1989, 1485)

PUBLIC SERVICES FOR CHILDREN

Sec. 104. 432.120 Release of information in registries; expunging information and sealing records; regulations.

1. Information contained in the central or regional registries or obtained for these registries must not be released unless the right of the applicant to the information is confirmed and the released information discloses the nature of the disposition of the case or its current status.

2. Unless an investigation of a report, conducted pursuant to NRS 432.100 to 432.130, inclusive, and 432B.010 to 432B.400, inclusive, reveals some credible evidence of alleged abuse or neglect of a child, all information identifying the subject of a report must be expunged from the central and regional registries at the conclusion of the investigation or within 60 days after the report is filed, whichever occurs first. In all other cases, the record of the substantiated reports contained in the central or regional registries must be sealed no later than 10 years after the child who is the subject of the report reaches the age of 18.

3. The welfare division shall adopt regulations to carry out the provisions of this section.

(Added to NRS by 1975, 790; A 1977, 738; 1985, 1386)

PROTECTION OF CHILDREN FROM ABUSE AND NEGLECT

Sec. 105. 432B.280 Confidentiality of reports and records of reports and investigations.

1. Reports made pursuant to this chapter, as well as all records concerning these reports and investigations thereof, are confidential.

2. Any person, law enforcement agency or public agency, institution or facility who willfully releases data or information concerning such reports and investigations, except:

(a) Pursuant to a criminal prosecution relating to abuse or neglect of a child; and

(b) To persons or agencies enumerated in NRS 432B.290,

is guilty of a misdemeanor.

(Added to NRS by 1985, 1373)

Sec. 106. 432B.290 Release of data or information concerning reports and investigations; penalty.

1. Data or information concerning reports and investigations thereof made pursuant to this chapter may be made available only to:

(a) A physician who has before him a child who he reasonably believes may have been abused or neglected;

(b) A person authorized to place a child in protective custody if he has before him a child who he reasonably believes may have been abused or neglected and he requires the information to determine whether to place the child in protective custody;

(c) An agency, including an agency in another jurisdiction, responsible for or authorized to undertake the care, treatment or supervision of:

(1) The child; or

(2) The person responsible for the child's welfare;

(d) A district attorney or other law enforcement officer who requires the information in connection with an investigation or prosecution of abuse or neglect of a child;

(e) Any court, for in camera inspection only, unless the court determines that public disclosure of the information is necessary for the determination of an issue before it;

(f) A person engaged in bona fide research or an audit, but any information identifying the subjects of a report must not be made available to him;

(g) The child's guardian ad litem;

(h) A grand jury upon its determination that access to these records is necessary in the conduct of its official business;

(i) An agency which provides protective services or which is authorized to receive, investigate and evaluate reports of abuse or neglect of a child;

(j) A team organized for the protection of a child pursuant to NRS 432B.350;

(k) A parent or legal guardian of the child, if the identity of the person responsible for reporting the alleged abuse or neglect of the child to a public agency is kept confidential;

(l) The person named in the report as allegedly being abused or neglected, if he is not a minor or otherwise legally incompetent;

(m) An agency which is authorized by law to license foster homes or facilities for children or to investigate persons applying for approval to adopt a child, if the agency has before it an application for that license or is investigating an applicant to adopt a child; or

(n) Upon written consent of the parent, any officer of this state or a city or county thereof or legislator authorized, by the agency or department having jurisdiction or by the legislature, acting within its jurisdiction, to investigate the activities or programs of an agency which provides protective services if:

(1) The identity of the person making the report is kept confidential; and

(2) The officer, legislator or a member of his family is not the person alleged to have committed the abuse or neglect.

2. Any person, except for the subject of a report or a district attorney or other law enforcement officer initiating legal proceedings, who is given access, pursuant to subsection 1, to information identifying the subjects of a report who makes this information public is guilty of a misdemeanor.

3. The welfare division shall adopt regulations to carry out the provisions of this section.

(Added to NRS by 1985, 1374)

MENTALLY ILL PERSONS

Sec. 107. 433A.360 Clinical records: Contents; confidentiality.

1. A clinical record for each client must be diligently maintained by any division [mental hygiene and mental retardation division of the Department of Human Resources] facility or private institution or facility offering mental health services. The record must include information pertaining to the client's admission, legal status, treatment and individualized plan for habilitation. The clinical record is not a public record and no part of it may be released, except:

(a) The record must be released to physicians, attorneys and social agencies as specifically authorized in writing by the client, his parent, guardian or attorney.

(b) The record must be released to persons authorized by the order of a court of competent jurisdiction.

(c) The record or any part thereof may be disclosed to a qualified member of the staff of a division facility, an employee of the division or a member of the staff of an agency in Nevada which has been established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §§ 6041 et seq.) or the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. §§ 10801 et seq.) when the administrator [administrator of the mental hygiene and mental retardation division] deems it necessary for the proper care of the client.

(d) Information from the clinical records may be used for statistical and evaluative purposes if the information is abstracted in such a way as to protect the identity of individual clients.

(e) To the extent necessary for a client to make a claim, or for a claim to be made on behalf of a client for aid, insurance or medical assistance to which he may be entitled, information from the records may be released with the written authorization of the client or his guardian.

(f) The record must be released without charge to any member of the staff of an agency in Nevada which has been established pursuant to 42 U.S.C. §§ 6041 et seq. or 42 U.S.C. §§ 10801 et seq. if:

(1) The client is a client of that office and he or his legal representative or guardian authorizes the release of the record; or

(2) A complaint regarding a client was received by the office or there is probable cause to believe that the client has been abused or neglected and the client:

(I) Is unable to authorize the release of the record because of his mental or physical condition; and

(h) Does not have a guardian or other legal representative or is a ward of the state.

(g) The record must be released as provided in NRS 433.332 and in chapter 629 of NRS.

2. As used in this section, "client" includes any person who seeks, on his own or others' initiative, and can benefit from care, treatment and training in a private institution or facility offering mental health services.

(Added to NRS by 1975, 1611; A 1987, 746, 1197; 1989, 2056; 1991, 2351)

433A.703 Right to petition for sealing of records. Any person who is admitted to a public or private hospital or mental health facility in this state either voluntarily or as the result of a noncriminal proceeding, and who has been released as recovered or with his illness in substantial remission, may file a verified petition for the sealing of all court and clinical records relating to his admission and treatment.

(Added to NRS by 1987, 745)

ADMINISTRATION OF PUBLIC HEALTH

Sec. 108. 439.270 Physician to report to health division name, age and address of person diagnosed as epileptic.

1. The state board of health shall define epilepsy for the purposes of the reports hereinafter referred to in this section.

2. All physicians shall report immediately to the health division, [health division of the Department of Human Resources] in writing, the name, age and address of every person diagnosed as a case of epilepsy.

3. The health division shall report, in writing, to the department of motor vehicles and public safety the name, age and address of every person reported to it as a case of epilepsy.

4. The reports are for the information of the department of motor vehicles and public safety and must be kept confidential and used solely to determine the eligibility of any person to operate a vehicle on the streets and highways of this state.

5. A violation of this section is a misdemeanor.

[1:269:1953] + [2:269:1953] + [3:269:1953] + [4:269:1953] + [5:269:1953]--(NRS A 1957, 630; 1963, 941; 1985, 1990)

PLANNING FOR THE PROVISION OF HEALTH CARE

Sec. 109. 439A.106 Department to prepare listing of hospitals and charges for services; disclosure of details of contracts; report to legislature on costs of health care.

1. The department [Department of Human Resources] shall prepare quarterly and release for publication or other dissemination a listing of every hospital in the state and its charges for representative services. The listing must include information regarding each hospital's average and total contractual allowances to categories of payers who pay on the basis of alternative rates rather than billed charges.

2. The department shall not disclose or report the details of contracts entered into by a hospital, or disclose or report information pursuant to this section in a manner that would allow identification of an individual payer or other party to a contract with the hospital, except that the department may disclose to other state agencies the details of contracts between the hospital and a related entity. A state agency shall not disclose or report information disclosed to the agency by the department pursuant to this subsection in a manner that would allow identification of an individual payer or other party to a contract with the hospital.

3. The department shall report quarterly to the legislative committee on health care regarding the effects of legislation on the costs of health care and on the manner of its provision.

4. As used in this section, "related entity" means an affiliated person or subsidiary as those terms are defined in NRS 439B.430.

(Added to NRS by 1987, 873; A 1991, 2111, 2331)

Sec. 110. 439B.420 Prohibited acts of hospitals and related entities: exceptions; submission of contracts to director; civil penalty.

1. A hospital or related entity shall not establish a rental agreement with a physician or entity that employs physicians that requires any portion of his medical practice to be referred to the hospital or related entity.

2. No rent required of a physician or entity which employs physicians by a hospital or related entity may be less than 75 percent of the rent for comparable office space leased to another physician or other lessee in the building, or in a comparable building owned by the hospital or entity.

3. A hospital or related entity shall not pay any portion of the rent of a physician or entity which employs physicians within facilities not owned or operated by the hospital or related entity, unless the resulting rent is no lower than the highest rent for which the hospital or related entity rents comparable office space to other physicians.

4. No health facility may offer any provider of medical care any financial inducement, excluding rental agreements subject to the provisions of subsection 2 or 3, whether in the form of immediate, delayed, direct or indirect payment to induce the referral of a patient or group of patients to the health facility. This subsection does not prohibit bona fide gifts under $100, or reasonable promotional food or entertainment.

5. The provisions of subsections 1 to 4, inclusive, do not apply to hospitals in a county whose population is less than 35,000.

6. A hospital, if acting as a billing agent for a medical practitioner performing services in the hospital, must not add any charges to the practitioner's bill for services other than a charge related to the cost of processing the billing.

7. No hospital or related entity may offer any financial inducement to an officer, employee or agent of an insurer, a person acting as an insurer or self- insurer or a related entity. A person shall not accept such offers. This subsection does not prohibit bona fide gifts of under $100 in value, or reasonable promotional food or entertainment.

8. A hospital or related entity shall not sell goods or services to a physician unless the costs for such goods and services are at least equal to the cost for which the hospital or related entity pays for the goods and services.

9. A practitioner or health facility shall not refer a patient to a health facility or service in which the referring party has a financial interest unless the practitioner or health facility first discloses the interest.

10. The director [director of the Department of Human Resources] may, at reasonable intervals, require a hospital or related entity or other party to an agreement to submit copies of operative contracts subject to the provisions of this section after notification by registered mail. The contracts must be submitted within 30 days after receipt of the notice. Contracts submitted pursuant to this subsection are confidential, except in cases in which an action is brought pursuant to subsection 11.

11. A person who willfully violates any provision of this section is liable to the State of Nevada for:

(a) A civil penalty in an amount of not more than $5,000 per occurrence, or 100 percent of the value of the illegal transaction, whichever is greater.

(b) Any reasonable expenses incurred by the state in enforcing this section.

Any money recovered pursuant to this subsection as a civil penalty must be deposited in a separate account in the state general fund and used for projects intended to benefit the residents of this state with regard to health care. Money in the account may only be withdrawn by act of the legislature.

12. As used in this section, "related entity" means an affiliated person or subsidiary as those terms are defined in NRS 439B.430.

(Added to NRS by 1987, 870; A 1989, 1925)

VITAL STATISTICS

Sec. 111. 440.170 Records open to inspection; use of data restricted.

1. All certificates in the custody of the state registrar are open to inspection subject to the provisions of this chapter. It shall be unlawful for any employee of the state to disclose data contained in vital statistics, except as authorized by this chapter or by the board [state board of health].

2. Information in vital statistics indicating that a birth occurred out of wedlock shall not be disclosed except upon order of a court of competent jurisdiction.

3. The board may permit the use of data contained in vital statistics records for research purposes, but without identifying the persons to whom the records relate.

[Part 45:199:1911; added 1941, 381; 1931 NCL § 5268.14]--(NRS A 1967, 1107)

COMMUNICABLE DISEASES

Sec. 112. 441A.220 Confidentiality of information; permissible disclosure. All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease, or by any person who has a communicable disease, or as determined by investigation of the health authority, [district health officer, or if none, the state health officer] is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpena, search warrant or discovery proceeding, except as follows:

1. For statistical purposes, provided that the identity of the person is not discernible from the information disclosed.

2. In a prosecution for a violation of this chapter.

3. In a proceeding for an injunction brought pursuant to this chapter.

4. In reporting the actual or suspected abuse or neglect of a child or elderly person.

5. To any person who has a medical need to know the information for his own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the board [state board of health].

6. If the person who is the subject of the information consents in writing to the disclosure.

7. Pursuant to subsection 2 of NRS 441A.320.

8. If the disclosure is made to the welfare division of the department of human resources and the person about whom the disclosure is made has been diagnosed as having acquired immunodeficiency syndrome or an illness related to the human immunodeficiency virus and is a recipient of or an applicant for assistance to the medically indigent.

9. To a fireman, police officer or person providing emergency medical services if the board has determined that the information relates to a communicable disease significantly related to that occupation. The information must be disclosed in the manner prescribed by the board.

10. If the disclosure is authorized or required by specific statute.

(Added to NRS by 1989, 299; A 1989, 1476)

Sec. 113. 441A.230 Disclosure of personal information prohibited without consent. Except as otherwise provided in this chapter, a person shall not make public the name of, or other personal identifying information about, a person infected with a communicable disease who has been investigated by the health authority pursuant to this chapter, without the consent of the person.

(Added to NRS by 1989, 300)

MATERNAL AND CHILD HEALTH: ABORTION

Sec. 114. 442.255 Notice to custodial parent or guardian; request for authorization for abortion; rules of civil procedure inapplicable.

1. Unless in the judgment of the attending physician an abortion is immediately necessary to preserve the patient's life or health or an abortion is authorized pursuant to subsection 2 of NRS 442.2555, a physician shall not knowingly perform or induce an abortion upon an unmarried and unemancipated woman who is under the age of 18 years unless a custodial parent or guardian of the woman is personally notified before the abortion. If the custodial parent or guardian cannot be so notified after a reasonable effort, the physician shall delay performing the abortion until he has notified the parent or guardian by certified mail at his last known address.

2. An unmarried or unemancipated woman who is under the age of 18 years may request a district court to issue an order authorizing an abortion. If so requested, the court shall interview the woman at the earliest practicable time, which

must be not more than 2 judicial days after the request is made. If the court determines, from any information provided by the woman and any other evidence that the court may require, that:

(a) She is mature enough to make an intelligent and informed decision concerning the abortion;

(b) She is financially independent or is emancipated; or

(c) The notice required by subsection 1 would be detrimental to her best interests,

the court shall issue an order within 1 judicial day after the interview authorizing a physician to perform the abortion in accordance with the provisions of NRS 442.240 to 442.270, inclusive.

3. If the court does not find sufficient grounds to authorize a physician to perform the abortion, it shall enter an order to that effect within 1 judicial day after the interview. If the court does not enter an order either authorizing or denying the performance of the abortion within 1 judicial day after the interview, authorization shall be deemed to have been granted.

4. The court shall take the necessary steps to ensure that the interview and any other proceedings held pursuant to this subsection or NRS 442.2555 are confidential. The rules of civil procedure do not apply to any action taken pursuant to this subsection.

(Added to NRS by 1981, 1163; A 1985, 2309)

Sec. 115. 442.2555 Procedure if district court denies request for authorization for abortion: Petition; hearing on merits; appeal.

1. If the order is denied pursuant to NRS 442.255, the court shall, upon request by the minor if it appears that she is unable to employ counsel, appoint an attorney to represent her in the preparation of a petition, a hearing on the merits of the petition, and on an appeal, if necessary. The compensation and expenses of the attorney are a charge against the county as provided in the following schedule:

(a) For consultation, research and other time reasonably spent on the matter, except court appearances, $20 per hour.

(b) For court appearances, $30 per hour.

2. The petition must set forth the initials of the minor, the age of the minor, the estimated number of weeks elapsed from the probable time of conception, and whether maturity, emancipation, notification detrimental to the minor's best interests or a combination thereof are relied upon in avoidance of the notification required by NRS 442.255. The petition must be initialed by the minor.

3. A hearing on the merits of the petition, on the record, must be held as soon as possible and within 5 judicial days after the filing of the petition. At the hearing the court shall hear evidence relating to:

(a) The minor's emotional development, maturity, intellect and understanding;

(b) The minor's degree of financial independence and degree of emancipation from parental authority;

(c) The minor's best interests relative to parental involvement in the decision whether to undergo an abortion; and

(d) Any other evidence that the court may find useful in determining whether the minor is entitled to avoid parental notification.

4. In the decree, the court shall, for good cause:

(a) Grant the petition, and give judicial authorization to permit a physician to perform an abortion without the notification required in NRS 442.255; or

(b) Deny the petition, setting forth the grounds on which the petition is denied.

5. An appeal from an order issued under subsection 4 may be taken to the supreme court, which shall suspend the Nevada Rules of Appellate Procedure pursuant to N.R.A.P. 2 to provide for an expedited appeal. The notice of intent to appeal must be given within 1 judicial day after the issuance of the order. The record on appeal must be perfected within 5 judicial days after the filing of the notice of appeal and transmitted to the supreme court. The court, shall, by court order or rule, provide for a confidential and expedited appellate review of cases appealed under this section.

(Added to NRS by 1985, 2306)

WATER CONTROLS; AIR POLLUTION

Sec. 116. 445.311 Public access to information; disclosure of confidential information.

1. Any records, reports or information obtained under NRS 445.131 to 445.354, inclusive, must be available to the public for inspection and copying unless the director [director of the State Department of Conservation and Natural Resources]

considers the record, report or information or part thereof as confidential on a satisfactory showing that the information contained therein, other than information describing a discharge into the waters of the state or injection of contaminants through a well, is entitled to protection as a trade secret of the informant.

2. Any record, report or information treated as confidential may be disclosed or transmitted to other officers, employees or authorized representatives of this state or the United States who:

(a) Carry out the provisions of NRS 445.131 to 445.354, inclusive; or

(b) Consider the information relevant in any proceeding under NRS 445.131 to 445.354, inclusive, and the information is admissible under the rules of evidence.

(Added to NRS by 1973, 1716; A 1985, 769)

Sec. 117. 445.576 Confidential information: Definition; limitations on use; penalty for unlawful disclosure or use.

1. As used in this section, "confidential information" means information or records which:

(a) Relate to quantities or dollar amounts of production or sales;

(b) Relate to processes or production unique to the owner or operator; or

(c) If disclosed, would tend to affect adversely the competitive position of the owner or operator.

2. The emission of an air contaminant which has an ambient air quality standard or emission standard or has been designated as a hazardous air pollutant by the United States Environmental Protection Agency cannot be certified as being confidential.

3. Any information, except information on emission data, received by the commission [state environmental commission], the director or any local control authority which is certified to the recipient as confidential by the owner or operator disclosing the information shall, unless the owner expressly agrees to its publication or availability to the public, be used only:

(a) In the administration or formulation of air pollution controls;

(b) In compiling or publishing analyses or summaries relating to the condition of the outdoor atmosphere which do not identify any owner or operator or reveal any confidential information; or

(c) In complying with federal statutes, rules and regulations.

4. This section does not prohibit the use of confidential information in prosecution for the violation of any air pollution control statute, ordinance or regulation.

5. A person who discloses or knowingly uses confidential information in violation of this section is guilty of a misdemeanor, and shall be liable in tort for any damages which may result from such disclosure or use.

(Added to NRS by 1971, 1201; A 1973, 1821; 1975, 1405)

MEDICAL AND OTHER RELATED FACILITIES

Sec. 118. 449.245 Release of child from hospital; copies of written authorization and other information to be furnished to welfare division; penalties.

1. No hospital licensed under the provisions of NRS 449.001 to 449.240, inclusive, may release from the hospital or otherwise surrender physical custody of any child under 6 months of age, whose living parent or guardian is known to the hospital, to any person other than a parent, guardian or relative by blood or marriage of that child, without a written authorization signed by a living parent, who must be the mother if unwed, or guardian specifying the particular person or agency to whom the child may be released and the permanent address of that person or agency.

2. Upon the release or other surrender of physical custody of the child, the hospital shall require from the person to whom the child is released such reasonable proof of identity as the hospital may deem necessary for compliance with the provisions of this section. The hospital shall furnish a true copy of the written authorization to the welfare division of the department of human resources before the release or other surrender by it of physical custody of the child. The copy must be furnished to the welfare division immediately upon receipt by the hospital.

3. Any person to whom any such child is released who thereafter surrenders physical custody of that child to any other person or agency shall, upon demand by the welfare division, disclose to the welfare division the name and permanent address of the person or agency to whom physical custody of the child was delivered.

4. All information received by the welfare division pursuant to the provisions of this section is confidential and must be protected from disclosure in the same manner that information concerning recipients of public assistance is protected under NRS 422.290.

5. Compliance with the provisions of this section is not a substitute for compliance with NRS 127.220 to 127.310, inclusive, governing placements for adoption and permanent free care.

6. A violation of any provision of this section is a misdemeanor.

(Added to NRS by 1957, 251; A 1961, 739; 1963, 962; 1967, 1172; 1973, 1286, 1406; 1981, 721)

Sec. 119. 449.510 Director to prepare and file summaries, compilations or other reports; public inspection; disclosure of details of contracts or identification of party to contract prohibited.

1. The director shall prepare and file such summaries, compilations or other supplementary reports based on the information filed with him pursuant to NRS 449.450 to 449.530, inclusive, as will advance the purposes of those sections. All such summaries, compilations and reports are open to public inspection, must be made available to requesting agencies and must be prepared within a reasonable time following the end of each institution's fiscal year or more frequently as specified by the director. The summaries, compilations and reports must include information regarding each hospital's average and total contractual allowances to categories of payers who pay on the basis of alternative rates rather than billed charges.

2. The director shall not disclose or report the details of contracts entered into by a hospital, or disclose or report information pursuant to this section in a manner that would allow identification of an individual payer or other party to a contract with the hospital, except that the director may disclose to other state agencies the details of contracts between the hospital and a related entity. A state agency shall not disclose or report information disclosed to the agency by the director pursuant to this subsection in a manner that would allow identification of an individual payer or other party to a contract with the hospital.

3. As used in this section, "related entity" means an affiliated person or subsidiary as those terms are defined in NRS 439B.430.

(Added to NRS by 1975, 704; A 1985, 1365; 1991, 2333)

Sec. 120. 449.720 Specific rights: Care; refusal of treatment and experimentation; privacy; notice of appointments and need for care. Every patient of a medical facility or facility for the dependent has the right to:

1. Receive considerate and respectful care.

2. Refuse treatment to the extent permitted by law and to be informed of the consequences of that refusal.

3. Refuse to participate in any medical experiments conducted at the facility.

4. Retain his privacy concerning his program of medical care. Discussions of a patient's care, consultation with other persons concerning the patient, examinations or treatments, and all communications and records concerning the patient, except as otherwise provided in NRS 108.640 and 449.705 and chapter 629 of NRS, are confidential. The patient must consent to the presence of any person who is not directly involved with his care during any examination, consultation or treatment.

5. Have any reasonable request for services reasonably satisfied by the facility considering its ability to do so.

6. Receive continuous care from the facility. The patient must be informed:

(a) Of his appointments for treatment and the names of the persons available at the facility for those treatments; and

(b) By his physician or an authorized representative of the physician, of his need for continuing care.

(Added to NRS by 1983, 821; A 1985, 1748; 1989, 2057; 1991, 2350)

CONTROLLED SUBSTANCES

Sec. 121. 453.151 Cooperative arrangements; confidentiality of information.

1. The board [state board of pharmacy] and the division [investigative division of the Department of Motor Vehicles and Public Safety] shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the board and division may:

(a) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(b) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(c) Cooperate with the Drug Enforcement Administration by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. The board and the division shall not furnish the name or identity of a patient or research subject whose identity could not be obtained pursuant to NRS 453.157; and

(d) Conduct programs of eradication aimed at destroying the wild growth or illicit propagation of plant species from which controlled substances may be extracted.

2. Results, information and evidence received from the Drug Enforcement Administration relating to the regulatory functions of the provisions of NRS 453.011 to 453.552, inclusive, including results of inspections conducted by it, may be relied and acted upon by the board in the exercise of its regulatory functions pursuant to NRS 453.011 to 453.552, inclusive.

(Added to NRS by 1971, 2003; A 1973, 1204; 1991, 484, 1651)

Sec. 122. 453.720 Confidential and privileged information. Unless otherwise requested by a narcotic addict being treated, or a person who in the past was treated, under NRS 453.660, all information in possession of the health division of the department [Department of Human Resources], any rehabilitation clinic or any certified hospital concerning such person is confidential and privileged.

(Added to NRS by 1971, 652; A 1979, 1671)

CANCER

Sec. 123. 457.270 Consent required for disclosure of identity of patient, physician or hospital. The health division shall not reveal the identity of any patient, physician or hospital which is involved in the reporting required by NRS 457.250 unless the patient, physician or hospital gives his or its prior written consent to such a disclosure.

(Added to NRS by 1983, 1678)

ABUSE OF ALCOHOL AND DRUGS

Sec. 124. 458.055 Confidential information.

1. To preserve the confidentiality of any information concerning persons applying for or receiving any services under this chapter, the bureau [bureau of alcohol and drug abuse in the rehabilitation division of the Department of Human Resources] may establish and enforce rules governing the confidential nature, custody, use and preservation of the records, files and communications filed with the bureau.

2. Wherever information concerning persons applying for and receiving any services under this chapter is furnished to or held by any other government agency or a public or private institution, the use of such records by such agency or institution shall be bound by the confidentiality rules of the bureau.

3. Except as otherwise provided in NRS 449.705 and chapter 629 of NRS and except for purposes directly connected with the administration of this chapter, a person shall not disclose, use or permit to be disclosed, any confidential information concerning a person receiving services under the provisions of this chapter.

(Added to NRS by 1973, 1398; A 1991, 2350)

Sec. 125. 458.280 Records of facility for treatment confidential; exceptions.

1. Except as otherwise provided in subsection 2, NRS 449.705 and chapter 629 of NRS, the registration and other records of a treatment facility are confidential and must not be disclosed to any person not connected with the treatment facility without the consent of the patient.

2. The provisions of subsection 1 do not restrict the use of a patient's records for the purpose of research into the causes and treatment of alcoholism if such information is not published in a way that discloses the patient's name or other identifying information.

(Added to NRS by 1975, 1144; A 1989, 2057; 1991, 2351)

Sec. 126. 459.050 Inspections.

1. Any authorized representative of the health division may enter at any reasonable time upon any private or public property for the purpose of determining whether there is compliance with or violation of the provisions of NRS 459.010 to 459.290, inclusive, or of the rules and regulations promulgated under NRS 459.010 to 459.290, inclusive, and the owner, occupant or person in charge of such property shall permit such entry and inspection.

2. Entry into areas under the jurisdiction of the Federal Government shall be effected only with the concurrence of the Federal Government or its duly designated representative.

3. Any report of investigation or inspection, or any information concerning trade secrets or secret industrial processes obtained under NRS 459.010 to 459.290, inclusive, shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the state board of health.

(Added to NRS by 1963, 579; A 1975, 1330)

Sec. 127. 459.3846 Report of assessment; severable addendum containing trade secrets; conditions for protection as trade secret. [Effective July 1, 1992.]

1. The person who conducted the assessment shall prepare and provide to the division and the facility a written report of assessment of the risk through analysis of the hazard, which must use as its standard the best available technology for control and must include findings, conclusions and recommendations.

2. The report must be written in a format that will permit its publication. To the extent that any portion of the report requires discussion of trade secrets, that information must be contained in a severable addendum to the report. In writing the report, the person who conducted the assessment shall, while protecting trade secrets, include in the publishable portion of the report sufficient information, in clear and comprehensible nontechnical language, to enable a member of the public to understand the significance of the report's findings, conclusions and recommendations.

3. A trade secret is entitled to protection under this section only if:

(a) The registrant of the facility has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a state or local government, an employee of such a person, or a person who is bound by an agreement of confidentiality, and the registrant has taken reasonable measures to protect the confidentiality of the information and intends to continue to take such measures;

(b) The information is not required to be disclosed, or otherwise made available, to the public under any other federal or state law;

(c) Disclosure of the information is likely to cause substantial harm to the competitive position of the registrant; and

(d) The chemical identity of a substance, if that is the trade secret, is not readily discoverable through analysis of the product containing it or scientific knowledge of how such a product must be made.

(Added to NRS by 1991, 2003, effective July 1, 1992)

Sec. 128. 459.3866 Receipt of records and documents; subpena; informal inquiries; inspection of facility; attorney general is counsel for committee; authorization to make recommendations to reviewing authority. [Effective July 1, 1992.]

1. After giving reasonable notice to the facility it oversees and after making arrangements to ensure that the normal operations of the facility will not be disrupted, a committee is entitled to receive from the facility such records and documents as the committee [a committee created by the governor to oversee the management of risks in a facility where an accident has occurred] demonstrates are required to carry out its duties. The committee is entitled to receive only those records and documents which cannot be obtained from the division.

2. A committee is entitled to receive from any governmental entity or agency records, documents and other materials relevant to the committee's review and evaluation of the facility to carry out its duties.

3. In carrying out its duties a committee and the attorney general may, by subpena, require the attendance and testimony of witnesses and the production of reports, papers, documents and other evidence which they deem necessary. Before obtaining such a subpena, the committee or the attorney general shall request the attendance of the witness or the production of the reports, papers, documents or other evidence. If the person to whom the request is made fails or refuses to attend or

produce the reports, documents or other evidence, the committee and the attorney general may obtain the subpena requiring him to do so.

4. In carrying out its duties, a committee may make informal inquiry of persons or entities with knowledge relevant to the committee's review and evaluation of the facility it oversees. Any committee which makes such informal inquiries shall advise the facility of those inquiries and of the results of the inquiries.

5. If the owner of a facility claims that the disclosure of information to a committee will reveal a trade secret or confidential information, the owner must specifically identify such information as confidential. When such an identification has been made, the provisions of NRS 459.846 apply.

6. A committee or its authorized representative may, to carry out its duties enter and inspect the facility overseen, its records and other relevant materials. Before such an inspection is made, the committee shall provide reasonable notice to the facility. The inspection must be conducted in such a manner as to ensure that the operations of the facility will not be disrupted.

7. The attorney general is counsel and attorney to each committee for the purposes of carrying out its duties and powers.

8. The members of a committee may make public comment with regard to their review and evaluation of the facility it oversees. At least 24 hours before making any formal comment, the committee shall advise the facility of its intention to do so and provide the facility with a summary of the comments that will be made.

9. A committee may review and make recommendations to the reviewing authority as to any applications for permits to construct, substantially alter or operate submitted by a facility which has been the subject of the committee's review and evaluation.

(Added to NRS by 1991, 2007, effective July 1, 1992)

Sec. 129. 459.555 Disclosure of public and confidential information.

1. Except as otherwise provided in this section, information which the department [State Department of Conservation and Natural Resources] obtains in the course of the performance of its duties relating to hazardous waste is public information.

2. Any information which specifically relates to the trade secrets of any person, including any processes, operations, style of work or apparatus, is **confidential** whenever it is established to the satisfaction of the director that the information is entitled to protection as a trade secret. In determining whether the information is entitled to protection, the director [director of State Department of Conservation and Natural Resources] shall consider, among other things, whether the disclosure of that information would tend to affect adversely the competitive position of the information's owner.

3. Any information which is **confidential** under subsection 2 may be disclosed to any officer, employee or authorized representative of this state or the United States if:

(a) He is engaged in carrying out the provisions of NRS 459.400 to 459.600, inclusive, or the provisions of federal law relating to hazardous waste; or

(b) The information is relevant in any judicial proceeding or adversary administrative proceeding under NRS 459.400 to 459.600, inclusive, or under the provisions of federal law relating to hazardous waste, and is admissible under the rules of evidence.

4. The commission [state environmental commission] shall adopt regulations concerning the availability of information which satisfy the criteria established by the Federal Government for delegation to the state of federal programs concerning the management of, and the enforcement of laws relating to, hazardous waste.

(Added to NRS by 1981, 885; A 1983, 1121; 1985, 904; 1991, 908)

Sec. 130. 459.846 Disclosure of information obtained by department.

1. Except as otherwise provided in this section, information which the department obtains in the course of the performance of its duties relating to storage tanks is public information.

2. Any information which specifically relates to the trade secrets of any person is confidential. The following information shall be deemed a trade secret:

(a) Information concerning fuel additives. For the purposes of this paragraph, "fuel additives" are ingredients which are present in fuel compositions in amounts of less than 1 percent by weight, including detergents, dispersants, demulsifiers and dyes.

(b) Any other information considered to be a trade secret by the director. A trade secret may include a formula, composition, process, method of operation, compilation of information or apparatus which is used in a person's business and gives that person an opportunity to obtain an advantage over competitors. In determining whether information is a trade secret, the director shall consider whether the information is publicly available in written form and, if not, whether its disclosure would tend to affect adversely the competitive position of the owner of the information.

3. Any information which is **confidential** under subsection 2 may be disclosed to any officer, employee or authorized representative of this state or the United States if:

(a) He is engaged in carrying out the provisions of NRS 459.800 to 459.856, inclusive, or the provisions of federal law relating to storage tanks; or

(b) The information is relevant in any judicial proceeding or adversary administrative proceeding under NRS 459.800 to 459.856, inclusive, or under the provisions of federal law relating to storage tanks, and is admissible under the rules of evidence.

The disclosure must be made in a manner which preserves the status of the information as a trade secret.

(Added to NRS by 1989, 773)

HUMAN BLOOD, BLOOD PRODUCTS AND BODY PARTS

Sec. 131. 460.020 Identifying data concerning person with history of viral hepatitis may be furnished to blood bank; confidentiality and unlawful use of data; penalty.

1. The state board of health, state health officer and any health authority, as defined in NRS 439.005, may disseminate to any blood bank in the State of Nevada identifying data concerning any person with a history of viral hepatitis.

2. The state board of health shall, pursuant to NRS 441A.120, adopt regulations specifying the identifying data to be disseminated to blood banks pursuant to subsection 1.

3. Any identifying data received by a blood bank pursuant to this section is **confidential** and may be used only for screening prospective blood donors.

4. Any person who has access to identifying data disseminated to a blood bank pursuant to this section and who divulges or uses such information in any manner except to screen prospective blood donors is guilty of a misdemeanor.

(Added to NRS by 1975, 128; A 1989, 300)

LICENSING AND CONTROL OF GAMING

Sec. 132. 463.120 Records of board and commission; report to legislature by board.

1. The board [State Gaming Control Board] and the commission [Nevada Gaming Commission] shall cause to be made and kept a record of all proceedings at regular and special meetings of the board and the commission. These records are open to **public inspection.**

2. The board shall maintain a file of all applications for licenses under this chapter, together with a record of all action taken with respect to those applications. The file and record are open to **public inspection.**

3. The board and the commission may maintain such other files and records as they may deem desirable.

4. Except as provided in this subsection and subsection 5, all information and data:

(a) Required by the board or commission to be furnished to it under this chapter or which may be otherwise obtained relative to the finances, earnings or revenue of any applicant or licensee;

(b) Pertaining to an applicant's criminal record, antecedents and background which have been furnished to or obtained by the board or commission from any source;

(c) Provided to the members, agents or employees of the board or commission by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as **confidential**; and

(d) Obtained by the board from a manufacturer, distributor or operator relating to the manufacturing of gaming devices,

are **confidential** and may be revealed in whole or in part only in the course of the necessary administration of this chapter or upon the lawful order of a court of competent jurisdiction. The commission may reveal such information and data to an authorized agent of any agency of the United States Government, any state or any political subdivision of this state pursuant to regulations adopted by the commission.

5. Before the beginning of each legislative session, the board shall submit to the legislative commission for its review and for the use of the legislature a report on the gross revenue, net revenue and average depreciation of all licensees, categorized by class of licensee and geographical area and the assessed valuation of the property of all licensees, by category, as listed on the assessment rolls.

6. Notice of the content of any information or data furnished or released pursuant to subsection 4 may be given to any applicant or licensee in a manner prescribed by regulations adopted by the commission.

7. The files, records and reports of the board are open at all times to inspection by the commission and its authorized agents.

8. All files, records, reports and other information pertaining to gaming matters in the possession of the Nevada tax commission must be made available to the board and the Nevada gaming commission as is necessary to the administration of this chapter.

[12:429:1955]--(NRS A 1959, 433; 1971, 672; 1979, 773; 1981, 1075; 1985, 1553, 1862)

Sec. 133. 463.335 Work permit required for gaming employee or independent agent; application; hearing and review; appointment of hearing examiner; confidential records; expiration.

1. The legislature finds that, to protect and promote the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and to carry out the policy declared in NRS 463.0129, it is necessary that the board:

(a) Ascertain and keep itself informed of the identity, prior activities and present location of all gaming employees and independent agents in the State of Nevada; and

(b) Maintain confidential records of such information.

2. A person may not be employed as a gaming employee or serve as an independent agent unless he is the holder of:

(a) A valid work permit issued in accordance with the applicable ordinances or regulations of the county or city in which his duties are performed and the provisions of this chapter; or

(b) A work permit issued by the board, if a work permit is not required by either the county or the city,

except that an independent agent is not required to hold a work permit if he is not a resident of this state and has registered with the board in accordance with the provisions of the regulations adopted by the commission.

3. A work permit issued to a gaming employee or an independent agent must have clearly imprinted thereon a statement that it is valid for gaming purposes only.

4. Whenever any person applies for the issuance or renewal of a work permit, the county or city officer or employee to whom the application is made shall within 24 hours mail or deliver a copy thereof to the board, and may at the discretion of the county or city licensing authority issue a temporary work permit. If within 90 days after receipt by the board of the copy of the application, the board has not notified the county or city licensing authority of any objection, the authority may issue, renew or deny a work permit to the applicant. A gaming employee who is issued a work permit must obtain renewal of the permit from the issuing agency within 10 days following any change of his place of employment. An independent agent who is issued a work permit must obtain renewal of the permit from the issuing agency within 10 days after executing an agreement to serve as an independent agent within the jurisdiction of the issuing agency.

5. If the board, within the 90-day period, notifies:

(a) The county or city licensing authority; and

(b) The applicant,

that the board objects to the granting of a work permit to the applicant, the authority shall deny the work permit and shall immediately revoke and repossess any temporary work permit which it may have issued. The notice of objection by the board which is sent to the applicant must include a statement of the facts upon which the board relied in making its objection.

6. Application for a work permit, valid wherever a work permit is not required by any county or city licensing authority, may be made to the board, and may be granted or denied for any cause deemed reasonable by the board. Whenever the board denies such an application, it shall include in its notice of the denial a statement of the facts upon which it relied in denying the application.

7. Any person whose application for a work permit has been denied because of an objection by the board or whose application has been denied by the board may, not later than 60 days after receiving notice of the denial or objection, apply to the board for a hearing. A failure of a person whose application has been denied to apply for a hearing within 60 days or his failure to appear at a hearing of the board conducted pursuant to this section shall be deemed to be an admission that the

denial or objection is well founded and precludes administrative or judicial review. At the hearing, the board shall take any testimony deemed necessary. After the hearing the board shall review the testimony taken and any other evidence, and shall within 45 days after the date of the hearing mail to the applicant its decision sustaining or reversing the denial of the work permit or the objection to the issuance of a work permit.

8. The board may object to the issuance of a work permit or may refuse to issue a work permit for any cause deemed reasonable by the board. The board may object or refuse if the applicant has:

(a) Failed to disclose or misstated information or otherwise attempted to mislead the board with respect to any material fact contained in the application for the issuance or renewal of a work permit;

(b) Knowingly failed to comply with the provisions of this chapter or chapter 463B, 464 or 465 of NRS or the regulations of the commission at a place of previous employment;

(c) Committed, attempted or conspired to commit any crime of moral turpitude, embezzlement or larceny or any violation of any law pertaining to gaming, or any crime which is inimical to the declared policy of this state concerning gaming;

(d) Committed, attempted or conspired to commit a crime which is a felony or gross misdemeanor in this state or an offense in another state or jurisdiction which would be a felony or gross misdemeanor if committed in this state;

(e) Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;

(f) Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority; or

(g) Had a work permit revoked or committed any act which is a ground for the revocation of a work permit or would have been a ground for revoking his work permit if he had then held a work permit.

If the board issues or does not object to the issuance of a work permit to an applicant who has been convicted of a crime which is a felony or gross misdemeanor, it may specially limit the period for which the permit is valid, limit the job classifications for which the holder of the permit may be employed and establish such individual conditions for the issuance, renewal and effectiveness of the permit as the board deems appropriate, including required submission to unscheduled tests for the presence of alcohol or controlled substances.

9. Any applicant aggrieved by the decision of the board may, within 15 days after the announcement of the decision, apply in writing to the commission for review of the decision. Review is limited to the record of the proceedings before the board. The commission may sustain or reverse the board's decision. The decision of the commission is subject to judicial review pursuant to NRS 463.315 to 463.318, inclusive.

10. Except as otherwise provided in this subsection, all records acquired or compiled by the board or commission relating to any application made pursuant to this section and all lists of persons to whom work permits have been issued or denied and all records of the names or identity of persons engaged in the gaming industry in this state are confidential and must not be disclosed except in the proper administration of this chapter or to an authorized law enforcement agency. Upon receipt of a request from the welfare division of the department of human resources pursuant to NRS 425.400 for information relating to a specific person who has applied for or holds a work permit, the board shall disclose to the division his social security number, residential address and current employer as that information is listed in the files and records of the board. Any record of the board or commission which shows that the applicant has been convicted of a crime in another state must show whether the crime was a misdemeanor, gross misdemeanor, felony or other class of crime as classified by the state in which the crime was committed. In a disclosure of the conviction, reference to the classification of the crime must be based on the classification in the state where it was committed.

11. A work permit expires unless renewed in accordance with subsection 4, or if the holder thereof is not employed as a gaming employee or does not serve as an independent agent within the jurisdiction of the issuing authority for more than 90 days.

12. The chairman of the board may designate a member of the board or the board may appoint a hearing examiner and authorize such person to perform on behalf of the board any of the following functions required of the board by this section concerning work permits:

(a) Conducting a hearing and taking testimony;

(b) Reviewing the testimony and evidence presented at the hearing;

(c) Making a recommendation to the board based upon the testimony and evidence or rendering a decision on behalf of the board to sustain or reverse the denial of a work permit or the objection to the issuance or renewal of a work permit; and

(d) Notifying the applicant of the decision.

3. Notice by the board as provided pursuant to this section is sufficient if it is mailed to the applicant's last known address as indicated on the application for a work permit, or the record of the hearing, as the case may be. The date of mailing may be proven by a certificate signed by an officer or employee of the board which specifies the time the notice was mailed. The notice shall be deemed to have been received by the applicant 5 days after it is deposited with the United States Postal Service with the postage thereon prepaid.

(Added to NRS by 1965, 758; A 1975, 686; 1977, 1434; 1979, 783; 1981, 548, 1884; 1983, 1563; 1989, 494; 1991, 589, 926, 1830, 1931)

Sec. 134. 463.3403 Confidentiality of information relating to termination of employment of gaming employee or independent agent. Any information obtained by the board from any licensee, his employer or agent relating to the termination of the employment of a gaming employee or the services of an independent agent is confidential and must not be disclosed except:

1. Such information obtained from the former employer of an applicant for a work permit must be disclosed to the applicant to the extent necessary to permit him to respond to any objection made by the board to his application for the permit;

2. In the necessary administration of this chapter; or

3. Upon the lawful order of a court of competent jurisdiction.

(Added to NRS by 1981, 1072; A 1991, 1844)

Sec. 135. 463.3407 Absolute privilege of required communications and documents; restrictions on and protections against disclosure.

1. Any communication or document of an applicant or licensee which is required by:

(a) Law or the regulations of the board or commission; or

(b) A subpena issued by the board or commission,

to be made or transmitted to the board or commission or any of their agents or employees is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. If such a document or communication contains any information which is privileged pursuant to chapter 49 of NRS, that privilege is not waived or lost because the document or communication is disclosed to the board or commission or any of its agents or employees.

3. Notwithstanding the provisions of subsection 4 of NRS 463.120:

(a) The board, commission and their agents and employees shall not release or disclose any information, documents or communications provided by an applicant or licensee which are privileged pursuant to chapter 49 of NRS, without the prior written consent of the applicant or licensee, or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or licensee.

(b) The board and commission shall maintain all privileged information, documents and communications in a secure place accessible only to members of the board and commission and their authorized agents and employees.

(c) The board and commission shall adopt procedures and regulations to protect the privileged nature of information, documents and communications provided by an applicant or licensee.

(Added to NRS by 1981, 1072; A 1987, 1274)

UNARMED COMBAT

Sec. 136. 467.137 Promoter and network to file copy of contracts for television rights; records of accounts and other documents; assessment of fee for license; confidentiality of contract.

1. A promoter and a broadcasting network for television shall each, at least 72 hours before a contest or exhibition of unarmed combat, or combination of those events is to be held, file with the commission's [Nevada Athletic Commission] executive director a copy of all contracts entered into for the sale, lease or other exploitation of television rights for the contest or exhibition.

2. The promoter shall keep detailed records of the accounts and other documents related to his receipts from the sale, lease or other exploitation on the television rights for a contest or exhibition. The commission, at any time, may inspect these accounts and documents to determine the amount of the total gross receipts received by the promoter from the television rights.

3. If a promoter or a network fails to comply with the requirements of this section, the commission may determine the amount of the total gross receipts from the sale, lease or other exploitation of television rights for the contest or exhibition and assess the appropriate license fee pursuant to paragraph (b) of subsection 1 of NRS 467.107.

4. Each contract filed with the commission pursuant to this section is confidential and is not a public record.

(Added to NRS by 1983, 927; A 1985, 942)

ADMINISTRATION OF LAWS RELATING TO MOTOR VEHICLES

Sec. 137. 481.063 Collection and deposit of fees for publications of department and private use of files and records of department; limitations on release and use of files and records; regulations.

1. The director may charge and collect reasonable fees for official publications of the department and from persons making use of files and records of the department or its various divisions for a private purpose. All money so collected must be deposited in the state treasury for credit to the motor vehicle fund.

2. The director shall not release, in any files and records made available for the solicitation of another person to purchase a product or service, the Social Security number of any person.

3. The director may deny any private use of the files and records if he reasonably believes that the information taken may be used for:

(a) An illegal purpose; or

(b) An unwarranted invasion of a particular person's privacy.

4. The director shall adopt such regulations as he deems necessary to carry out the purposes of this section.

(Added to NRS by 1957, 611; A 1975, 210; 1979, 1118; 1981, 1590; 1985, 686; 1989, 473)

DRIVERS' LICENSES; DRIVING SCHOOLS AND DRIVING INSTRUCTORS

Sec. 138. 483.340 Issuance and contents of license; license for purposes of identification only issued to certain persons.

1. The department [Department of Motor Vehicles and Public Safety] shall upon payment of the required fee issue to every qualified applicant a driver's license indicating the type or class of vehicles the licensee may drive. The license must bear a unique number assigned to the licensee pursuant to NRS 483.345, the licensee's social security number, if he has one, unless he requests that it not appear on the license, the full name, date of birth, mailing address, and a brief description of the licensee, and a space upon which the licensee shall write his usual signature in ink immediately upon receipt of the license. A license is not valid until it has been so signed by the licensee.

2. The department may issue a driver's license for purposes of identification only for use by officers of local police and sheriffs' departments, agents of the investigation division of the department while engaged in special undercover investigations relating to narcotics or prostitution or for other undercover investigations requiring the establishment of a fictitious identity and agents of the state gaming control board while engaged in investigations pursuant to NRS 463.140. No such license may be issued for use by any federal agent or investigator under any circumstances. An application for such a license must be made through the head of the police or sheriff's department, the chief of the investigation division [investigation division of the Department of Motor Vehicles and Public Safety] or the chairman of the state gaming control board. Such a license is exempt from the fees required by NRS 483.410. The department, by regulation, shall provide for the cancellation of any such driver's license upon the completion of the special investigation for which it was issued.

3. Information pertaining to the issuance of a driver's license pursuant to subsection 2 is confidential.

4. It is unlawful for any person to use a driver's license issued pursuant to subsection 2 for any purpose other than the special investigation for which it was issued.

5. At the time of the issuance of the driver's license, the department shall give the holder the opportunity to indicate on his driver's license that he wishes to be a donor of all or part of his body pursuant to NRS 451.500 to 451.590, inclusive, or that he refuses to make an anatomical gift of his body or part of his body.

[19:190:1941; A 1943, 268; 1943 NCL § 4442.18]--(NRS A 1963, 843; 1969, 544; 1975, 802; 1977, 449; 1981, 1106, 2007; 1985, 1938; 1987, 895; 1989, 437, 474, 1152; 1991, 487, 2171)

Sec. 139. 483.800 Information to be furnished to department; establishment of registry; regulations; maintenance of file; confidential information; penalty.

1. The following sources shall submit, within 30 days of learning such information, to the department the name, address, birth date, social security number, visual acuity and any other information which may be required by regulation of the department, of persons who are blind or night-blind or whose vision is severely impaired and shall designate whether the person is blind, night-blind or has severely impaired vision:

(a) Hospitals, medical clinics and similar institutions which treat persons who are blind, night-blind or whose vision is severely impaired; and

(b) Agencies of the state and political subdivisions which provide special tax consideration for blindness.

2. When any source described in subsection 1 learns that vision has been restored to any person whose name appears in the registry established pursuant to subsection 3, the fact of restoration of vision must be reported to the registry within 30 days after learning of that fact.

3. The department may establish a registry for the purposes of this section and adopt regulations governing reports to and operation of the registry.

4. The department shall maintain a file of the names, addresses, birth dates and social security numbers of persons who are blind or night-blind or whose vision is severely impaired.

5. All information learned by the department pursuant to this section is confidential and any person who, without the consent of the person concerned, reveals that information for purposes other than those specified in this section, or other than for administration of the program for supplemental security income, including state supplementary assistance and services to the aged, blind or disabled pursuant to chapter 422 of NRS, or services to the blind pursuant to NRS 426.520 to 426.610, inclusive, is guilty of a misdemeanor.

(Added to NRS by 1973, 1522; A 1975, 1013; 1981, 1912; 1985, 1941)

TRAFFIC LAWS

Sec. 140. 484.229 Written report of accident to department by driver or owner; exceptions; confidentiality; use as evidence at trial.

1. Except as provided in subsections 2, 3 and 4, the driver of a vehicle which is in any manner involved in an accident on a highway or on premises to which the public has access, if the accident results in bodily injury to or the death of any person or total damage to any vehicle or item of property to an apparent extent of $350 or more, shall, within 10 days after the accident, forward a written report of the accident to the department [Department of Motor Vehicles and Public Safety]. Whenever damage occurs to a motor vehicle, the operator shall attach to the accident report an estimate of repairs or a statement of the total loss from an established repair garage, an insurance adjuster employed by an insurer licensed to do business in this state, an adjuster licensed under chapter 684A of NRS or an appraiser licensed under chapter 684B of NRS. The department may require the driver or owner of the vehicle to file supplemental written reports whenever the original report is insufficient in the opinion of the department.

2. A report is not required from any person if the accident was investigated by a law enforcement agency and the report of the investigating officer contains:

(a) The name and address of the insurance company providing coverage to each person involved in the accident;

(b) The number of each policy; and

(c) The dates on which the coverage begins and ends.

3. The driver of a vehicle subject to the jurisdiction of the Interstate Commerce Commission or the public service commission of Nevada need not submit in his report the information requested pursuant to subsection 3 of NRS 484.247 until the 10th day of the month following the month in which the accident occurred.

4. A written accident report is not required under this chapter from any person who is physically incapable of making a report, during the period of his incapacity. Whenever the driver is physically incapable of making a written report of an accident as required in this section and he is not the owner of the vehicle, the owner shall within 10 days after knowledge of the accident make the report not made by the driver.

5. All written reports required in this section to be forwarded to the department by drivers or owners of vehicles involved in accidents are without prejudice to the person so reporting and are for the confidential use of the department or other state agencies having use of the records for accident prevention, except that the department may disclose to a person involved in an accident or to his insurer the identity of another person involved in the accident when his identity is not otherwise known or when he denies his presence at the accident. The department may also disclose the name of his insurer and the number of his policy.

6. No written report forwarded under the provisions of this section may be used as evidence in any trial, civil or criminal, arising out of an accident except that the department shall furnish upon demand of any party to such a trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department in compliance with law, and, if the report has been made, the date, time and location of the accident, the names and addresses of the drivers, the owners of the vehicles involved and the investigating officers. The report may be used as evidence when necessary to prosecute charges filed in connection with a violation of NRS 484.236.

(Added to NRS by 1969, 1484; A 1981, 1126, 1865; 1983, 1067; 1985, 1174, 1943)

FINANCIAL RESPONSIBILITY FOR LIABILITY

Sec. 141. 485.300 Matters not to be evidence in civil suits. Any action taken by the division pursuant to NRS 485.185 to 485.300, inclusive, the findings, if any, of the division [drives' license division of the Department of Motor Vehicles and Public Safety] upon which the action is based, and the security filed as provided in NRS 485.185 to 485.300, inclusive, are privileged against disclosure at the trial of any action at law to recover damages.

[10:127:1949; 1943 NCL § 4439.10]--(NRS A 1961, 144; 1971, 809; 1981, 1129)

MOBILE HOMES AND SIMILAR VEHICLES; MANUFACTURED HOMES

Sec. 142. 489.801 Manufacture or sale of noncomplying unit; sale without certificate or label of compliance; false certification; notification of defects; failure to permit access; disclosure of contents of examination; use of unsafe unit.

1. It is unlawful for any person to manufacture any manufactured home, mobile home, travel trailer or commercial coach unless the manufactured home, mobile home, travel trailer or commercial coach and its components and systems are constructed and assembled according to the standards prescribed pursuant to the provisions of this chapter.

2. It is unlawful for any person knowingly to sell or offer for sale any manufactured home which has been constructed on or after June 15, 1976, unless the manufactured home and its components and systems have been constructed and assembled according to the standards prescribed pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401 et seq.).

3. Any person who knowingly sells or offers to sell in this state any manufactured home, mobile home or commercial coach for which a certificate or label of compliance is required under this chapter, which does not bear a certificate or label of compliance, is liable for the penalties provided in NRS 489.811 and 489.821.

4. It is unlawful for any person to issue a certification which states that a manufactured home conforms to all applicable federal standards for safety and construction if that person, in the exercise of due care, has reason to know that the certification is false or misleading in any material respect.

5. It is unlawful for a manufacturer to fail to furnish notification of defects relating to construction or safety, as required by the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. § 5414).

6. It is unlawful for any person to fail or refuse to permit access by the administrator [administrator is chief of the manufactured housing division] to the documentary materials set forth in NRS 489.231.

7. It is unlawful for any person, without authorization from the division [manufactured housing division of the Department of Commerce], to disclose or obtain the contents of an examination given by the division.

8. It is unlawful for any person to use a manufactured home or mobile home as living quarters or for human occupancy, respectively, if the manufactured home or mobile home violates a standard of safety set forth in regulations adopted pursuant to subsection 1 of NRS 489.251, concerning installation, tie down, and support of manufactured homes and mobile homes.

(Added to NRS by 1979, 1207; A 1981, 1194; 1983, 796, 797)

OIL AND GAS: CONSERVATION

Sec. 143. 522.040 Powers and duties of department.

1. The department [Department of Minerals] has jurisdiction and authority over all persons and property, public and private, necessary to effectuate the purposes and intent of this chapter.

2. The department shall make investigation to determine whether waste exists or is imminent, or whether other facts exist which justify or require action by it.

3. The department shall adopt regulations, make orders and take other appropriate action to effectuate the purposes of this chapter.

4. The department may:

(a) Require:

(1) Identification or ownership of wells, producing leases, tanks, plants and drilling structures.

(2) The making and filing of reports, well logs and directional surveys. Logs of exploratory or "wildcat" wells marked "confidential" must be kept confidential for 6 months after the filing thereof, unless the owner gives written permission to release those logs at an earlier date.

(3) The drilling, casing and plugging of wells in such a manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water, and to prevent blowouts, cavings, seepages and fires.

(4) The furnishing of a reasonable bond with good and sufficient surety conditioned for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste.

(5) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.

(6) The gauging or other measuring of oil and gas to determine the quality and quantity thereof.

(7) That every person who produces oil or gas in this state keep and maintain for a period of 5 years within this state complete and accurate record of the quantities thereof, which must be available for examination by the department or its agents at all reasonable times.

(b) Regulate, for conservation purposes:

(1) The drilling, producing and plugging of wells.

(2) The shooting and chemical treatment of wells.

(3) The spacing of wells.

(4) The disposal of salt water, nonpotable water and oil field wastes.

(5) The contamination or waste of underground water.

(c) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

[4:202:1953]--(NRS A 1977, 1151; 1981, 86; 1983, 2079)

GEOTHERMAL RESOURCES

Sec. 144. 534A.031 Exploration and subsurface information: Filing with department of minerals; confidentiality; release to state engineer or other agency. Exploration and subsurface information obtained as a result of a geothermal project must be filed with the department of minerals within 30 days after it is accumulated. The information is confidential for a period of 5 years after the date of filing and may not be disclosed during that time without the express written consent of the operator of the project, except that it must be made available by the department to the state engineer or any other agency of the state upon request. The state engineer or other agency shall keep the information confidential.

(Added to NRS by 1977, 383; A 1985, 1303)

GL Construction is relevant here. They specifically rejected caselaw from other states that looked to a party's agreements outside of the case to determine whether or not there was a prevailing party. And specifically in that case the plaintiff had a case -- had claims against the defendant, the defendant brought counterclaims. The plaintiff settled their claims for a six-figure amount, and then the defendant continued on with a bench trial, got a $10,000 judgment, and then moved for attorneys' fees for $67,000. And the District Court said they were the prevailing party. And when the -- that issue went on to an appeal the Supreme Court says, the District Court does not look to a party's agreements outside of the case to determine who is the prevailing party.

And that is exactly what happened here, Your Honor. We entered into an agreement on a good-faith basis, we produced all the records, we provided a 16-page privilege log, there were 3300 documents -- I should say, 330 pages of documents, and a significant number of pages were withheld. The issue from the initial petition, Judge Kishner recognized that we may have issues with confidentiality, especially with respect to the recent interview that was done and everything else, which is why an evidentiary hearing was scheduled.

THE COURT: Okay.

MR. ERWIN: I'm going to be really brief, Your Honor. And I think to your point earlier, the Nevada Public Records Act

isn't NRS 18.010. It uses different language. I realize the Nevada Supreme Court referenced NRS 18.010 caselaw in the Blackjack Bonding case, but that is just for the general principle that you don't need to win on every single issue to get your attorneys' fees in a case. They weren't presented with this issue. They weren't doing an analysis of what does the term "prevails" mean verse the legal term of our "prevailing party." We cited a lot of caselaw dealing with the catalyst theory and dealing with how other states have interpreted the term "prevails" in connection with this exact argument, and the law uniformly falls in favor of awarding fees.

And lastly, this wasn't resolved by a settlement agreement. Metro finally started to follow the law. We didn't compromise on anything. Metro did what it should have done about six months too late.

THE COURT: Well, that's why I was wondering why you guys didn't get an order on the writ.

MR. ERWIN: Judge Kishner felt due to the expedited --

THE COURT: That's why I reset the whole thing.

MR. ERWIN: Right.

THE COURT: Because I'm not -- I don't really care what Judge Kishner thought.

MR. ERWIN: I understand that. And I objected to that process, because in my view Metro failed to meet its burden, as Judge Kishner recognized, and the writ should have been granted

right there. But, that's not what happened, and I don't know that we can change that. So --

THE COURT: Well, that's why I reset the petition for hearing. Anything else you want to tell me?

MS. NICHOLS: Nope.

THE COURT: Okay. It does not appear that Metro initially complied with the public records request, and after the filing of the petition and the original argument did attempt to comply, and, through the work of counsel working together, produced a satisfactory amount of documents for the petitioner. For that reason it appears to me that in this particular case that the petitioner prevailed in this action.

So what are you going to do on the attorneys' fees issues?

MR. ERWIN: I would plan to submit a memorandum of fees and costs, unless you wanted to have a discussion.

THE COURT: You need to file a motion. It has to be a motion for attorneys' fees.

MR. ERWIN: Okay.

THE COURT: And then we'll have to deal with the issue on whether the amount is reasonable under the Brunzell factors.

MR. ERWIN: Correct.

THE COURT: Okay?

MS. NICHOLS: Thank you, Your Honor.

THE COURT: Thank you. Have a nice day.

MR. ERWIN: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:43 A.M.

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

JILL HAWKINS
Court Recorder

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Steven D. Grierson
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING INC., a California Nonprofit Organization, Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	CASE NO.: A-18-773883-W DEPT. NO.: XI **NOTICE OF ENTRY OF ORDER**

Please take notice that on the 5th day of November, 2018, an Order Regarding the Center for Investigative Reporting Inc.'s Petition for Writ of Mandamus, was duly entered in the above entitled matter, a copy of which is attached as "Exhibit 1" and by this referenced made part hereof.

DATED this 5th day of November, 2018.

CAMPBELL & WILLIAMS

By: /s/ ***Philip Erwin***
Philip R. Erwin, Esq. (11563)
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Case Number: A-18-773883-W

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 5th day of November, 2018, I caused the foregoing document entitled **NOTICE OF ENTRY ORDER** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

By: /s/ ***Lucinda Martinez***
An Employee of Campbell and Williams

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EXHIBIT 1

EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING INC., a California Nonprofit Organization, Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	CASE NO.: A-18-773883-W DEPT. NO.: XI **ORDER REGARDING THE CENTER FOR INVESTIGATIVE REPORTING INC.'S PETITION FOR WRIT OF MANDAMUS** Hearing Date: October 30, 2018 Hearing Time: 9:00 a.m.

This matter came on for hearing on Petitioner The Center For Investigative Reporting Inc.'s Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 (the "Petition") on October 30, 2018. Philip R. Erwin, Esq. of the law firm Campbell & Williams appeared on behalf of Petitioner The Center For Investigative Reporting Inc. ("CIR") and Jackie V. Nichols, Esq. of the law firm Marquis Aurbach Coffing appeared on behalf of Respondent Las Vegas Metropolitan Police Department ("LVMPD"). Having considered CIR's Petition, LVMPD's Response, CIR's Reply, the parties' supplemental briefing regarding CIR's prevailing status under NRS 239.011(2), and the arguments of counsel, and good cause appearing therefore:

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Case Number: A-18-773883-W

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I. FINDINGS

THE COURT HEREBY FINDS THAT prior to the filing of this lawsuit, LVMPD did not comply with the Nevada Public Records Act in response to CIR's requests seeking public records related to the murder of Tupac Shakur in September 1996.

THE COURT FURTHER FINDS THAT as a result of the filing of this lawsuit, LVMPD complied with the Nevada Public Records Act and made a satisfactory production of the public records sought by CIR's Petition.

THE COURT FURTHER FINDS THAT because the filing of this lawsuit caused LVMPD to comply with the Nevada Public Records Act, CIR prevailed pursuant to NRS 239.011(2).

II. ORDER

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 is DENIED as moot.

IT IS FURTHER ORDERED THAT CIR shall be deemed to have prevailed in this litigation pursuant to NRS 239.011(2).

IT IS FURTHER ORDERED THAT CIR shall submit a motion for attorney's fees and costs within ten (10) days of the notice of entry of this Order.

IT IS SO ORDERED.

DATED this 5 day of November, 2018.

DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

CAMPBELL & WILLIAMS

By: _____

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Approved as to form and content:

MARQUIS AURBACH COFFING

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING INC., a California Nonprofit Organization, Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	CASE NO.: A-18-773883-W DEPT. NO.: XI **THE CENTER FOR INVESTIGATIVE REPORTING INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS**

Petitioner The Center for Investigative Reporting Inc. ("CIR"), through its undersigned counsel, hereby submits the following Motion for Attorneys' Fees and Costs. This Motion is made and based upon the papers and pleadings on file herein, the exhibits attached hereto, and the Points and Authorities that follow.

POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arose out of the Las Vegas Metropolitan Police Department's ("LVMPD") noncompliance with the Nevada Public Records Act ("NPRA") in connection with The Center for Investigative Reporting Inc.'s ("CIR") requests for public records concerning the murder of Tupac

Case Number: A-18-773883-W

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Shakur in Las Vegas, Nevada in September 1996. Because LVMPD maintained a blanket objection to confidentiality and refused to produce any records beyond a two-page police report, CIR commenced this action by filing its Petition for Writ of Mandamus (the "Petition") pursuant to NRS 239.011. Thereafter, the Honorable Joanna Kishner conducted a hearing on CIR's Petition and stated that LVMPD had failed to meet its burden of demonstrating confidentiality as required by Nevada law. Following the hearing, LVMPD agreed to produce the requested records and ultimately provided CIR with over 2,500 pages of records and other media related to Tupac Shakur's murder.

Based on LVMPD's belated compliance, CIR submitted that the contested issues in its Petition were moot. The parties, however, disputed whether CIR "prevailed" pursuant to NRS 239.011(2) such that CIR could recover its attorney's fees and costs incurred in prosecuting this matter. Based on its finding that CIR's lawsuit caused LVMPD to comply with the NPRA, this Court held that CIR prevailed pursuant to NRS 239.011(2). Accordingly, CIR hereby submits its request for attorneys' fees and costs.

II. ARGUMENT

A. CIR Is Entitled To Recover Its Attorneys' Fees And Costs Pursuant To NRS 239.011(2).

In Nevada, an award of attorneys' fees is permitted when "allowed by express or implied agreement or when authorized by statute." *See Schouweiler v. Yancey Co.*, 101 Nev. 827, 829, 712 P.2d 786, 788 (1985). Under the NPRA, "[i]f the requester prevails, the requester is entitled to recover his or her costs and reasonable attorneys' fees in the proceeding from the governmental entity whose officer has custody of the book or record." NRS 239.011(2). Here, the parties previously submitted comprehensive briefs on this issue and the Court determined that CIR "prevailed" pursuant to NRS 239.011(2). *See* Order Regarding The Center for Investigative Reporting, Inc.'s Petition for Writ of Mandamus (on file).

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B. The Amount Sought and Counsel's Declaration.

CIR seeks attorneys' fees in the amount of Fifty Five Thousand and Eighty Dollars ($55,080.00), and costs in the amount of One Thousand, Fifty Three and 54/100th Dollars ($1,053.54). As set forth in the Declaration of undersigned counsel, the subject fees and costs were actually and necessarily incurred in the litigation and are reasonable. *See* Declaration of Philip R. Erwin, attached hereto as Exhibit 1. CIR has likewise included the documentation that describes the work performed by each attorney that worked on this matter, the billing applicable thereto, and the total amount of attorneys' fees being sought. *See* Attached Exhibit 2.

C. Applicable Factors

In determining the amount of attorneys' fees and costs to be awarded, the Nevada Supreme Court ruled in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 345, 455 P.2d 31, 311 (1969), that the following factors are to be considered:

> Before discussing the separate counts, it seems advisable that we state the well-known basic elements to be considered in determining the reasonable value of an attorneys' services. From a study of the authorities it would appear such factors may be classified under four general headings (1) *the qualities of the advocate:* his ability, his training, education, experience, professional standing and skill; (2) *the character of the work to be done:* its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation, (3) *the work actually performed by the lawyer:* the skill, time and attention given to the work; (4) *the result:* whether the attorney was successful and what benefits were derived. (citations omitted).

See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 345, 455 P.2d 31, 311 (1969).

The *quality* of the pleadings prepared and work performed on behalf of CIR are self-proving. The Court has had ample opportunity to review and consider the *character* of the services rendered in this action—an action involving a critically acclaimed media outlet and LVMPD, the latter of which is the primary law enforcement agency in Southern Nevada. Given the Court's familiarity with the efforts of CIR and its counsel during the course of this litigation, the undersigned will not elaborate at

length on the foregoing topics except as set forth in the Declaration of Philip R. Erwin, which is attached hereto as Exhibit 1.

With respect to the work *actually* performed on behalf of CIR's counsel, the undersigned respectfully asks the Court to consider the time and effort involved in this litigation as well as the important policy interests underlying the fee provision in the NPRA. Here, LVMPD forced CIR's counsel to perform extensive work to obtain public records concerning a 22-year-old murder in which there is significant public interest. Initially, CIR's counsel was required to engage in an extensive letter-writing campaign due to LVMPD's stonewalling of CIR's public records requests. When those pre-litigation efforts to obtain records were unsuccessful, CIR filed its Petition and sought judicial intervention. LVMPD opposed CIR's Petition at every turn before finally agreeing to produce the requested records at the eleventh hour in the face of an adverse result. LVMPD, in fact, even contested CIR's status as the "prevailing" party thereby imposing the burden of supplemental briefing and court proceedings. As such, LVMPD should not be heard to complain about the work performed by CIR's counsel in light of its obstructive conduct and militant defense in this action.

Insofar as the last factor to be considered by the Court, the undersigned humbly suggests that the *result* speak for itself.

III. CONCLUSION

Based on the foregoing, CIR respectfully submits that its Motion for Attorneys' Fees and Costs should be granted in its entirety.

Dated: November 14, 2018

CAMPBELL & WILLIAMS

By /s/ ***Philip R. Erwin***

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SAMUEL R. MIRKOVICH, ESQ. (11662)
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Telephone: (702) 382-5222
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Attorneys for Petitioner

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 14th day of November, 2018 I caused the foregoing document entitled **The Center For Investigative Reporting Inc.'s Motion for Attorney's Fees and Costs** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ ***John Y. Chong***
An employee of Campbell & Williams

EXHIBIT 1

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DECLARATION OF PHILIP R. ERWIN

I, PHILIP R. ERWIN, declare under penalty of perjury as follows:

1. I am retained counsel for Petitioner The Center For Investigative Reporting Inc. ("CIR") in the instant action. I make this declaration in support of CIR's Motion for Attorneys' Fees and Costs and specifically with regard to the reasonableness of CIR's requested attorneys' fees as well as the quality and character of the work performed herein. I am over eighteen years of age, have personal knowledge of the facts set herein and, if called as a witness, I could and would testify competently with respect thereto.

2. I am a Partner in the law firm of Campbell & Williams and have been a member of the bar for over nine (9) years. I am a *cum laude* graduate of the William S. Boyd School of Law, and for the past six years have been included as a "Rising Star" in Super Lawyers as well as one of Nevada's "Legal Elite" in Nevada Business Magazine. During that time, I have drafted countless legal briefs (including obtaining multiple judgments in excess of $1 million and numerous dismissals by way of summary judgment), handled a variety of motion and evidentiary hearings, taken and defended depositions, and sat second chair in various trials, arbitrations and appellate proceedings involving a wide range of complex matters in both state and federal court. I have also begun developing an emphasis on appellate practice. *See, e.g.*, *The Power Co., Inc. v. Henry*, 130 Nev. Adv. Op. 21, 321 P.3d 858 (2014) (affirming entry of $9 million judgment and establishing new legal precedent regarding the application of NRCP 41); *Gardner of Behalf of L.G. v. Eighth Judicial Dist. Court,* 405 P.3d 651 (Nev. Nov. 22, 2017) (finding that limited liability company members can be sued individually for personally participating in tortious acts and that the alter ego doctrine applies to limited liability companies).

3. Samuel R. Mirkovich is a Partner in the law firm of Campbell & Williams and has been a member of the bar for over nine (9) years where his practice has been focused on complex commercial litigation and catastrophic personal injury matters. In that time, Mr. Mirkovich has

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served as lead trial counsel in over nine (9) civil trials and numerous arbitrations. Mr. Mirkovich has represented both plaintiffs and defendants in a variety of tort cases and, as counsel for plaintiffs, achieved numerous results in excess of $1 million. Since joining Campbell & Williams in 2013, Mr. Mirkovich been consistently recognized as a "Rising Star" as well as one of Nevada's "Legal Elite" in Nevada Business Magazine. Mr. Mirkovich has also been recognized as one of the "Top 40 under 40" by the National Trial Lawyers on multiple occasions.

4. Senior Partner J. Colby Williams and our firm's student law clerks also performed work on this matter although CIR is not seeking to recover fees for their services as part of this Motion.

5. Because CIR is a nonprofit organization, Campbell and Williams performed work in this matter in a pro bono capacity in that the firm did not seek the contemporaneous payment of its attorney's fees and costs directly from CIR. Instead, CIR and Campbell & Williams agreed that any recovery of attorneys' fees and costs was contingent on a successful result that would trigger the fee provision in NRS 239.011(2). *See O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, --- P.3d --- (Nev. Ct. App. 2018) ("[A]ttorneys fees are permissible in pro bono cases[.]"); *Miller v. Wilfong*, 121 Nev. 619, 622-23, 119 P.3d 727, 729-30 (2005) (discussing public policy rationale in support of awarding attorney's fees to pro bono counsel and concluding that such awards are proper).

6. Campbell & Williams charges an hourly rate of $450 for both my time and Mr. Mirkovich's time. These rates are consistent with reasonable community standards, and other courts have approved similar rates in matters handled by Campbell & Williams.

7. From the date of our retention on or about March 25, 2018 through the Court's November 5, 2018 Order finding that CIR had prevailed pursuant to NRS 239.011(2), the true and correct total of attorneys' fees and costs incurred in prosecuting this action is $56,133.54. A true and correct itemization of the work performed by Campbell & Williams is attached hereto and all

of the work was actually performed, and the fees necessarily incurred. Based on my experience, I believe the work performed and fees charged were reasonable.

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

9. Declarant further says naught.

DATED this 14th day of November, 2018.

PHILIP R. ERWIN

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EXHIBIT 2

CAMPBELL & WILLIAMS

ATTORNEYS AT LAW

Invoice # 2281
Date: 11/06/2018

700 S 7th St
Las Vegas, NV 89101
Phone: (702) 382-5222

Ms. Victoria Baranetsky
vbaranetsky@revealnews.org

Center for Investigative Reporting

Services

Date	Description	Attorney	Hours
03/26/2018	Prep for and conduct client intake call with PRE; review demand to LVMPD.	SRM	0.70
03/26/2018	Teleconference with Victoria Baranetski regarding new matter; reviewed case law related to public records requests for criminal records; drafted letter to LVMPD and edited.	PRE	2.00
03/27/2018	E-mail exchange with client and PRE regarding final edits to doc request to LVMPD.	SRM	0.20
03/28/2018	Revised letter to LVMPD PIO, compiled exhibits and directed service by Lucinda.	PRE	0.70
04/10/2018	Reviewed e-mail correspondence with client and drafted follow-up e-mail to LVMPD regarding public records request; e-mail correspondence with client regarding same.	PRE	1.00
04/13/2018	Reviewed letter from Metro's GC regarding public records request; researched confidentiality of investigative records; e-mail correspondence with Victoria regarding analysis of Metro's claim of confidentiality.	PRE	1.20
04/19/2018	Teleconference with Victoria and Andy regarding strategy in responding to Metro's letter; researched Nevada law on disclosure of	PRE	6.00

	investigative files and proceedings in October 1 shooting case; drafted comprehensive response to Metro's letter; e-mail correspondence with Victoria and Andy regarding same.		
04/30/2018	Additional research on Nevada Public Records Act and Nevada law interpreting the same; additional research on federal counterparts interpreting FOIA exceptions for criminal investigative records; drafted petition for writ of mandamus.	PRE	9.20
05/01/2018	Completed draft of Petition for Writ of Mandamus; multiple edits and revisions; reviewed complete briefing in October 1 shooting case; researched state court decisions refusing to apply FOIA exceptions or federal law enforcement privilege under state public records act; review JCW/SRM edits to Petition; e-mail correspondence with client regarding same.	PRE	6.80
05/01/2018	Review/editing of Petition and meet with PRE to discuss same and general strategy regarding LVMPD's position.	SRM	1.00
05/02/2018	Meet/discuss with PRE regarding additional elements added to Petition before filing.	SRM	0.60
05/02/2018	Client revisions to Petition for Writ of Mandamus; prepared petition for filing and additional revisions; prepared exhibits to petition; drafted IAFD; drafted application for OST and declaration of Andy Donohue; coordinated filing of petition with Lucinda; e-mail correspondence with client regarding petition, application for OST and status.	PRE	3.20
05/03/2018	Met with SRM regarding judicial assignment of Judge Kishner; teleconference with Judge Kishner's staff regarding potential conflict and application for OST; coordinated submission for application for OST and service on Metro with LMM; e-mail correspondence with client regarding filing of complaint and assignment of judge.	PRE	1.00
05/07/2018	Coordinated service and filing of Petition for Writ of Mandamus (with hearing date) with LMM; e-mail correspondence with Charlotte Bible regarding petition.	PRE	0.50
05/08/2018	E-mail correspondence with client regarding briefing schedule and upcoming events.	PRE	0.30
05/10/2018	E-mail correspondence with LVMPD and counsel regarding failure to serve Response in a timely manner; reviewed Response; performed additional research regarding arguments raised therein and outlined reply brief; began drafting Reply.	PRE	4.00
05/11/2018	Drafted Reply ISO Petition.	PRE	7.80

05/12/2018	Multiple edits and extensive revisions to Reply ISO Petition; e-mail correspondence with JCW and SRM regarding same.	PRE	3.20
05/14/2018	Final edits and preparations to reply for filing; e-mail correspondence with client regarding hearing and reply brief; teleconferences with court and client regarding scheduling; prepared errata to reply; prepared courtesy copy for court with case law; outlined argument and prepared for hearing.	PRE	5.00
05/14/2018	Extensive review/edit of Response to Metro Opp.; meet with PRE to discuss hearing.	SRM	2.20
05/15/2018	Early morning preparation and attended hearing on Petition; follow-up discussions with opposing counsel and SRM regarding hearing; drafted lengthy e-mail summary to client regarding hearing and upcoming proceedings.	PRE	3.50
05/15/2018	Prep for and attend hearing regarding Petition with PRE; meet with PRE to discuss evidentiary hearing preparation and presentation.	SRM	2.80
05/16/2018	E-mail correspondence with client regarding hearing and strategy; e-mail correspondence to Nick Crosby regarding length of evidentiary hearing and proposal for LVMPD to produce redacted records; drafted Stipulated Protective Order; met with SRM regarding SPO and strategy.	PRE	5.10
05/16/2018	Review/edit proposed SPO; meet with PRE to devise evidentiary hearing strategy.	SRM	0.70
05/18/2018	Teleconferences and e-mail correspondence with Nick Crosby regarding SPO, sealed hearing and alternative proposal of redacted production; e-mail correspondence and teleconferences with client regarding same; teleconference with Judge Kishner's chambers regarding alternative proposal and sealed hearing.	PRE	1.80
05/18/2018	Meet with PRE regarding production and case strategy moving forward.	SRM	0.40
05/21/2018	Drafted letter to Judge Kishner regarding Metro agreement to produce records in lieu of sealed hearing; review and edits to same; SRM edits and met to discuss same; e-mail correspondence with opposing counsel and client regarding letter to Judge Kishner.	PRE	2.00
05/22/2018	E-mail correspondence with Nick Crosby regarding letter to Judge Kishner; finalized and revised letter and coordinated delivery to Judge Kishner; e-mail correspondence with opposing counsel and co-counsel regarding same.	PRE	1.00

07/06/2018	E-mail correspondence with Jackie Nichols regarding Metro production of records; e-mail correspondence with client regarding same.	PRE	0.80
07/09/2018	E-mail correspondence with Jackie Nichols regarding confidentiality and production of investigative file; e-mail correspondence with client regarding same; met with Molly and Ashley regarding review of file and privilege log and research projects; preliminary review of privilege and redaction log.	PRE	1.50
07/10/2018	E-mail correspondence with client regarding questions concerning document production.	PRE	0.30
07/16/2018	Met with Molly and Ashley regarding review of Metro's production and possible challenges to redactions; teleconference and e-mail correspondence with client regarding same and strategy moving forward.	PRE	0.80
07/17/2018	Teleconference with client regarding potential challenges to redactions and withholdings; directed further research by clerks; e-mail correspondence with opposing counsel regarding sealed hearing and drafted letter to the Court regarding same.	PRE	1.20
07/18/2018	E-mail correspondence with opposing counsel regarding letter to court and coordinated service of letter.	PRE	0.30
07/30/2018	E-mail correspondence with Victoria regarding status of case and next steps; e-mail correspondence with Jackie Nichols regarding Metro's production.	PRE	0.60
08/07/2018	Reviewed document "wish list" for client and drafted memo regarding comments and potential success in challenging withholdings/redactions; e-mail correspondence with client regarding same.	PRE	1.20
08/08/2018	E-mail correspondence with client regarding "wish list" documents and next steps.	PRE	0.30
08/14/2018	E-mail correspondence and teleconference with Victoria regarding "wish list" and discussion with Metro; e-mail correspondence with Metro's counsel regarding discussion of redactions and withholdings.	PRE	0.70
08/16/2018	E-mail correspondence, prep, and teleconference with Jackie Nichols regarding requests for additional documents from Metro; e-mail correspondence with client regarding same.	PRE	1.00
08/27/2018	Reviewed documents produced by LVMPD; e-mail correspondence with Jackie Nichols and Victoria/Andy regarding same and next steps; drafted letter to Judge Kishner regarding status check.	PRE	1.20

09/13/2018	Attended status check on writ petition and follow-up teleconference with Jackie regarding hearing and next steps.	PRE	1.00
09/15/2018	Drafted proposed order regarding writ petition.	PRE	1.50
09/21/2018	E-mail correspondence with Jackie Nichols regarding Metro's proposed edits to order.	PRE	0.30
09/24/2018	E-mail correspondence with Jackie Nichols regarding proposed order.	PRE	0.20
09/25/2018	Attended status check before Judge Kishner and follow-up meeting with opposing counsel regarding status of case; researched catalyst theory under state public records acts and met with Molly regarding same; e-mail correspondence with opposing counsel regarding briefing schedule and other outstanding issues.	PRE	3.50
09/27/2018	E-mail correspondence with Nick Crosby regarding negotiations on order; teleconference with Victoria regarding status of case.	PRE	0.60
10/04/2018	Reviewed research on catalyst theory and conducted further research regarding same; drafted supplemental brief on prevailing party status.	PRE	6.50
10/08/2018	Continued drafted supplemental brief and conducted additional research on the catalyst theory in public records litigation.	PRE	7.80
10/09/2018	Edited and revised supplemental brief.	PRE	2.50
10/11/2018	JCW and SRM edits to supplemental brief; drafted proposed FFCL and edited same.	PRE	5.80
10/12/2018	Final edits to supplemental brief and proposed FFCL; teleconferences with chambers regarding notice of department reassignment and e-mail correspondence with opposing counsel regarding same; prepared exhibits and finalized supplemental brief and proposed FFCL for submission; e-mail correspondence with Judge Kishner's chambers and opposing counsel regarding same; e-mail correspondence with client regarding same.	PRE	4.20
10/22/2018	E-mail correspondence with Dan regarding hearing on Petition; met with JCW and SRM regarding reassignment and re-hearing of Petition; e-mail correspondence with client regarding same.	PRE	0.70
10/29/2018	Preparation for hearing on Petition and supplemental briefing on fees issue.	PRE	2.00
10/30/2018	Early morning prep and attended hearing on Petition for Writ of Mandamus; e-mail correspondence with client regarding same;	PRE	2.00

	drafted proposed order and e-mail correspondence with opposing counsel regarding same.	
	Quantity Subtotal	**122.4**
	Total Fees	**$55,080.00**

Expenses

Date	Description	Total
03/31/2018	Print charges for March 2018	$2.80
04/30/2018	Print charges for April 2018	$46.90
05/03/2018	Driving charges - Round trip to State Court	$0.65
05/04/2018	Filing fee	$285.10
05/04/2018	Parking fee	$6.00
05/07/2018	Driving charges - Round trip to State Court	$0.65
05/08/2018	Filing fee	$13.80
05/09/2018	Filing fee	$3.50
05/11/2018	Report to Court Invoice #77	$55.00
05/15/2018	Filing fee	$7.00
05/31/2018	Print charges for May 2018	$165.10
08/31/2018	Print charges for August 2018	$10.55
09/15/2018	Parking fee	$20.00
09/30/2018	Print charges for September 2018	$14.35
10/05/2018	Transcript Order #18190	$264.99
10/12/2018	Filing fee	$3.50
10/31/2018	Print charges for October 2018	$153.65
	Total Expenses	**$1,053.54**

Time Keeper	Hours	Rate	Total
Philip R. Erwin	113.8	$450.00	$51,210.00
Samuel R. Mirkovich	8.6	$450.00	$3,870.00
		Quantity Total	**122.4**
		Subtotal	**$56,133.54**
		Total	**$56,133.54**

Statement of Account

Outstanding Balance		New Charges		**Total Balance**
$0.00	+	$56,133.54	=	**$56,133.54**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
2281	12/06/2018	$56,133.54	$0.00	$56,133.54
			Outstanding Balance	**$56,133.54**
			Total Amount Outstanding	**$56,133.54**

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Steven D. Grierson
CLERK OF THE COURT

Marquis Aurbach Coffing
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Attorneys for Respondent, Las Vegas Metropolitan Police Department

DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING, INC., Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	Case No.: A-18-773883-W Dept. No.: 31

RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S RESPONSE TO MOTION FOR ATTORNEYS' FEES AND COSTS

Respondent Las Vegas Metropolitan Police Department ("LVMPD" or the "Department"), by and through its attorneys of record, Nicholas Crosby, Esq. and Jackie Nichols, Esq., of the law firm of Marquis Aurbach Coffing, hereby submits its Response to The Center for Investigative Reporting, Inc.'s ("CIR") Motion for Attorneys' Fees and Costs.

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MARQUIS AURBACH COFFING
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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Case Number: A-18-773883-W

This Response is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities, and any oral argument allowed by the Court at the hearing on this matter.

Dated this 4th day of December, 2018.

MARQUIS AURBACH COFFING

By: /s/ Jackie V. Nichols
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Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Center for Investigative Reporting ("CIR") seeks an award of attorney's fees and costs totaling $55,080.00 in fees and $1,053.54 in costs pursuant to NRS 239.011. CIR ignores the fact that NRS 239.012 immunizes a government entity from fees and costs. An award of fees and costs pursuant to the Nevada Public Records Act ("NPRA") is subject to a good faith standard. In removing the criminal penalty, the Legislature created a mechanism for requesters to appeal to the courts for the requested records. If the requester prevails, it may recover attorney's fees and costs, so long as it demonstrates the governmental entity acted in bad faith in denying its requests. There is no doubt the term "damages" within NRS 239.012 encompasses the fees and costs permitted in NRS 239.011, as the only damages a requester can seek are fees and costs associated with the court action. Because LVMPD acted in good faith, CIR's request for fees and costs must be denied.

Nevertheless, if this Court determines CIR is entitled to its fees and costs, the award must be reduced. First, this was not a complex or difficult case for the caliber of CIR's attorneys. And, if it is, surely CIR's attorneys cannot charge such an unreasonably rate. Second, CIR

mistakenly includes fees that occurred prior to the commencement of the lawsuit. Finally, CIR did not appropriately evidence it costs. In the event this Court enters an order awarding fees and costs to CIR, LVMPD is entitled to a stay pending appeal as a matter of law.

II. STATEMENT OF FACTS

CIR filed a Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 ("Verified Petition") on May 2, 2018. *See* Verified Petition on file herein. The Verified Petition sought to inspect or obtain copies of any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder, within the legal custody and control of LVMPD. *Id.* LVMPD argued that the investigation concerning Tupac was ongoing and active. *See* Opposition to Verified Petition on file herein. Indeed, LVMPD detectives had scheduled a meeting with witnesses in California as part of its active investigation. *Id.* On May 15, 2018, the Court conducted a hearing on the Verified Petition. The Court found that, in accordance with Nevada law, a sealed evidentiary hearing was necessary to determine whether disclosure of the requested records was required. *See* Transcript of Proceedings on file herein at pp. 22-27. The Court scheduled a sealed evidentiary hearing for Wednesday, May 23rd at 10:00 a.m. *Id.* Notably, the Court did not compel LVMPD to produce records. Id. Instead, the Court required the Parties to prepare a confidentiality agreement for purposes of the evidentiary hearing. *Id.* A confidentiality agreement was never prepared. On May 21, 2018, counsel for CIR informed the Court that the Parties had reached an agreement on production. *See* Letter dated May 21, 2018 on file herein. While LVMPD provided some records, the majority of the records were provided in a redacted format. LVMPD also withheld records on the basis of the active investigation and criminal history records. As a result of the agreement, this matter has been resolved. To date, CIR has not challenged LVMPD's redactions and/or withholding of records.

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III. LEGAL ARGUMENT

A. STANDARDS FOR ANALYZING REQUESTS FOR ATTORNEY FEES AND COSTS.

Nevada courts follow the American Rule that attorney fees will not be awarded absent a statute, rule, or contract provision authorizing such an award. *See Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1356, 971 P.2d 383, 388 (1998); *Consumers League v. Southwest Gas*, 94 Nev. 153, 156, 576 P.2d 737, 738 (1978). Moreover, it is an abuse of discretion for a court to award attorney fees without a proper basis for doing so. *See Rowland v. Lepire*, 99 Nev. 308, 315, 662 P.2d 1332, 1336 (1983). Statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law. *See Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994).

B. LVMPD ACTED IN GOOD FAITH AND IS ENTITLED TO IMMUNITY FOR FEES AND COSTS.

1. The Plain Meaning of NRS 239.011 and 239.012 Provides for Immunity.

"[T]he construction of a statute is a question of law." *Edgington v. Edgington*, 119 Nev. 577, 582, 80 P,3d 1282, 1286 (2003) (citation omitted), "In interpreting a statute, 'words . . . should be given their plain meaning unless this violates the spirit of the act." *Id.* (citation omitted). "Thus, when a statute's language is clear and unambiguous, the apparent intent must be given effect, as there is no room for construction." *Id.* at 582-83 (citations omitted). "If, however, a statute is susceptible to more than one reasonable meaning, it is ambiguous, and the plain meaning rule does not apply." *Id.* at 583, 1286-87 (citation omitted). "Instead, the legislative intent must be ascertained from the statute's terms, the objectives and purpose, 'in line with what reason and public policy' dictate." *Id.* at 1287 (citations omitted).

Furthermore, "[s]tatutory interpretation should avoid meaningless or unreasonable results, and 'statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained.'" *Id.* (citations omitted). "Additionally, 'when construing a specific portion of a statute, the statute should be read as a whole, and, where possible, the statute should be read to give meaning to all of its parts.'" *Id.* (citation omitted).

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substantive ruling on the matter? Can you present that and then we can do a hearing next week?

For you all -- I'm saying next week to try and balance everyone' interests with regards to timing.

MR. CROSBY: Here's my --

THE COURT: Because --

MR. CROSBY: -- hesitation with that, Your Honor, is two-fold. I -- candidly, I don't -- that Table of Contents isn't going to provide a whole lot of information of the specifics behind each tab.

And, secondarily, if -- even if it's out under seal and this Court were to find that, for example, I have to produce some things but I can redact persons of interest or witnesses, counsel would already have those names. And I'm not -- nothing against Mr. Erwin, but it seems to me that it would be more appropriate that if the Court and he's here in the hearing, that's fine, to discuss it, but I don't want those documents floating out --

THE COURT: How do they prepare for a hearing then?

MR. CROSBY: Well, I think you only --

THE COURT: I mean, you wouldn't want to show up without -- I mean, all experienced counsel always tell me they need to prepare for hearings and then the Court reminds them --

Docket 77617 Document 2019-20622

MR. CROSBY: I understand, Your --

THE COURT: -- the Court needs to prepare for hearings, too, so please provide me information. But okay.

I -- the -- there's a couple of different options. One option is you provide everything and then you redact what's confidential and then we have the -- you have the dispute down the road of what you think is not confidential. You know what I mean? You produce everything other than what you assert is confidential in a redacted format. The confidential, you know, gets redacted and then the Court addresses any future concerns at an appropriate future date that the parties agree to. Choice two is I hold a hearing over everything but they have to have some information in which to present their side of the case and to do a cross-examination because otherwise really super silly is a hearing. I mean, they'd have nothing but speculat -- I presume they've done more than --

MR. CROSBY: I guess my inquiry is I don't know what the names of potential suspects or a suspect would have with respect to counsel's need to cross-examination -- cross-examine an officer on what is going on in the case.

THE COURT: So, are you suggesting you provide everything that you can provide in a redacted format and if there's any questions regarding the redacted information that the Court also address that at the hearing?

MR. CROSBY: No. My preference would be, Your Honor, is to take it all at once at the hearing rather than me have those -- that information out ahead of time. Because by ordering me to produce it, even in a redacted version, that's essentially setting a precedent, albeit not controlling, but a precedent that I have to do that in every case I have --

THE COURT: No. It's a sealed proceeding -- well, let's put it this way. If you all agree that it's for purposes of this case only and this is sealed and then, you know, you can ask me to seal today's portion, I would temporarily do it under the Supreme Court rules and then reevaluate it at the appropriate time and then you've got that all taken care of.

Do you know what I mean? There's lot of ways to work this to get this done to meet everybody's needs and --

MR. CROSBY: Well, and my concern --

THE COURT: -- the best possible -- it's going to happen. So you're either going to provide things to them so that they can have a well-reasoned opportunity to have a hearing or you going to provide things subject to redaction and then let you all dispute down the road whether those redactions are proper because at -- as of this juncture, this Court doesn't have -- and I was trying to be appreciative of the short time frame here, the Court

doesn't have that you've met the burden under *Donrey*, *Bradshaw*, or the statutory provision. Okay? As to the totality of everything. Which you may have it with certain things and a certain hearing on Thursday and certain witness meetings that may have Thursday and certain documents that may be related to that. You may have an argument but I don't have enough information in that area, which is why I was doing it next Wednesday. It would be after the hearing. You would then have the full opportunity to know that your client already obtained or didn't obtain, you'd have an opportunity to speak again with your client so that they would have a well-reasoned opportunity to respond to the various issues raised, and by giving plaintiff's counsel, the petitioner, an opportunity to have some information, they can have a full opportunity to do their cross-examination on behalf of their client and, therefore, you're meeting the parties' needs but you're also meeting the public's needs and I'm also complying with the statute and applicable case law.

So, I'm giving you an option one and an option two.

MR. CROSBY: So, option one would be to produce the documents with redactions.

THE COURT: Right. And, then, you argue about --

MR. ERWIN: And then we fight over the

confidential stuff.

MR. CROSBY: And then --

THE COURT: Yeah.

MR. CROSBY: -- option two being that we --

THE COURT: You have a hearing on everything but you provide under seal some type of Index or some type of log so that they can prepare for purposes of a full evidentiary --

MR. CROSBY: I'll do option 2, Your Honor.

MR. ERWIN: And we'd ask that that log include dates, times, things of that nature so that we know when these things are happening rather than just titles.

MR. CROSBY: And any --

THE COURT: I'm going to have to balance this at this juncture to ask them to do -- something that they would have to produce by Friday when today's already Tuesday. There has to be some basis of what they need to produce, which they have available to them with some reasonable work that they may need to do to provide it to you.

MR. ERWIN: I understand.

THE COURT: If they had to go back through 22 years and put all the dates and times on everything, since this one is a 22-year -- in that case, the 22-year works towards their side of that. I can see as being overly

burdensome and if you dispute what they've provided you, then we have the opportunity next Wednesday really to hear all of that and then that's something that the Court has to take into consideration if --

MR. ERWIN: I understand, Your Honor.

THE COURT: Trying to balance everybody here.

MR. ERWIN: Perfect.

THE COURT: And in accordance with the statute and applicable case law.

So, hearing next Wednesday, 10 a.m. Everyone's schedule?

MR. ERWIN: We're clear. Thank you.

MR. CROSBY: I couldn't get logged on, but I'll make it work.

THE COURT: Okay. Because I've got to get to Mr. -- I've got to get to -- counsel, you can start coming forward, because I've got to get to this inmate as well and I appreciate trying to take you as well and take care of everyone's needs.

Okay. So, hearing next Wednesday at 10 a.m. You all will send me a letter by Friday, please, I prefer Thursday, of how long the estimate is going to be for each side so that we can make sure we block out the appropriate amount of time. Okay? For you all. And if you're going to have witnesses, live testimony, if you all -- and I'm

going to ask you all, you're going to provide me a stipulated confidentiality agreement that covers what you need to cover for a temporary basis. Okay?

With regards to Friday, since you may not be able to get me that temp -- that confidentiality agreement by Friday, because you may be working to get the information to plaintiff's counsel, can I have an agreement here in open court that to the extent that information is provided, it will be viewed as being sealed pursuant to Supreme Court rule and it will not be disclosed to anyone other than direct counsel?

MR. ERWIN: Sealed, attorneys' eyes only.

MR. CROSBY: I was going to say attorneys' eyes only and then -- correct, Your Honor.

THE COURT: Does that meet your needs?

MR. ERWIN: Absolutely.

MR. CROSBY: And then --

THE COURT: Okay.

MR. CROSBY: -- same would apply for the hearing itself as being --

THE COURT: I've got to do it in two stages. By the hearing, I'm sure you all are going to give me a written document. I'm appreciative that while you're trying to put together the information that you need for Friday, you probably want to spend your time getting that

information together and you probably want to receive it. And, so, if you all are here in open court telling me that whatever gets presented on Friday, which is going to be a concrete document that you all are going to say is Exhibit Blank on next Wednesday anyway. Right? You're going to ask me to do a Court's Exhibit. It's attorneys' eyes only. I've taken care of the immediate need, today's hearing. Is there any -- you really haven't said anything, but is there anything you need today's hearing to be sealed for any reason?

MR. CROSBY: I don't know if we could.

MR. ERWIN: Yeah. I don't know --

THE COURT: I mean, you've got -- okay. That's what I'm saying.

MR. ERWIN: -- that's possible, but --

THE COURT: I --

MR. ERWIN: From our standpoint, no.

MR. CROSBY: No. I don't think the Court would be able to do it anyway --

THE COURT: Okay. I'm just -- I'm trying to make sure I click off each and every need that potentially could be out there.

Okay. Have I taken care of all of the issues to -- that I can address today?

MR. ERWIN: I believe so, Your Honor.

MR. CROSBY: I believe so, Your Honor.

THE COURT: It is so ordered. Thank you for your time.

MR. ERWIN: Thank you, Judge.

MR. CROSBY: Thank you, Judge.

THE COURT: Thank you.

PROCEEDING CONCLUDED AT 9:41 A.M.

* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

EXHIBIT 9

EXHIBIT 9

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW

May 21, 2018

VIA FACSIMILE (702-366-1412)

The Honorable Joanna S. Kishner
Department 31
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

Re: The Center for Investigative Reporting v. Las Vegas Metropolitan Police Department, Case No. A-18-773883-W

Dear Judge Kishner:

I am writing to advise that the sealed hearing currently scheduled for Wednesday, May 23, 2018 at 10:00 a.m. is no longer required at this time as the parties have reached an agreement regarding the partial production of records that are the subject of the Petition for Writ of Mandamus filed by The Center for Investigative Reporting ("CIR").

Pursuant to the parties' agreement, the Las Vegas Metropolitan Police Department ("LVMPD") will produce records concerning the murder of Tupac Shakur within thirty (30) days subject to LVMPD's right to redact and/or withhold records based on confidentiality under the Nevada Public Records Act ("NPRA"). LVMPD will likewise produce a *Vaughn* index identifying any records that are redacted and/or withheld along with the supporting legal justification(s) therefore. CIR reserves the right to challenge LVMPD's redactions and/or withholdings of records that are the subject of the Petition for Writ of Mandamus. CIR further reserves the right to seek its attorney's fees and costs at the conclusion of this proceeding pursuant to NRS 239.011(2).

In order to allow LVMPD sufficient time to make the partial production of records and for CIR to assess the validity of any redactions and/or withholdings, the parties request that the Court continue the sealed hearing for approximately sixty (60) days until the week of July 23-27, 2018 subject to either party's need for additional time. Thank you for your consideration of this matter and the parties are available to conduct a telephonic conference should the Court have questions concerning the parties' agreement or request to continue the sealed hearing.

Very truly yours,

CAMPBELL & WILLIAMS

Philip R. Erwin, Esq.

cc: Nick Crosby, *via e-mail*

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EXHIBIT 10

EXHIBIT 10

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DECLARATION OF PHILIP R. ERWIN, ESQ. IN SUPPORT OF PETITIONER THE CENTER FOR INVESTIGATIVE REPORTING INC.'S SUPPLEMENTAL BRIEF REGARDING ITS PREVAILING STATUS UNDER NRS 239.011

I, PHILIP R. ERWIN, ESQ., declare as follows:

1. I am a resident of Clark County, Nevada. I am over the age of eighteen (18) years and am in all respects competent to make this Declaration.

2. I am a licensed attorney in the State of Nevada, Nevada State Bar Number 11563, a partner in the law firm of Campbell & Williams, and one of the attorneys representing Petitioner The Center for Investigative Reporting Inc. ("CIR") in this proceeding.

3. On July 9, 2018, the Las Vegas Metropolitan Police Department ("LVMPD") produced more than 2,500 pages of records concerning Tupac Shakur's murder. LVMPD also produced a *Vaughn* index identifying records that were redacted or withheld along with the supporting legal bases for non-disclosure under the NRPA.

4. On August 2, 2018, LVMPD produced audio recordings of 911 calls.

5. On August 16, 2018, I requested additional information and/or the production of certain records identified on LVMPD's *Vaughan* index. I further requested that LVMPD produce any audio recordings of witness interviews conducted during its investigation of Tupac Shakur's murder.

6. On August 27, 2018, LVMPD produced additional documents that were previously identified on its *Vaughan* index.

7. On August 31, 2018, LVMPD agreed to produce any audio recordings of witness interviews. To date, LVMPD has made rolling productions of six audio recordings of witness interviews related to the murder of Tupac Shakur.

8. Attached hereto as Exhibit "1," is a true and correct copy of e-mail correspondence dated December 11, 2017 between Andy Donohue and LVMPD Office of Public Information.

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9. Attached hereto as Exhibit "2," is a true and correct copy of a letter from Philip R. Erwin, Esq. dated March 28, 2018.

10. Attached hereto as Exhibit "3," is a true and correct copy of the two-page police report produced by LVMPD on April 5, 2018 in response to CIR's public records request concerning the murder of Tupac Shakur.

11. Attached hereto as Exhibit "4," is a true and correct copy of e-mail correspondence from Philip R. Erwin, Esq. dated April 11, 2018.

12. Attached hereto as Exhibit "5," is a true and correct copy of a letter from Charlotte M. Bible, Esq. dated April 12, 2018.

13. Attached hereto as Exhibit "6," is a true and correct copy of a letter from Philip R. Erwin, Esq. dated April 23, 2018.

14. Attached hereto as Exhibit "7," is a true and correct copy of a letter from Charlotte M. Bible, Esq. dated April 27, 2018.

15. Attached hereto as Exhibit "8," is a true and correct copy of transcript from the May 15, 20108 hearing in this matter.

16. Attached hereto as Exhibit "9," is a true and correct copy of a letter from Philip R. Erwin, Esq. to Judge Kishner dated May 21, 2018.

17. I declare under penalty of perjury, under the laws of the State of Nevada, that the foregoing is true and correct.

DATED this 12th day of October, 2018.

/s/ ***Philip R. Erwin***
PHILIP R. ERWIN, ESQ.

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING, INC., Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	Case No.: A-18-773883-W Dept. No.: 31

RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S BRIEF REGARDING ISSUE OF PREVAILING PARTY

Respondent Las Vegas Metropolitan Police Department ("LVMPD" or the "Department"), by and through its attorneys of record, Nicholas Crosby, Esq. and Jackie Nichols, Esq., of the law firm of Marquis Aurbach Coffing, hereby submit its Brief Regarding Issue of Prevailing Party.

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Case Number: A-18-773883-W

This Brief is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities, and any oral argument allowed by the Court at the hearing on this matter.

Dated this 12 day of October, 2018.

MARQUIS AURBACH COFFING

By: _____

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Jackie V. Nichols, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

CIR cannot be deemed a prevailing party because this matter was resolved by virtue of an agreement between the Parties. In accordance with Nevada law, an action must proceed to judgment in order for a party to have prevailed. The Supreme Court has expressly applied this standard to NPRA cases. Because the Parties reached an agreement, which precluded this Court from making a ruling on the merits of the Verified Petition, CIR cannot meet the "prevailing party" standard. To be sure, the Supreme Court recently issued a decision where it rejected the argument that the recovery as a result of the parties' agreement should be considered in determining whether a party prevailed. Under Nevada law, CIR cannot be considered the prevailing party to this action. CIR's argument that the instant action was the "catalyst" to it receiving the records subject to the Petition is also unpersuasive. The law relied upon by CIR in support of its theory is solely based on the fee and cost provision within the Freedom of Information Act, which cannot apply given the Nevada authority directly on point. Without an order from this Court on the merits of the Verified Petition, including an order to compel records, CIR is not a prevailing party.

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II. STATEMENT OF FACTS

The Center for Investigative Reporting ("CIR") filed a Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 ("Verified Petition") on May 2, 2018. *See* Verified Petition on file herein. The Verified Petition sought to inspect or obtain copies of any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder, within the legal custody and control of LVMPD. *Id.*

On May 15, 2018, the Court conducted a hearing on the Verified Petition. The Court found that, in accordance with Nevada law, a sealed evidentiary hearing was necessary to determine whether disclosure of the requested records was required. *See* Transcript of Proceedings on file herein at pp. 22-27. The Court scheduled a sealed evidentiary hearing for Wednesday, May 23rd at 10:00 a.m. *Id.* Notably, the Court did not compel LVMPD to produce records. *Id.* Instead, the Court required the Parties to prepare a confidentiality agreement for purposes of the evidentiary hearing. *Id.* On May 21, 2018, counsel for CIR informed the Court that the Parties had reached an agreement on production. *See* Letter dated May 21, 2018 on file herein. As a result of the agreement, this matter has been resolved. To date, CIR has not challenged LVMPD's redactions and/or withholding of records.

III. LEGAL ARGUMENT

A. THE NPRA'S LEGAL STANDARD.

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

proving by a preponderance of the evidence that the requested record is confidential. NRS 239.0113 (emphasis added).

B. CIR DID NOT OBTAIN A WRIT COMPELLING PRODUCTION.

The NPRA provides that if a requester prevails, it may recover its costs and reasonable attorney's fees in the proceeding. NRS 239.011(2). In the NPRA context, the Supreme Court has determined that a party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit."[1] *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015) (citation omitted). The *Blackjack* court had ordered LVMPD to produce nearly all of the information that the requester sought in its petition for a writ of mandamus. *Id.* The lower court, however, denied Blackjack's request for attorney fees and costs because it was required to pay the costs of production. *Id.* Finding that the lower court abused its discretion, the Supreme Court concluded that because Blackjack ***obtained a writ compelling the production of records*** it was entitled to its attorney fees and costs. *Id.* (emphasis added).

Applying the same analysis utilized by the Supreme Court, it is undisputed that CIR is not a prevailing party. This Court did not enter an order requiring LVMPD to produce records. Rather, this Court determined that a sealed evidentiary hearing was necessary to determine whether production would be required. The Court did not have the opportunity to reach the merits of the Verified Petition because the Parties' reached an agreement. In fact, CIR admitted the Petition is moot in light of LVMPD's production. Thus, this action did not proceed to judgment and the Court never compelled LVMPD to produce records. Because this Court did not compel production of the requested records, CIR cannot be considered a prevailing party.

C. THE COURT IS PROHIBITED FROM CONSIDERING THE PARTIES' AGREEMENT TO DETERMINE WHO IS A PREVAILING PARTY.

A party to an action cannot be considered a prevailing party where the action has not proceeded to judgment. *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1375-76 (1987)

[1] Notably, this is the same standard the Supreme Court applies to fees and costs sought under NRS 18.010 and NRS 18.020. Thus, the same analysis applies under fees and costs sought pursuant to those provisions.

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disapproved of on other grounds by *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 354 P.3d 964 (2001). In *Works*, the appellant argued that the district court abused its discretion in refusing to award attorney's fees pursuant to NRS 18.010. The parties to the case settled prior to going to trial. *Id.* Appellant, nonetheless moved for attorney fees, which the district court denied. *Id.* The Supreme Court reiterated its previous holdings that a party to an action cannot be considered a prevailing party within the contemplation of NRS 18.010, where the action has not "proceeded to judgment." *Id.* The Court also noted that NRS 18.010(3) appears to contemplate the award of fees following a trial or special proceeding. *Id.* In affirming the lower court's order, the Supreme Court reasoned because the appellant agreed to respondent's offer and respondents voluntarily dismissed their counterclaim, the appellant could not be considered as having prevailed. *Id.*

Like *Works*, the Parties reached an agreement, which prevented this matter from proceeding to judgment. While the NPRA permits recovery of costs and reasonable attorney fees, separate and apart from NRS 18.010, the Supreme Court has used the same standard in determining whether a party prevails. Recently, the Supreme Court published a decision that addressed whether parties who recover from settlement are prevailing parties for purposes of seeking fees and costs. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. Adv. Op. 60, 422 P.3d 1234 (2018).

In *GL*, the plaintiff initiated an action for damages against the defendant and the defendant later filed a counterclaim for breach of contract. *Id.* at 1236. The district court bifurcated the trial and, three days into trial, the parties settled plaintiff's claims. *Id.* A bench trial proceeded on the counterclaim and the district court found in favor of the defendant. *Id.* The defendant then moved for attorney fees and costs and prevailed. *Id.* While the main issue dealt with offsetting the awards to determine who was the prevailing party, the Supreme Court addressed case law from other states, including California, that have found that parties who recover through settlement are the prevailing party within the meaning of attorney fee statutes. *Id.* at 1237. The Supreme Court was unpersuaded by these holdings. *Id.* Ultimately, the Supreme Court held that that NRS 18.010(2)(a) and NRS 18.020(3) do not intend for the district

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court, in determining the "prevailing party," to compare a monetary settlement of one party's claim against a judgment for damages on another party's counterclaim. *Id.* In other words, the district court is prohibited from considering an agreement reached between the parties to make a determination of who prevailed. *Id.*

As a matter of law, the Court is prohibited from relying on the Parties' agreement in reaching a determination as to whether CIR prevailed in this matter. Without reaching a final decision on the merits, *i.e.*, proceeding to judgment, this Court cannot find CIR as a prevailing party. Because CIR is not a prevailing party pursuant to Nevada law, it cannot seek its attorney's fees and costs pursuant to NRS 239.011(2). CIR may make the argument that, although it made an agreement with LVMPD, it reserved its right to seek fees and costs. *See* May 21, 2018 letter on file herein. The letter, however, also indicates that CIR reserved its right to challenge LVMPD's redactions and/or withholding of records. Logistically, had CIR raised issues regarding LVMPD's redactions and/or withholding of records with the Court, and the Court entered an order on the issue in CIR's favor, CIR would be considered a prevailing party on that limited issue in accordance with Nevada law. This Court has not made a substantive ruling on the Verified Petition, nor can it because the Parties reached an agreement. For these reasons, CIR cannot be deemed the prevailing party in this case.

D. THE COST AND FEE PROVISION SET FORTH IN THE FREEDOM OF INFORMATION ACT DOES NOT APPLY.

CIR will likely argue that the instant action was the catalyst to it receiving the records subject to the Petition. *See Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec.*, 218 F.Supp.3d 27, 41-42 (D. D.C. 2016) (finding that plaintiff was prevailing party under the "catalyst" theory where defendant's production of records was caused by the plaintiff's lawsuit); *Judicial Watch, Inc. v. United States Dep't of Justice*, 878 F.Supp.2d 225, 231-233 (D. D.C. 2012) ("Here, the Court finds that Judicial Watch has adequately shown that this lawsuit was the catalyst for the DOJ's release of records, thus making it eligible for attorneys' fees under the FOIA."). Like the NPRA, the Freedom of Information Act ("FOIA") allows a requester to seek its attorney fees and costs if it prevails in a proceeding. *See* 5 U.S.C. § 552(a)(4)(E)(i). Contrary

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to the NPRA, and Nevada law, FOIA specifically provides that a complainant has substantially prevailed if it has obtained relief through either:

> (I) a judicial order, or an enforceable written agreement or consent decree; or
>
> (II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

5 U.S.C. § 552(a)(4)(E)(ii). CIR's reasoning, and reliance on the cases cited above, is without merit. Because the Supreme Court has specifically incorporated the NRS 18.010 and 18.020 standard to NPRA cases in determining whether or not a party is a prevailing party, the provisions defining "substantially prevailed" within the FOIA context cannot apply to this instant case.

IV. CONCLUSION

Based on the foregoing, CIR is not a "prevailing party" pursuant to Nevada law. As such, CIR is prohibited from requesting its attorney's fees and costs related to this proceeding.

Dated this 12 day of October, 2018.

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By: _____

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S BRIEF REGARDING ISSUE OF PREVAILING PARTY** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 12th day of October, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[2]

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Attorneys for Petitioner The Center for Investigative Reporting, Inc.

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

N/A

An employee of Marquis Aurbach Coffing

[2] 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).

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DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Mandamus	**COURT MINUTES**	**October 30, 2018**

A-18-773883-W Center for Investigative Reporting Inc, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

October 30, 2018 **9:00 AM** **Hearing: Petition for Writ of Mandamus**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES PRESENT:
Erwin, Philip R. — Attorney for Plaintiff
Nichols, Jacqueline — Attorney for Defendant

JOURNAL ENTRIES

- Court noted this case was transferred to its docket after arguments, after supplemental briefing, and apparently after submission of proposed findings of fact and conclusions of law. Court further noted it has read the briefing but not the transcripts, and inquired if there was anything that has not been produced subject to the petition that counsel is still seeking. Mr. Erwin stated, no. Court further inquired whether counsel contends Metro has changed their process as a result of the petition. Mr. Erwin stated he contends that Metro has started following the law. Court noted parties are then basically arguing attorney's fees today. Ms. Nichols argued as to what they need to address; supplemental briefing was done to determine the prevailing party under the NPRA to be able to seek attorney's fees. Court noted "prevailing party" is different from "prevails."

Following arguments by counsel, COURT FINDS it does not appear Metro initially complied with the public records request and after the filing of the petition and original argument did attempt to comply and through the work of counsel working together produced a satisfactory amount of documents for the Petitioner. For that reason, it appears to the Court in this particular case that the Petitioner PREVAILED in this action.

With regards to attorney's fees, COURT DIRECTED counsel to file a motion.

Mr. Erwin to prepare today's order.

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Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING, INC., Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	CASE NO. A-18-773883-W DEPT. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PETITION FOR WRIT OF MANDAMUS

TUESDAY, OCTOBER 30, 2018

APPEARANCES:

FOR THE PETITIONER: PHILIP R. ERWIN, ESQ.

FOR THE RESPONDENT: JACKIE V. NICHOLS, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER

Case Number: A-18-773883-W

LAS VEGAS, NEVADA, TUESDAY, OCTOBER 30, 2018, 9:35 A.M.

(Court was called to order)

MR. ERWIN: Good morning, Your Honor.

THE COURT: Good morning. How are you?

MR. ERWIN: I'm doing well.

MS. NICHOLS: Good morning, Your Honor.

THE COURT: So this case was transferred to me after arguments, after supplemental briefing, and apparently after you'd submitted findings of fact and conclusions of law to Judge Kishner. I have read, not the hearing transcripts, but all the briefing. I have a couple of questions, and then we'll decide what we're doing next.

Is there anything that you think haven't been produced that was subject to your petition which you are still seeking?

MR. ERWIN: No, Your Honor.

THE COURT: Okay. Do you contend that Metro has changed their process as a result of your request?

MR. ERWIN: I can tell you that they've started to follow the law in this case after my request. I don't know that they have changed their process of handling public records requests [inaudible].

THE COURT: Following the law would be a change in process.

MR. ERWIN: Correct.

THE COURT: If we ignored the law before and we never

told you within the time frame we were supposed to respond to public that would be a change in process.

MR. ERWIN: Then, yes, Your Honor. I'd agree there's been a change of process.

THE COURT: So basically you're arguing attorneys' fees now; right?

MR. ERWIN: Correct, Your Honor.

THE COURT: Okay. Do you want to argue, or are you -- what do you want to do?

MS. NICHOLS: Well, Your Honor, I think the first issue is whether or not they're a prevailing party, not necessarily whether they're entitled to attorneys' fees, because I think that's a whole separate argument and I have a whole other issue with that under the NPRA. So first I think what our supplemental briefs were for was to determine whether or not they are a prevailing party under the NPRA to be able to seek attorneys' fees and costs.

THE COURT: Which doesn't use the term "prevailing party." It says "prevails."

MS. NICHOLS: Correct, Your Honor.

THE COURT: Which is different than prevailing party.

MS. NICHOLS: However, I believe that the Supreme Court in LVMPD versus Blackjack Bonding applied the prevailing party standard. And so that's the standard to be used to determine whether or not a party prevails. And if you look at

the legislative history, I do agree that there is a difference in "prevails" and "prevailing party," but if you look at the legislative history and specially Assembly Bill 365 from the 1993 legislation and specially the May 7th, 1993, hearing, they went back and forth to determine whether or not it should be a prevailing party or whether it's just prevails, and they decided to stay away from prevailing party because prevailing party would then allow the government agency to seek fees and costs. And they didn't want that. They wanted it just limited to the requestor in the event that they prevailed.

So the same standard applies, but the language is different because it doesn't apply to both parties if only --

THE COURT: So does "prevails" mean that you refused to produce all of the records for a long, long time and then all of a sudden you did?

MS. NICHOLS: No, Your Honor. I believe that in the recent Supreme Court case in 2018, we reached an agreement as far as the records are concerned. You know, our concern with this case is that it dealt with an open investigation. And we've had candid conversations with --

THE COURT: A really old, but arguably open investigation.

MS. NICHOLS: It's still -- and there was a recent interview that our officers did conduct. So --

THE COURT: I heard that -- or I read that in the

briefing.

MS. NICHOLS: So the argument -- our concern was, Your Honor, is that this is an open investigation and so we didn't -- we didn't want this case to be used against us in the future to say, oh, a murder just happened, it's 22 hours old, now we're entitled to the full investigative file. That was our entire concern with this case. And we were candid with opposing --

THE COURT: Isn't that what happened in the Paddock case?

MS. NICHOLS: No, Your Honor. That was a little bit different, because there was not someone alive that was able to be charged with.

THE COURT: Okay.

MS. NICHOLS: As far as --

THE COURT: You guys haven't been doing so good on public record request cases lately is why I'm asking the questions. I'm trying to figure out at what point that line gets drawn given all of the history that we have.

MS. NICHOLS: Well, there's seven cases in front of the Supreme Court right now, Your Honor, dealing with all of these issues. So hopefully by 2019 we will have some sort of answer.

THE COURT: Yeah. Maybe.

MS. NICHOLS: But I do think that the Supreme Court's recent decision in August 2018, the Northern Nevada Homes versus

your client. Due to the open investigation, the requested records are not public records under NRS 239.010(1), as such records are declared by law to be confidential. *See Pub. Employees Ret. Sys. v. Reno Newspapers* 129 Nev. Adv. Op. 88, 313 P.3d 221, 224-25 (2013).

The public records law does not require the disclosure of materials that are confidential as a matter of law. *See, Civil Rights for Seniors v. Admin-Office of the Courts* 129 Nev. Adv. Op. 80, 313 P.3d 216, 219-20 (2013). The open criminal investigation is confidential because it subject to the law enforcement privilege and is protected from disclosure. *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 636, 798 P.2d 144, 148, (1990)); *Miller v. Mehltretter*, 478 F. Supp. 2d 415 (W.D.N.Y.)(2007); *See also,* 5 U.S.C. section 552(b)(7)(Nevada Supreme Court cites to the FOIA exemptions as analogous authority for the Nevada Public Records Act).

The requested documents are protected from disclosure because when the interests are weighed, the law enforcement policy justifications for nondisclosure clearly outweigh the public's interest in access to the records. In this case, disclosure of the investigative file would jeopardize apprehending a murder suspect. *See, Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 636, 798 P.2d 144, 148, 1990 (acknowledging that law enforcement policy justifications for nondisclosure such as pending criminal investigations, confidential investigative techniques, potential jeopardy to law enforcement personnel, and a defendant's right to a fair trial may outweigh the general policy in favor of open government).

Based on the foregoing, there are no other public records responsive to your request.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By: Charlotte M. Bible

Charlotte M. Bible
Assistant General Counsel

CMB:sa

Docket 77617 Document 2019-20622

EXHIBIT 6

EXHIBIT 6

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW

April 23, 2018

VIA E-MAIL (C9479B@LVMPD.COM)

Charlotte M. Bible, Esq.
Associate General Counsel
Las Vegas Metropolitan Police Department
400 Stewart Avenue
Las Vegas, Nevada 89101

Dear Ms. Bible:

I am in receipt of your letter dated April 12, 2018, which states that there are no other public records responsive to Mr. Andy Donohue's repeated public records requests because the criminal investigation of the 1996 murder of Lesane Parrish Crooks a/k/a Tupac Shakur is an "open active investigation" and "disclosure of the investigative file would jeopardize apprehending a murder suspect." Suffice it to say, we disagree with the legal grounds for the Las Vegas Metropolitan Police Department's ("LVMPD") blanket refusal to produce the requested records as Nevada law clearly provides that disclosure is required here.

Under the Nevada Public Records Act (the "Act"), all public records generated by government entities are public information and subject to disclosure unless otherwise declared to be confidential. *Reno Newspapers v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010). In 2007, the Legislature amended the Act to ensure the presumption of openness, and provided that all statutory provisions related to the Act must be construed liberally in favor of the Act's purpose of fostering the principles of democracy by allowing public access to information about government activities. *Id.* The Legislature likewise provided that any exemption, exception, or a balancing of interests that restricts the public's right to access a governmental entity's records must be construed narrowly. As a result, Nevada courts presume that all public records are open to disclosure unless either (1) the Legislature has expressly and unequivocally created an exemption or 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. *Id.* at 214-15, 234 P.3d at 924-25.

Beginning with the first prong, you cite *Pub. Emps. Ret. Sys. (PERS) v. Reno Newspapers*, 129 Nev. Adv. Op. 88, 313 P.3d 221, 224-25 (2013) for the proposition that "[d]ue to the open investigation, the requested records are not public records under NRS 239.010(1), as such records are declared by law to be confidential." The Nevada Supreme Court, however, did not address the confidentiality of criminal investigative materials in *PERS*. Rather, the Nevada Supreme Court in *PERS* assessed the confidentiality of records related to retired state employees who were collecting pensions were confidential. As such, the Nevada Supreme Court's opinion in *PERS* is wholly inapplicable to this matter.

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

Similarly unavailing is your suggestion that "[t]he open criminal investigation is confidential because it is subject to the law enforcement privilege and is protected from disclosure." The Nevada Supreme Court in *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 634, 798 P.2d 144, 147 (1990) expressly held that investigative materials prepared by law enforcement agencies "are subject to disclosure if policy considerations so warrant." As to your apparent reliance on the federal "law enforcement privilege," I would simply note that the Honorable Richard F. Scotti recently rejected this exact argument when it was advanced by the LVMPD in response to public records requests concerning the October 1 Massacre. *See* March 2, 2018 Order, *Am. Broad. Cos. v. Las Vegas Metro. Police Dep't*, Case No. A-17-764030-W. To that end, Judge Scotti compelled the production of the file related to that incident on grounds "that there exists no rule that records can be withheld merely because they relate to an ongoing investigation."

Turning to the balancing of interests, we recognize that law enforcement justifications may outweigh the general policy in favor of open government in some limited circumstances. *Bradshaw*, 106 Nev. at 635-36, 798 P.2d at 147-48. We would further note, however, that "the balancing test under *Bradshaw* now requires a narrower interpretation of private or government interests promoting confidentiality or nondisclosure to be weighed against the liberal policy for open and accessible government" as a result of the Legislature's amendments to the Act in 2007. *Reno Newspapers*, 126 Nev. at 217-18, 234 Nev. at 926.

In that regard, the *Bradshaw* factors clearly weigh in favor of disclosure of the requested records especially where, as here, the murder of Tupac Shakur occurred in 1996. First, your reference to "pending criminal investigations" mischaracterizes the Nevada Supreme Court's opinion in *Bradshaw* as the relevant consideration is whether there is a pending or anticipated criminal *proceeding*—and there is none. Second, the LVMPD cannot credibly claim that there are confidential sources or investigative techniques to protect in the criminal investigation of a murder that took place twenty-two years ago. This is especially true when many of the witnesses and/or persons with knowledge have since passed away. Lastly, there is no possibility of denying someone a fair trial nor is there any potential jeopardy to law enforcement personnel. While the LVMPD may still label the Tupac Shakur murder investigation as "open," any claimed justification for withholding the requested records would be "merely hypothetical and speculative[,]" which is insufficient to prevent disclosure under the Act. *PERS*, 129 Nev. at 839, 313 P.3d at 225. Simply put, the LVMPD cannot demonstrate that law enforcement justifications "clearly outweigh" the public interest in access to the requested records concerning a decades-old unsolved murder.

Based on the foregoing, we again demand that the LVMPD produce the requested records as required by Nevada law. We further request that the LVMPD confirm its intention to produce the requested records in writing on or before the close of business on Friday, April 27, 2018. Should the LVMPD fail to respond by that date and/or maintain its improper refusal to produce the requested records, we will promptly seek judicial intervention along with our attorney's fees and costs pursuant to NRS 239.111.

[redacted]

Thank you and please do not hesitate to contact me with any questions.

Very truly yours,

CAMPBELL & WILLIAMS

Philip R. Erwin, Esq.

cc: Liesl K. Freedman, Esq., *via e-mail at L8706@lvmpd.com*
Lawrence Hadfield, *via e-mail at L7171H@lvmpd.com*
D. Victoria Baranetsky, Esq., General Counsel at The Center for Investigative Reporting

[redacted]

EXHIBIT 7

EXHIBIT 7

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT
JOSEPH LOMBARDO, Sheriff

Partners with the Community

April 27, 2018

SENT VIA EMAIL: pre@cwlawlv.com

Philip R. Erwin, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89101

Dear Mr. Erwin:

I am in receipt of your letter sent to my email address. I am very familiar with the 1 October public records request and the proceedings that have occurred. As you should know a District Court order is not precedent, should not be cited as authority and is not binding other than in the case. For your information, LVMPD is appealing Judge Scotti's orders.

Regarding the application of the public records law and its exceptions to the Tupac Shakur murder investigation, I may not have been as clear as I could have been in explaining the public policy justification for non-disclosure of the investigative file. LVMPD's interest in protecting the investigative file is to avoid interference with the investigation of the murder of Tupac Shakur which LVMPD is actively pursuing. Disclosing the investigative records may alert persons of interest or possible suspects of the investigation and investigative leads which could cause the destruction or concealment of evidence or other circumvention of the investigation. If a suspect is identified then the suspect has a right to a fair and impartial trial and a right to view the evidence prior to the media or any other person. Based on these reasons, the policy justification for nondisclosure of the records clearly outweighs the media's interest in disclosure. LVMPD obtained evidence, conducted an investigation and continues its investigation concerning the murder of Tupac Shakur because it is the law enforcement agency with jurisdiction to enforce the laws of the State of Nevada to protect the public.

Contrary to your understanding of *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990), LVMPD understands *Donrey* to protect open, ongoing law enforcement investigations from interference by premature disclosure of the investigative records or information. Preventing interference with a criminal investigation is a strong policy justification for denying the request for disclosure. LVMPD asserts the law enforcement privilege in good faith. Accordingly, LVMPD maintains the records are confidential by law and will not be producing the records requested at this time.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By: Charlotte M. Bible
Charlotte M. Bible
Assistant General Counsel

:sa

400 S. Martin L. King Blvd. • Las Vegas, Nevada 89106-4372 • (702) 828-3111
www.lvmpd.com • www.protectthecity.com

EXHIBIT 8

EXHIBIT 8

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Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

CENTER FOR INVESTIGATIVE REPORTING, INC., Plaintiff, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Defendant.	CASE NO. A-18-773883 DEPT. NO. XXXI **Transcript of Proceedings**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

VERIFIED PETITION FOR WRIT OF MANDAMUS AND INCORPORATED APPLICATION FOR ORDER AND EXPEDITED HEARING PURSUANT TO NRS 239.011

TUESDAY, MAY 15, 2018

APPEARANCES:

For the Plaintiff: PHILIP R. ERWIN, ESQ.
SAMUEL R. MIRKOVICH, ESQ.

For the Defendant: NICHOLAS CROSBY, ESQ.

RECORDED BY: SANDRA HARRELL, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

Case Number: A-18-773883-W

TUESDAY, MAY 15, 2018 AT 9:03 A.M.

THE COURT: Okay. The other parties that were here early and if they wish to be called next, I'd be fine doing so is Center for Investigative Reporting versus Las Vegas Metro PD, 773883.

Page 11. See, when people are here early, we call them.

MR. ERWIN: Phil Erwin, Campbell and Williams, on behalf of the Center for Investigative Reporting.

MR. MIRKOVICH: Good morning, Your Honor. Samuel Mirkovich, Campbell and Williams, on behalf of the Center.

MR. CROSBY: Good morning, Your Honor. Nick Crosby with Marquis, Aurbach, Coffing on behalf of the Las Vegas Metropolitan Police Department.

THE COURT: Thank you. And we were not waiting for anyone else on behalf of defense. Right?

MR. CROSBY: Correct, Your Honor.

THE COURT: Okay. I didn't -- I appreciate that we had a couple of calls, people were going to be late, but I understood that you all were now here.

Okay. So, page 11. It's a Petition for a Writ of Mandamus. So, since no one requested this be on anything other than a 9 o'clock calendar, you know, that's the quick, few minutes of argument calendar, because no one

requested a special setting.

Okay. So, let me do the following. You're the petitioner. Go ahead.

MR. ERWIN: Okay. And, Your Honor, keeping in mind that we are on the 9 o'clock calendar, I'll be brief, as I think the issues were addressed in detail in the pleadings.

THE COURT: I appreciate the very nice, well-tabbed binder.

MR. ERWIN: We tried.

THE COURT: Thank you.

MR. ERWIN: I think what we're confronted with, and this isn't about opposing counsel, but this is about Metro, is Metro's systematic refusal to comply with the open records law in Nevada. We've seen it in this case. We've seen it in other cases that have been reported in the media and in recent litigation. Metro's approach seems to be to make things as difficult for the requesting party in the hopes that they just give up and go away.

In that regard, my client made a request in December, had to follow-up on that request on three separate occasions without receiving a response, in violation of the Act. We only received a substantive response when our firm got involved and pressed the issue and even that response was severely lacking, in our view,

with conclusory justifications for withholding and erroneous citations to law.

So, we filed the Petition and I know Your Honor is familiar with the legal standard governing open --

THE COURT: You know what? I'm sorry, counsel. I meant to make a disclosure in this case and my apologies. So let me stop you for a quick moment. And I understood that you all had spoken among yourselves about the disclosure. I have an extern coming in in a couple of weeks. Did you have a chance to speak about that?

MR. ERWIN: I didn't speak to opposing counsel about that. I spoke to your staff about that.

MR. CROSBY: I -- this is the first I'm hearing about this.

THE COURT: Okay. Then let me make the disclosure. My apologies. I understood that you all were going to speak about it. Since no one was raising it, --

MR. ERWIN: Oh, I didn't under -- I'm sorry.

THE COURT: No worries.

MR. ERWIN: My apologies, Your Honor.

THE COURT: Okay. No worries. Let's just make it clear on the record.

I have an extern coming in in a couple of weeks. Okay? An extern normally if -- and I understand that this extern will be externing for me for a couple of -- during

part of the summer. Okay? It's an extern, not a law clerk. Extern coming in and, at the same time, will be externing a couple days a week at the Campbell Williams firm. Okay?

MR. ERWIN: And, to be clear, she hasn't started at our firm yet. So, --

THE COURT: Right. She hasn't started with me and she hasn't started with them.

MR. CROSBY: Okay.

THE COURT: Okay? So, in fact, she's due to start here the 29th, I believe. The 29th or -- I'd have to double-check. Anyway, it's a couple of weeks away.

MR. ERWIN: I think it's the 30th for our office.

THE COURT: Okay. Which would make sense. Okay. So, she's going to work a couple of days a week here, a couple of days a week at their firm.

Generally, this Court's policy, if an extern has any relationship -- because, as you know, sometimes externs sometimes have relatives, friends, family, whatever, okay, we've had it with your firm. So, that what we do is that we make sure that they play no role in any case in any way and they wouldn't have any responsibility, do you know what I mean? Or any knowledge of -- I mean, and as you know, an extern only does limited amount of work. We try to give them the full experience, you know, to ensure they have a

full opportunity, but it's a different role. Okay?

And, so, but I did want to make that disclosure in case there was any issue. This Court doesn't find -- because the Court can find -- short answer, she's not even here yet. So, that's a nonissue, right now. Down the road, depending on what issues come up in this case, it's very, very simple. With the full workload that we have in the Department, there's lots of other matters that she can work on and what I understand is the Campbell Williams similarly would be shielding her --

MR. ERWIN: She would be completely screened off the matter.

MR. CROSBY: I'm fine. If the Court doesn't believe there's any concern with it, I wouldn't have any reason to --

THE COURT: The only thing would be is if you all had a future hearing when she was here, we offer externs the full opportunity to be at every single hearing, but they would -- she would not be playing any role in any briefing or anything like that. Could she potentially pick up the phone and one of you all call? It would be the same as anybody else say, you know, put it in a piece of paper and put it on a fax. Possibly. But that's -- so, any questions at all?

MR. CROSBY: No, Your Honor.

THE COURT: Before you make a well-reasoned decision, I just wanted to see if you had any further questions.

MR. CROSBY: I mean, I -- and, I guess, I'd just ask that she had the job with Campbell Williams before she had the externship [indiscernible] with the Court?

THE COURT: I don't -- I think she was pursuing them at the same time, but I'm not really sure.

MR. ERWIN: I think it was parallel.

THE COURT: I didn't ask --

MR. CROSBY: Okay.

THE COURT: She's -- her -- she's an out of state law student, American University, back in Washington. Has family here, attorneys that --

MR. CROSBY: I'm fine with that, Your Honor.

THE COURT: So, she pursued an externship. She had the qualifications. We give everyone an opportunity who has the qualifications who wishes to extern. We don't ask where else they may be -- we're just more than glad to accommodate. So, we wouldn't have asked those follow-up questions. I don't know if you did on your end.

MR. ERWIN: no. And to be fair, I think she was slated to begin with us before we filed this case because it's been an expedited proceeding and when we got the judicial assignment, I called to ask what the policy was,

and was informed of that, and our understanding was we would screen her off completely, and she would have no involvement in the case.

MR. CROSBY: Fair enough.

THE COURT: So, do you have any further questions?

MR. CROSBY: I do not, Your Honor.

THE COURT: Do you have any issues? Do you want to waive? Do you not want to waive? Do you want to consider it and have me continue this hearing? What would you like to do?

MR. CROSBY: I don't think, based upon what the Court's represented and what Mr. Erwin's represented, I don't see a concern or a need to proceed -- or to continue the hearing. So, I'll waive, --

THE COURT: Okay.

MR. CROSBY: -- based upon the limited information I have now.

THE COURT: And that's the limited information -- I mean, it doesn't fall anywhere within 2.11. I mean, it's not even a law clerk, however this Court does have a policy of -- I mean, I disclose who my kids played soccer with a decade ago, so --

MR. CROSBY: I understand, Your Honor.

THE COURT: -- just because I disclose something doesn't mean I fell it should have concern, but I view the

comment within the section where it says anything can -- I do it in a very, very broad manner because if I were in you all's shoes, I'd want it to be in a broad manner.

MR. CROSBY: Appreciate it, Your Honor. Thank you.

THE COURT: Okay.

[Colloquy between the Court and the Law Clerk]

THE COURT: Sorry. Just one second.

[Colloquy between the Court and the Law Clerk]

THE COURT: Okay. I just got a notification that our inmate case that was on at 9 o'clock, I'm sorry, does need to be taken care of right now because you can appreciate somebody who is in CCDC only have --

MR. ERWIN: Sure.

THE COURT: -- a very limited window. So, my apologies. I'm going to have to recall you in a few moments. I was hoping to get you taken care of before he was on the line, but we just have a notification that he's on the line.

So, stay tuned. Talk among yourselves for a few moments outside in the ante rooms, if you wish to, and we'll recall you as soon this inmate case is taken care of. Okay? I appreciate it. Thank you so much.

Okay. My apologies.

[Case trailed at 9:10 a.m.]

[Case recalled at 9:19 a.m.]

THE COURT: And we're recalling, thank you for your patience, page 11, *Center for Investigative Reporting versus Las Vegas Metro PD*, case 773883. And, counsel, since I had to call an intervening matter, if you don't mind restating your appearances, please.

MR. ERWIN: Phil Erwin, Campbell and Williams, on behalf of the petitioner.

MR. MIRKOVICH: Samuel Mirkovich, Campbell and Williams, on behalf of the Center for Investigative Reporting.

MR. CROSBY: Nick Crosby with Marquis, Aurbach, Coffing on behalf of Las Vegas Metropolitan Police Department.

THE COURT: Okay. I do appreciate it. Thank you so very much.

So, before I had to take that one, just to let you know, in 10 minutes, I have another inmate. So, I'm going to --

MR. ERWIN: I'm going to move it.

THE COURT: Go ahead, counsel for plaintiff. You're in the midst of making oral argument. Feel free to continue.

MR. ERWIN: All right. I'll pick up where I left off.

I know the Court's familiar with the legal standard governing requests under the Open Records Act. There's just one point that I want to reemphasize from the pleading and that is that the burden is on Metro and it's a heavy burden, a burden to make a showing that the law enforcement justifications for confidentiality clearly outweigh the public's interest in the materials related to the murder of Tupac Shakur. And following the 2007 amendments to the Act, those law enforcement justifications are to be construed narrowly in favor of a liberal application of the Act.

And we would submit that the showing that's been made on the factors identified by the Nevada Supreme Court in the *Bradshaw* case hasn't been made and hasn't been addressed. Rather, Metro has essentially adopted the same position that the Reno Police Department advanced in *Bradshaw* 30 years ago and that was rejected by the Court then. And that is that records relating to a, quote/unquote, open criminal investigation are just per se confidential and not subject to disclosure under the Act. And that position was rejected by the Nevada Supreme Court then and this Court should do so again.

And just touching on the factors briefly, say three out of the four, there's no dispute that they weigh in favor of disclosure. There's no pending or anticipated

criminal proceeding, there's no suspect whose right to a fair trial can be impeded, there's no danger to law enforcement personnel. All we're left with, essentially, is a very conclusory and vague declaration from Detective Mogg, and I submit that the claims about jeopardy to the entire investigation, and witness tampering, and, you know, the destruction of evidence in a 22-year old case, are just the type of hypothetical and speculative concerns that the Nevada Supreme Court has repeatedly held is insufficient to warrant withholding under the Act.

As to the assertion that witness interviews are in the process of being scheduled, I don't know what in the process of being scheduled means. I don't know when those are being scheduled. I don't know when an action was taken to actually schedule those. Was it after my client's request for the public records?

Similarly, we have no information about the historical level of activity in this case. What was being done in the year prior to the CIR's request? The two years prior? The five years prior?

So, I think Metro's clearly failed to make the required showing under the heavy burden of the Act. And, even if it did make a showing that some information should be maintained confidential, the Open Records Act requires that Metro go through the file, redact confidential

information, and produce the rest. And it's just inconceivable in a 22-year old case that every single piece of information in the file is confidential.

THE COURT: Okay. Let me give them time as well.

MR. ERWIN: That was where I was ending. So, --

THE COURT: No worries.

MR. ERWIN: Thank you, Your Honor.

THE COURT: Counsel for defense.

MR. CROSBY: Good morning, Your Honor. And I will be brief.

THE COURT: And you know I'm going to ask you the question about the age of the case, the fact that it's a blanket no, and the fact that, while I'm appreciative that this is on an OST and you jumped in real quickly to kind of do some of the responses, the request have been for several months outstanding. Okay? Those are the questions I'm going to ask you to go ahead, counsel.

MR. CROSBY: Understand, Your Honor. And I think that the age of the case, 22 years, doesn't have any bearing under the Public Records Act or common law exceptions related thereto or any of the case progeny relating to those issues.

Specifically, Your Honor has noted in the responsive pleading, where would the Court draw the line when a case is too old for the purpose of the Public Record

Act? Is it 22 months? Is it 22 years? Is it 22 days? Is it 22 hours? The focus, Your Honor, does go back to the *Bradshaw* factors, specifically, whether or not there is an anticipated criminal proceeding and this Court can see on paragraph 10 of Detective Mogg's -- or paragraph 11 of Detective Mogg's declaration, which is identified as Exhibit A to the responsive pleading, he identified that these witnesses have a potential to lead to criminal proceedings.

The Department is put in a very precarious position in these types of cases when it's being accused of not being forthright or providing vague declarations while, at the same time, they can't disclose the information -- the very information it seeks to protect to ensure the integrity of the criminal investigation. In this particular case, there is -- I know for a fact there is a specific interview that is being conducted. I believe it's this week, if I'm not mistaken.

The --

THE COURT: And when was it set up? Was it set up after --

MR. CROSBY: Prior to this, I believe.

THE COURT: Which prior?

MR. CROSBY: Prior to the filing of --

THE COURT: Prior to the first request by their

client?

MR. CROSBY: I don't know --

THE COURT: Historically?

MR. CROSBY: I don't know with respect to the requests, but I believe it was set up prior to the filing of this -- the Writ Petition. But --

THE COURT: Okay. No worries. Thank you.

MR. CROSBY: But the -- Your Honor, this is what's challenging for the Department is we can't come out and say we're interviewing so-and-so for this reason and here are the people that we've interviewed in the past because, at that point, you are divulging your leads, you're divulging your investigative techniques, you're divulging information that will challenge the investigator's ability to gauge the veracity of any witness who comes forward, whether that witness, when they're telling us, I saw X on this date, whether they know that from being there or whether they know that from reading it in the public domain.

The Department disagrees with the analysis adopted by petitioners with respect to its application of the *Donrey* case. That case didn't involve an active, open criminal investigation. It involved a closed matter on a -- I believe it was a public bribery or a bribery of a public official case. It's remarkably different when you're dealing with a murder case, where there's no statute

of limitations.

The Department doesn't -- despite petitioner's argument to the contrary, doesn't have a policy to just deny public records requests. The only cases that the general public gets to see are the ones that we are disputing. They don't see hundreds, and hundreds, and hundreds of --

THE COURT: Sure.

MR. CROSBY: -- public records requests we respond to every single day. There are -- there's a fee schedule for public records requests that we comply with. There's a process that we -- that people are required to comply with. So, to say that we just deny everything is specious, at best, and certainly counsel doesn't have the institutional knowledge of my client to say that that's every -- to say that that's all that the Police Department does.

But, most notably, if the Court feels that this -- the declaration of Detective Mogg is insufficient at this point in time to articulate to the Court that, at this point in time, this time in the case, the balance tips in the favor of nondisclosure, an in-camera hearing is appropriate. As I'm sure this Court is aware, in *Donrey*, the Court conducted an in-camera review of the actual investigative report that it was seeking to find. Judge Cadish, in the Route 91 case, regarding the release of

search warrant affidavits, conducted a sealed, in-camera hearing prior to releasing the redacted versions of those search warrant materials, which also came after the FBI released its search warrant materials to -- and not only that this case with the Route 91 case is not appropriate and was -- most specifically, there are a lot of different factors that paly in that case and this case. Notably, there was only one person responsible for the crimes in the Route 91 festival and that person was dead upon our arrival. It doesn't change the fact that we have to conduct a criminal investigation, but we're not necessarily as worried about providing information regarding our investigations and our conclusions that we've reached so far to potential suspects or persons of interest or witnesses so that we can further verify and test our hypotheses with respect to our investigation.

So, at the very least, if this Court feels that Detective Moggs's declaration and arguments associated in the responsive brief are insufficient at this point in time, we'd ask this Court to conduct an in-camera hearing so that the Court can hear, in a candid fashion, the actual specifics as to what are going on in this case, currently, what have happened, if the Court would like a historical perspective of it, so that the Court can engage in that balancing factor in an open manner, meaning my detective or

my representative of my Department can come and explain to the Court with facts that can't be released to the public, but so the Court can satisfy its balancing test to its sufficiency.

THE COURT: Okay. Can you -- did you say that the interview is taking place this week?

MR. CROSBY: I believe there's an interview on Thursday, if memory serves.

THE COURT: So, is that the only interview that you're aware of that's being scheduled?

MR. CROSBY: I don't know how many are on Thursday, but I know that there is at least one on Thursday. But, yes, that's the only one I know of right now.

THE COURT: So, would it meet your client's needs if things were released after Thursday? Because you're going to take time to get an Order, and get it signed, right? And, then, have a release date, would that --

MR. CROSBY: Well, --

THE COURT: If your concern is that those may in some way be impacted, isn't that --

MR. CROSBY: Well, --

THE COURT: -- a timing issue versus a substance issue?

MR. CROSBY: Absolutely not, Your Honor. It's a

substance issue.

THE COURT: Okay.

MR. CROSBY: I was offering up that because counsel suggested and argued that my declaration is vague and I'm trying to offer some more facts without disclosing the very --

THE COURT: Okay. No worries.

MR. CROSBY: -- information we're trying to protect, but it's -- that wouldn't help the cause, Your Honor, because I don't know if that witness is going to be the last witness they interview and what that witness is going to say. And I have a feeling, based upon my discussions with my client, the investigators in this case, that it will not be and there's an end-run goal with respect to a hypothesis that the Department has with respect to person or persons of interest.

THE COURT: I appreciate it and I'm going to allow them a brief response because, in a moment, I'm going to have to -- as soon as -- we don't have a call yet, right?

THE LAW CLERK: No.

THE COURT: Okay. We're going to have a call in just a moment. Sorry, on the other inmate case.

Go ahead, counsel.

MR. ERWIN: Yeah, on this witness interview, I just find it hard to believe that after 22 years the case

is going to be broken open in 2018 and I'd really like to know when this witness interview was scheduled. I understand it may have been before the Petition, but as Your Honor noted, this dialogue has been continuing for months and I sent multipole letters threatening to go into court to file a Petition. So, when did this activity start?

But, setting that aside, that's just one piece of a 22-year old file. What about the rest of the file? Things dating back from the '90s. I think that should all be subject to disclosure.

And the age of the case does matter. It matters with regard to the analysis and *Bradshaw* factors. As to *Bradshaw*, that case made no distinction between open and closed investigatory records. There is no distinction in the law. Everything is analyzed under the factors, which will be -- which are to be narrowly construed against Metro.

And, as to Metro's approach, I think their response to my client's public records request speaks for itself. We received no response for months. If there's some policy of compliance, then why not respond and comply wit the obligations that they have? They haven't done so here and they should be required to do so by this Court. Thank you.

THE COURT: I have the request about the in-camera hearing before the disclosure's made.

MR. ERWIN: Your Honor, we --

THE COURT: If I can set an in-camera hearing in a very short order, i.e. next week.

MR. ERWIN: We object to a closed hearing where we're not entitled to participate and there's some --

THE COURT: Oh, no. You'd be entitled to -- you're not --

MR. ERWIN: That's not what --

THE COURT: Are you anticipating that --

MR. ERWIN: -- I understood the --

THE COURT: I thought you wanted a sealed record, but they'd be able to -- entitled to participate to have an understanding of what you're requesting so that they can make well-reasoned arguments.

MR. CROSBY: My initial preference would be in-camera with exclusion of counsel. But if counsel and the Court believes counsel should be present, it should be sealed such that that information doesn't get out to the public domain.

MR. ERWIN: We'd like to -- if that's the case, we'd like the opportunity to cross-examine Detective Mogg about his declaration, but we'd also object to any subsequent proceedings. This was their opportunity to

submit evidence in support of their case and they chose to piecemeal it.

THE COURT: Here's what I think the Court's looking at is I have to take into account an ex parte nature, you know what I mean, in a shortened time type hearing. And when there's a request for a hearing -- what the Court's inclined to do is the following.

Court's inclined that my current trial has told me that they're going to be done -- I have to double-check with them, by end of day today to see where they're at, but it looks like I may have some time next Wednesday the 23rd at 9 a.m. because they -- oh, excuse me. It would have to be 10 a.m. because I've got CD before that. But at 10 a.m., that I can hold a hearing where counsel -- it would be a sealed hearing, but counsel for both parties would have an opportunity to be present and to cross-examine any witnesses so that you have an opportunity to the extent you feel, from a due process standpoint, that your client needs a little bit of extra time because of the shortened nature of the hearing and to explain things further versus in an affidavit purpose, but the same time that the movement would have an opportunity to cross-examine to fully flush out everything. That's where I'm inclined to go to balance everybody's interests.

So, let me give each of you a moment because we

have -- oh, he's on the line? So, why don't you just tell him about three minutes. Tell him about three minutes.

So, I'm going to give you each one minute to respond to my inclination. Go ahead.

MR. ERWIN: We'd ask that Metro be required to produce anything that they're going to use in that hearing by Friday and we'd also like a log pursuant to he *Givens* case of what's actually being withheld and what we're looking at. I understand the argument that we can't give you a log because that would -- that would divulge confidentiality, but the Nevada Supreme Court has expressly said that we're -- a requesting party under the Act is not supposed to blindly argue against nothing.

THE COURT: Does a log exist for the last 22 years -- I mean, presumably some log and the various information if he's doing new witness interviews this Thursday, he has to have some basis, because he has only been in this Department for 15 years and the case is 22 years old. So, he'd have to be relying on something.

MR. CROSBY: There is a Table of Contents for the file --

THE COURT: And can that be produced under seal? You all do a stipulation under seal and only this Court can unseal it and so it would be provided only to counsel, not disclosed to anybody ese until the Court makes a

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Appellant, vs. THE CENTER FOR INVESTIGATIVE REPORTING, INC., A CALIFORNIA NONPROFIT ORGANIZATION, Respondent.	Supreme Court Case Nos.: 77617/77965 Appeal from the Eighth Judicial District Court, the Honorable Elizabeth Gonzalez Presiding

Electronically Filed
May 10 2019 03:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX
(Volume 2, Bates Nos. 251–500)

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Docket 77617 Document 2019-20622

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2	Letter from Philip Erwin to LVMPD	Vol. 2, Bates Nos. 277–284
3	Case Report No. LLV960907002063	Vol. 2, Bates Nos. 285–287
4	Emails from March 2018 to April 2018 Regarding Records Request Production	Vol. 2, Bates Nos. 288–290
5	April 12, 2018 Letter from LVMPD to Philip Erwin	Vol. 2, Bates Nos. 291–293
6	April 23, 2018 Letter from Philip Erwin to LVMPD	Vol. 2, Bates Nos. 294–297
7	April 27, 2018 Letter from LVMPD to Philip Erwin	Vol. 2, Bates Nos. 298–299
8	Transcript of May 15, 2018 Hearing on Writ (filed 10/05/18)	Vol. 2, Bates Nos. 300–333
9	May 21, 2018 Letter from Philip Erwin to Judge Kishner	Vol. 2, Bates Nos. 334–335
10	Declaration of Philip R. Erwin, Esq. in Support of Petitioner The Center for Investigative Reporting Inc.'s Supplemental Brief Regarding Its Prevailing Status Under NRS 239.011 (dated 10/12/18)	Vol. 2, Bates Nos. 336–338
Respondent Las Vegas Metropolitan Police Department's Brief Regarding Issue of Prevailing Party (filed 10/12/18)		Vol. 2, Bates Nos. 339–346

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5	Order in Clark County District Court Case No. A669057 (filed 06/22/15)	Vol. 4, Bates Nos. 863–873
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DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Mandamus | **COURT MINUTES** | **September 13, 2018**

A-18-773883-W Center for Investigative Reporting Inc, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

September 13, 2018 **09:00 AM** **Plaintiff's Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Jolley, Tena

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Philip R. Erwin, ESQ **Attorney for Plaintiff**

JOURNAL ENTRIES

Mr. Erwin indicated that the parties appear to have resolved the contested issues; that the received Metro redacted production, requested additional documents, that tapes were being converted and produced and there would be no need for an in camera review. Mr. Erwin requested an Order granting the Writ and that he would be filing for fees for having to bring the Writ. The Court stated it would need opposing counsel to be present and ORDERED matter CONTINUED. Mr. Erwin indicated the parties may possiblu submit a proposed Order for the Court's consideration.

CONTINUED TO: 9/25/18 9:30 AM

A-18-773883-W

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Mandamus | **COURT MINUTES** | **September 25, 2018**

A-18-773883-W Center for Investigative Reporting Inc, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

September 25, 2018 **09:30 AM** **Plaintiff's Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Jolley, Tena

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Nick D Crosby **Attorney for Defendant**

Philip R. Erwin, ESQ **Attorney for Plaintiff**

JOURNAL ENTRIES

Mr. Erwin indicated he and Mr. Crosby had been working towards a resolution but that communications had broken down and there remains an outstanding issue as to attorney's fees. Mr. Erwin suggested the parties submit competing briefs on the issue. Mr. Crosby stated they disagree as to the term "prevailing party" and was agreeable to submitting supplemental briefs. Colloquy regarding simultaneous briefing and possible further oral argument. The Court DIRECTED counsel to submit a letter to the Court as to the agreed upon date for simultaneous briefing and, if further oral argument is requested, counsel's availability for further argument on a Tuesday or Thursday at 9:30 a.m. the week after the submissions. COURT ORDERED matter SET for Status Check in Chambers regarding receipt of counsel's letter.

9/28/18 (CHAMBERS) STATUS CHECK: LETTER FROM COUNSEL WITH SIMULTANEOUS BRIEFING DATE AND IF ORAL ARGUMENT IS REQUESTED REGARDING PREVAILING PARTY RE WRIT

A-18-773883-W

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Mandamus | **COURT MINUTES** | **September 28, 2018**

A-18-773883-W Center for Investigative Reporting Inc, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

September 28, 2018 **03:00 AM** **Status Check: Letter from Counsel with Simultaneous Briefing Date and if Oral Argument is Requested regarding prevailing party re Writ**

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Jolley, Tena

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Status check for supplemental briefs and proposed Findings of Fact and Conclusions of Law SET for 10/19/18 in Chambers.

Electronically Filed
10/12/2018 4:04 PM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING INC., a California Nonprofit Organization, Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	CASE NO.: A-18-773883-W DEPT. NO.: XXXI **PETITIONER THE CENTER FOR INVESTIGATIVE REPORTING INC.'S SUPPLEMENTAL BRIEF REGARDING ITS PREVAILING STATUS UNDER NRS 239.011** Hearing Date: October 19, 2018 Hearing Time: In Chambers

Petitioner The Center for Investigative Reporting Inc. ("CIR"), a California nonprofit organization, by and through its counsel, hereby submits the following Supplemental Brief Regarding its Prevailing Status under NRS 239.011. CIR's Supplemental Brief is based upon the papers and pleadings on file herein, the exhibits attached hereto, and the Points and Authorities that follow.

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Case Number: A-18-773883-W

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POINTS AND AUTHORITIES

I. INTRODUCTION

This matter presents an issue of first impression in this State that will, in all likelihood, ultimately be resolved by the Nevada Supreme Court. Specifically, this Court must determine whether CIR "prevailed" under NRS 239.011 where it filed suit to compel the production of public records from the Las Vegas Metropolitan Police Department ("LVMPD") and, in doing so, caused LVMPD to voluntarily produce the requested records before the Court entered an order on the merits of CIR's Petition for Writ of Mandamus (the "Petition"). In other words, this Court must determine whether Nevada recognizes what is commonly referred to as the "catalyst theory" in the context of the Nevada Public Records Act (the "NPRA"). Because courts regularly apply the catalyst theory in public records litigation and LVMPD only produced the requested records as a direct result of CIR's Petition, CIR respectfully submits that the Court should find that it "prevailed" in this proceeding pursuant to NRS 239.011.

II. FACTUAL BACKGROUND

1. Petitioner The Center for Investigative Reporting Inc. ("CIR"), a California nonprofit organization, owns and operates *Reveal*, a website, public radio program, and podcast. CIR was founded in 1977 as the nation's first nonprofit investigative journalism organization and its work has been recognized for its excellence with recent awards including two national News & Documentary Emmys, a George Foster Peabody Award, a Webby award, a Military Reporters and Editors Award, a Bartlett & Steele Gold Award for investigative business journalism, Alfred I. DuPont-Columbia University awards, a George Polk award, IRE Awards for multiplatform journalism and an Edward R. Murrow Award for investigative reporting. CIR was also named as a finalist for the Pulitzer Prize in 2012, 2013, and 2018.

2. Respondent Las Vegas Metropolitan Police Department ("LVMPD") is a state agency and the joint city-county police force for the City of Las Vegas and Clark County, Nevada.

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3. On or about December 11, 2017, Andy Donohue, the Managing Editor of CIR, contacted LVMPD's Office of Public Information to request information under the NPRA concerning the murder of Tupac Shakur in Las Vegas, Nevada in September 1996. Specifically, Mr. Donohue formally requested the opportunity to inspect or obtain copies of "[a]ny and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder." *See* Exhibit "1," E-mail Correspondence between Andy Donohue and LVMPD Office of Public Information.

4. The purpose of Mr. Donohue's request was to gather information for a piece of investigative journalism about the decades-old unsolved murders of Tupac Shakur and Christopher Wallace aka Notorious B.I.G. that would be broadcast to a national audience on one of CIR's platforms.

5. If LVMPD refused to comply with CIR's public records request, Mr. Donohue asked that LVMPD cite each specific exemption justifying such refusal under Nevada law. *Id.* To the extent LVMPD determined that some, but not all, of the information in the subject records was exempt from disclosure, Mr. Donohue further requested that LVMPD redact that information and produce the segregable portions of the records. *Id.*

6. Although Nevada law requires that a government entity respond to a request for public records under the NPRA with five (5) business days, LVMPD did not respond to Mr. Donohue's December 11, 2017 e-mail.

7. On January 10, 2018, Mr. Donohue followed up on CIR's public records request and noted that LVMPD had failed to comply with its statutory obligations under the NPRA. Ex. 2. That same day, LVMPD's Office of Public Information responded to Mr. Donohue by stating that his e-mail had been forwarded to PIO Officer Lawrence Hadfield for "follow-up." *Id.* Nevertheless, neither Officer Hadfield nor any other individual from LVMPD provided a determination to CIR regarding its public records request. *Id.*

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8. On January 22, 2018, Mr. Donohue followed up on CIR's public records request for a second time and noted that LVMPD's determination was more than one month overdue. *Id.* Again, LVMPD did not respond to Mr. Donohue's e-mail. *Id.*

9. On March 15, 2018, Mr. Donohue followed up on CIR's public records request for a third time and pointed out that LVMPD's determination was now more than three months overdue. *Id.* Consistent with its prior failures to comply with the requirements of the NPRA, LVMPD did not respond to Mr. Donohue's e-mail. *Id.*

10. On March 28, 2018, CIR's counsel sent a letter to LVMPD Director of Public Information, Carla Alston, setting forth LVMPD's failure to comply with its statutory obligations under the NPRA and demanding a complete response to CIR's public records request on or before April 4, 2018. *See* Exhibit "2," 3/28/2018 Letter from Philip R. Erwin, Esq.

11. On April 5, 2018, LVMPD produced a two-page police report concerning the murder of Tupac Shakur. *See* Exhibit "3" Police Report. In direct contravention of its obligations under NRS 239.0107(d), LVMPD did not indicate whether additional records existed or were withheld based on alleged confidentiality grounds.

12. On April 11, 2018, CIR's counsel e-mailed Officer Hadfield and asked for confirmation that the two-page police report was the only document in LVMPD's possession responsive to CIR's public records request. *See* Exhibit "4," 4/11/2018 E-mail Correspondence from Philip R. Erwin, Esq. CIR's counsel likewise requested that LVMPD confirm that it did not withhold any responsive records—*e.g.* investigative files, correspondence, memoranda, et cetera—based on confidentiality grounds. *Id.* If LVMPD did withhold responsive records on confidentiality grounds, CIR's counsel demanded that it provide notice of that fact along with a citation to the supporting statute(s) or other legal authorities as required by NRS 239.0107(d). *Id.*

13. On April 12, 2018, Charlotte M. Bible, Assistant General Counsel for LVMPD, sent a letter in response to CIR's counsel's April 11, 2018 e-mail. *See* Exhibit "5," 4/12/2018

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Letter from Charlotte M. Bible, Esq. Ms. Bible first confirmed that LVMPD failed to advise CIR that it would research its public records request and respond within 30 days as required by NRS 239.0107(1)(c). *Id.* Ms. Bible then claimed that the criminal investigation of Tupac Shakur's murder was an "open active investigation" and, as such, the requested records were (i) not public records under NRS 239.010(1), (ii) declared by law to be confidential, (iii) subject to the "law enforcement privilege," and (iv) protected from disclosure because law enforcement policy justifications for nondisclosure outweigh the public's interest in access to the records. *Id.* Notwithstanding LVMPD's continued refusal to comply with CIR's public records request, Ms. Bible conceded that LVMPD had failed to notify CIR that responsive documents were withheld and did not provide supporting legal authorities as required by the NPRA. *Id.* In sum, Ms. Bible declared that "disclosure of the investigative file would jeopardize apprehending a murder suspect" although she did not provide any information or evidence to suggest that LVMPD's purported investigation into Tupac Shakur's murder was, in fact, "open" and "active." *Id.*

14. On April 23, 2018, CIR's counsel responded to Ms. Bible's letter and disputed LVMPD's legally unsupported position that any and all records related to Tupac Shakur's 22-year-old murder were confidential as a matter of law because LVMPD had labeled its investigation as "open" and "active." *See* Exhibit "6," 4/23/2018 Letter from Philip R. Erwin, Esq. In addition, CIR's counsel pointed out that LVMPD's stated reason for withholding the requested records—*i.e.* that the mere categorization of a criminal investigation as "open" precluded the public dissemination of records under the NPRA—was recently rejected in the widely-publicized public records litigation related to the October 1 shooting at Mandalay Bay. *Id.* In short, CIR's counsel submitted that the production of records related to the murder of Tupac Shakur was required under Nevada law and requested that LVMPD confirm its intention to comply with its statutory obligations by April 27, 2018. *Id.*

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15. On April 27, 2018, Ms. Bible responded and maintained LVMPD's position that the requested records were confidential and, therefore, not subject to disclosure under the NPRA. *See* Exhibit "7," 4/27/2018 Letter from Charlotte M. Bible, Esq. Although Ms. Bible attempted to expand on LVMPD's policy justifications for nondisclosure, she did not provide any additional information or evidence to suggest that the LVMPD's alleged investigation into the decades-old murder of Tupac Shakur was "open" and "active." *Id.* Ms. Bible also did not indicate whether LVMPD had actually reviewed the requested records to determine whether each and every document is confidential. *Id.* Instead, LVMPD maintained its blanket objection to CIR's request on confidentiality grounds and refused to produce any documents other than the two-page police report.

16. On May 2, 2018, CIR filed its Petition and argued that records related to Tupac Shakur's murder were subject to disclosure under the balancing test established by the Nevada Supreme Court in *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). *See* Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 (on file).

17. On May 10, 2018, LVMPD filed its Response to the Petition. *See* Respondent Las Vegas Metropolitan Police Department's Response to Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 (on file). Therein, LVMPD maintained its blanket objection to the production of records related to the murder of Tupac Shakur on grounds that the NPRA did not require the disclosure of records concerning open criminal investigations. *Id.*

18. On May 14, 2018, CIR filed its Reply in Support of Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011. *Id.* (on file).

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19. On May 15, 2018, the Court conducted a hearing on CIR's Petition and stated that LVMPD had failed to meet its burden of demonstrating confidentiality as required by Nevada law. *See* Exhibit "8," 5/15/2018 Hr'g Tr. at 26:25-27:3. In light of the expedited briefing schedule, however, the Court provided LVMPD with two options: 1) produce the requested records with redactions or 2) conduct an *in-camera* evidentiary hearing regarding confidentiality. *Id.* at 26:8-28:9. In response, LVMPD indicated that it would maintain its blanket confidentiality objection and proceed with the *in-camera* evidentiary hearing. *Id.*

20. Following the hearing, LVMPD agreed to produce records concerning the murder of Tupac Shakur within thirty (30) days subject to LVMPD's right to redact and/or withhold records based on confidentiality under the NPRA. *See* Exhibit "9," 5/21/2018 Letter to Judge Kishner. LVMPD likewise agreed to produce a *Vaughn* index identifying any records that were redacted and/or withheld along with the supporting legal justification(s) therefore. *Id.* CIR reserved the right to challenge LVMPD's redactions and/or withholdings of records that were the subject of the Petition for Writ of Mandamus. *Id.* CIR further reserved the right to seek its attorney's fees and costs at the conclusion of this proceeding pursuant to NRS 239.011(2). *Id.*

21. On July 9, 2018, LVMPD produced more than 2,500 pages of records concerning Tupac Shakur's murder. *See* Exhibit "10," Declaration of Philip R. Erwin, Esq. LVMPD also produced a *Vaughn* index identifying records that were redacted or withheld along with the supporting legal bases for non-disclosure under the NRPA. *Id.*

22. On August 2, 2018, LVMPD produced audio recordings of 911 calls. *Id.*

23. On August 16, 2018, CIR requested additional information and/or the production of certain records identified on LVMPD's *Vaughan* index. *Id.* CIR further requested that LVMPD produce any audio recordings of witness interviews conducted during its investigation of Tupac Shakur's murder. *Id.*

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24. On August 27, 2018, LVMPD produced additional documents that were previously identified on its *Vaughan* index. *Id.*

25. On August 31, 2018, LVMPD agreed to produce any audio recordings of witness interviews. *Id.*[1]

26. Based on LVMPD's belated compliance with the NPRA, CIR submits that the contested issues in its Petition have been resolved. This case is, therefore, moot as it pertains to the production of records requested by CIR in its Petition. *Id.* The sole remaining issue that is disputed by the parties is whether CIR "prevailed" pursuant to NRS 239.011(2).

III. ARGUMENT

NRS 239.011(2) provides that "[i]f the requester ***prevails***, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." *Id.* (emphasis added). The Nevada Supreme Court has never considered whether a petitioner "prevails" under NRS 239.011(2) where it causes a government entity to voluntarily disclose public records during litigation prior to the entry of a court order on the merits.[2] As such, CIR will begin its analysis by detailing the manner in which

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[1] At the time of filing, LVMPD has produced six (6) audio recordings of witness interviews.

[2] The Nevada Supreme Court has only interpreted this provision on one occasion in *Las Vegas Metro. Police Dep't v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015). There, the Nevada Supreme Court confirmed that "by its plain meaning, [NRS 239.011] grants a requester who prevails in NPRA litigation the right to recover attorneys fees and costs[.]" *Id.* at 615. The Nevada Supreme Court further stated that "[a] party prevails if it succeeds on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit." *Id.* (emphasis in original). The Nevada Supreme Court then explained that "[t]o be a prevailing party, a party need not succeed on every issue." *Id.* Ultimately, the Nevada Supreme Court determined that the petitioner in *Blackjack Bonding* "prevailed" for the purposes of NRS 239.011 because it obtained a writ compelling the production of records that were wrongfully withheld by LVMPD. *Id.* Because the petitioner actually obtained a writ of mandamus against LVMPD, *Blackjack Bonding* has no application here.

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other federal and state courts have applied the catalyst theory in public records litigation before turning to the plain language of NRS 239.011(2).

A. The Genesis Of The Catalyst Theory Under The Freedom Of Information Act ("FOIA").

In 1974, Congress amended FOIA to include a provision awarding attorney's fees and costs to a plaintiff who "substantially prevailed" in litigation against a government entity. *First Amendment Coal. v. United States Dep't of Justice*, 878 F.3d 1119, 1126 (9th Cir. 2017). "The fees provision [in FOIA] has as its fundamental purpose the facilitation of citizen access to the courts to vindicate the public's statutory rights, and a grudging application of the attorney fees provision would clearly be contrary to congressional intent." *Id.* (internal citations omitted). FOIA did not define the term "substantially prevailed" and, as a result, the United States Circuit Courts developed a body of decisional law interpreting that legal standard. *Id.*

One crucial aspect of this decisional law was the widespread adoption of the catalyst theory, *i.e.*, an "alternate theory for determining the prevailing party [in public records litigation] if no relief on the merits is obtained." *Kilgour v. City of Pasadena*, 53 F.3d 1007, 1010, *as modified on denial of reh'g* (9th Cir. 1995). Indeed, the Ninth Circuit Court of Appeals and numerous other Circuit Courts adopted the catalyst theory in FOIA litigation. *See, e.g.*, *Long v. I.R.S.*, 932 F.2d 1309 (9th Cir. 1991); *Nationwide Bldg. Maint. Inc. v. Sampson*, 559 F.2d 704 (D.C. Cir. 1977); *Maynard v. C.I.A.*, 986 F.2d 547 (1st Cir. 1993); *Vermont Low Income Advocacy Council v. Usery*, 546 F.2d 509 (2d Cir. 1976); *Cazalas v. United States Dep't of Justice*, 660 F.2d 612 (5th Cir. 1981); *Clarkson v. I.R.S.*, 678 F.2d 1368 (11th Cir. 1982).

In 2001, the United States Supreme Court held that the catalyst theory was not a permissible basis to award attorney's fees and costs under the "prevailing party" attorney's fees provisions in the Fair Housing Amendments Act ("FHAA") and the Americans with Disabilities Act ("ADA"). *See Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources*, 532

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U.S. 598 (2001). Specifically, the United States Supreme Court focused on Congress's use of the legal term of art "prevailing party" in the FHAA and ADA, and ruled that "[a] defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change." *Id.* at 603-605. The United States Supreme Court further held that a plaintiff must obtain an enforceable judgment on the merits or a court-ordered consent decree to be considered a "prevailing party" entitled to an award of attorney's fees under the FHAA and ADA. *Id.* at 604.

In response to the *Buckhannon* decision, Congress amended the FOIA attorney's fees statute "to clarify [ ] that *Buckhannon* does not apply to FOIA cases, since under that provision, a FOIA requester can obtain attorney's fees when he or she filed a lawsuit to obtain records from the Government and the Government releases those records before the court orders them to do so." *First Amendment Coal.*, 878 F.3d at 1128. Congress enacted this amendment to address the concern that "[f]ederal agencies had an incentive to delay compliance with FOIA requests until just before a court decision was made that was favorable to a FOIA requester." *Id.* (internal citations omitted). The Ninth Circuit Court of Appeals and six other Circuit Courts have since concluded that the catalyst theory continues to apply to FOIA litigation if there is a "causal nexus between the litigation and the voluntary disclosure or change in position by the Government." *Id.* (listing cases).

B. Application Of The Catalyst Theory In State Public Records Litigation After *Buckhannon*.

CIR anticipates that LVMPD will argue federal law is distinguishable because Congress codified the catalyst theory in the FOIA attorney's fees provision in response to *Buckhannon* whereas Nevada has no such statutory provision. To begin, the United States Supreme Court did not address FOIA in *Buckhannon* and, moreover, Congress only amended the FOIA to "clarify" that *Buckhannon* had no application in the public records domain. While federal law considering FOIA is certainly persuasive in this area, CIR submits that the manner in which other states have addressed the catalyst

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theory in connection with attorney's fees provisions that mirror the language of NRS 239.011(2) is highly instructive here.

In *Mason v. City of Hoboken*, the New Jersey Supreme Court considered the application of the catalyst theory to the attorney's fees provision in that state's public records act, which contained broad language providing that "a requestor who ***prevails*** in any proceeding shall be entitled to a reasonable attorney's fee." 951 A.2d 1017, 1031 (N.J. 2008) (emphasis added). The New Jersey Supreme Court rejected *Buckhannon* and applied the catalyst theory on grounds that "[o]ur case law and the language and purpose of the OPRA justify this departure from the reasoning of federal cases that interpret similar federal laws." *Id.* at 1032. In addition to the statute's broad use of the term "prevails"—as opposed to the legal term of art "prevailing party"—the New Jersey Supreme Court found that "Plaintiff and amici rightly advance another reason why the catalyst theory should apply to OPRA: the potential for abuse should an agency deny access, vigorously defend against a lawsuit, and then unilaterally disclose the documents sought at the eleventh hour to avoid the entry of a court order and the resulting award of attorney's fees." *Id.* at 1031. Accordingly, the New Jersey Supreme Court determined that the *Buckhannon* decision did not preclude the application of the catalyst theory in litigation under New Jersey's public records act.

The Illinois Court of Appeals reached the same conclusion when assessing that state's attorney's fees provision, which contained similarly broad language: "[i]f a person seeking the right to inspect or receive a copy of public record ***prevails*** in a proceeding under this Section, the court shall award such person reasonable attorneys' fees and costs." *Uptown People's Law Ctr. v. Dep't of Corr.*, 7 N.E.3d 102, 104 (Ill. Ct. App. 2014) (emphasis added). As in *Mason*, the court acknowledged the state legislature's use of the broad term "prevails" and declined to follow the reasoning espoused by the United States Supreme Court in *Buckhannon*. *Id.* at 108-09. Accordingly, the Illinois Court of Appeals confirmed that a judgment on the merits is not a prerequisite to an award of attorney's fees in public records litigation. *Id.*

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The District of Columbia Court of Appeals followed suit. In *Frankel v. Dist. of Columbia Office for Planning and Econ. Dev.*, 110 A.3d 553, 557 (D.C. Ct. App. 2015), the court found that the D.C. Council's use of the phrase "***prevails*** in whole or in part"—as opposed to "prevailing party"—"suggests that the D.C. Council intended to authorize attorney's fees in [D.C.] FOIA cases more often than in other types of cases." *Id.* (emphasis added). The court also declined to infer that the catalyst theory did not apply to D.C. FOIA because, unlike Congress, the D.C. Council did not amend its attorney's fees provision following *Buckhannon*. *Id.* Finally, the court held that the catalyst theory "advances [the] goals [of D.C. FOIA] by allowing more litigants to recover attorney's fees and creating an incentive for the D.C. government to disclose more documents in the first place." *Id.* In sum, the court ruled that "the catalyst theory continues to operate in D.C. FOIA cases, and a party 'prevails in whole or in part' [ ] when he demonstrates a causal nexus between the action brought in court and the agency's surrender of the information." *Id.*; *see also Fraternal Order of Police, Metro. Labor Comm. v. Dist. of Columbia*, 113 A.3d 195 (2015) (reaffirming application of catalyst theory in D.C. FOIA cases and rejecting *Buckhannon*).

For its part, California has long recognized that the catalyst theory applies to its public records act, which provides that a "court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff ***prevail*** in litigation filed pursuant to this section." *See Belth v. Garamendi*, 232 Cal.App.3d 896, 902 (Cal. Ct. App. 1991) ("A plaintiff is considered the prevailing party if his lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior, or if the litigation substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result.") (internal citations omitted) (emphasis added). In *Graham v. DaimlerChrysler Corp.*, 101 P.3d 140, 152 (Cal. 2004), the California Supreme Court refused to follow *Buckhannon* and instead cited the *Belth* court's application of the catalyst theory with approval. Indeed, the California Supreme Court stated that it would be "perverse" to award attorney's fees to a plaintiff who obtains a final judgment, "but not a plaintiff whose litigation position is so strong

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that it achieves the same result by compelling the defendant to change its conduct rather than face a probable judgment against it." *Id.*[3]

Based on the foregoing, numerous states considering this issue have declined to follow *Buckhannon* and instead applied the catalyst theory in public records litigation by awarding attorney's fees to a requestor who files a lawsuit and, in turn, causes a government entity to produce the requested records. Many state courts applying the catalyst theory under these circumstances have relied on the statutes' use of the general term "prevail" rather than the legal term of art "prevailing party," which was at issue in *Buckhannon*. These courts have likewise determined that refusing to adopt the catalyst theory would incentivize government entities to withhold public records and only turn them over in the face of an impending court order.[4]

C. CIR Prevailed In This Litigation Because The Catalyst Theory Is A Viable Right Of Recovery Under NRS 239.011(2).

The Nevada Public Records Act provides that "all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person." NRS 239.010. "The purpose of this chapter is to foster democratic principles by providing members of the public with

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[3] Ohio has also continued to employ the catalyst theory in public records litigation despite the United States Supreme Court's decision in *Buckhannon*. *See, e.g.*, *State ex rel. Cincinnati Enquirer v. Ronan*, 918 N.E.2d 515 (Ohio 2009) (finding claim for attorneys fees in public records action was not mooted by government's production of records during litigation); *State ex rel. Cincinnati Enquirer v. Heath*, 902 N.E.2d 976 (Ohio 2009) (same); *cf. State ex rel. Pennington v. Gundler*, 661 N.E.2d 1049 (Ohio 1996) (holding that a court may award attorneys fees where the government produces records only after the mandamus action is filed, thereby rendering the claim moot).

[4] In *Buckhannon*, the United States Supreme Court dismissed this consideration by pointing out that "petitioners' fear of mischievious defendants only materializes in claims for equitable relief, for so long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case." 532 U.S. at 608-09. The New Jersey Supreme Court correctly noted that the *Buckhannon* court's analysis is distinguishable in the context of public records litigation because "unlike other fee-shifting statutes, the OPRA does not provide for damages. Under OPRA, a victorious party gains access to public records and possibly an award of attorney's fees, but not civil damages." *Mason*, 951 A.2d at 1032.

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access to inspect and copy public books and records to the extent permitted by law." NRS 239.011(1); *see also DR Partners v. Bd. of Cnty. Comm'rs of Clark Cnty.*, 116 Nev. 616, 622, 6 P.3d 465, 468 (2000) ("The purpose of the [Nevada Public Records Act] is to ensure the accountability of the government to the public by facilitating public access to vital information about governmental activities."). "The provisions of [NRS Chapter 239] must be construed liberally to carry out this important purpose." NRS 239.011(2). In furtherance of this underlying policy, NRS 239.011(2) provides that "[i]f the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record."

The NPRA does not define "prevails" and, as such, the Court must interpret the plain language of the statute. *See, e.g.*, *Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697, 699 (2007) ("When examining a statute, a purely legal inquiry, this court should ascribe to its words their plain meaning, unless this meaning was clearly not intended."); *see also S. Nevada Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) ("When interpreting a statute, this court must give its terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render the words or phrases superfluous or a make a provision nugatory.").

Here, it is important to note that the Legislature intentionally used the term "prevails" in NRS 239.011(2) rather than the legal term of art "prevailing party," which has a well-defined meaning in Nevada. *C.f.*, *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 284, 890 P.2d 769, 773-74 (1995) ("Where the legislature uses words which have received judicial interpretation, they are presumed to be used in that sense unless the contrary intent can be gathered from the statute. The legislature's employment of the same measuring language suggests that the legislature did not intend to eliminate the requirement of a money judgment."); *Savage*, 123 Nev. at 94, 157 P.3d at 703 ("When the same word is used in different statutes that are similar with respect to purpose and content, the word will

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be used in the same sense unless the statutes' context indicates otherwise."). Indeed, the legal term of art "prevailing party" has "consistently been interpreted as requiring a money judgment [*i.e.* an order on the merits] prior to an award of attorney fees." *Id.* (interpreting the use of "prevailing party" in NRS 18.010).

Accordingly, the fact that the Legislature chose not to use the legal term of art "prevailing party" in NRS 239.011(2) is significant as it demonstrates that the Legislature intended the attorney's fees provision in the NPRA to be broader in scope and not tied to judicial relief on the merits. *Compare Frankel*, 110 A.3d at 557 (finding that the D.C. Council's use of the term "'prevails' [ ] suggests that the D.C. Council intended to authorize attorney's fees in [D.C.] FOIA cases more often than in other types of cases.") *with Buckhannon*, 532 U.S. at 604 (placing importance on the fact that "Congress employed the term 'prevailing party' [in the FHAA and ADA], a legal term of art.").

As demonstrated above, numerous other states (like Nevada) employ the term "prevails"—rather than "prevailing party"—in attorney's fees provisions in public records acts. Courts interpreting that language have uniformly determined that it encompasses a scenario where, as here, the government entity changes position and voluntarily discloses the requested records only after the requestor was forced to file a lawsuit. *See supra* at 11-13. The underlying purpose of the NPRA also supports this interpretation of NRS 239.011 as any ruling to the contrary would incentivize government entities like LVMPD to "deny access, vigorously defend against a lawsuit, and then unilaterally disclose the documents sought at the eleventh hour to avoid the entry of a court order and the resulting award of attorney's fees." *Mason*, 951 A.2d at 1031. That cannot be the law.

Accordingly, CIR respectfully submits that the Court should adopt the standard that a requesting party "prevails" under NRS 239.011 if there is a "causal nexus" between the filing of a petition for writ of mandamus and subsequent disclosure of the requested records. Here, there can be no doubt that LVMPD disclosed the records related to the murder of Tupac Shakur as a result of CIR's

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Petition. LVMPD brazenly stonewalled CIR's written requests for public records for months and only responded once CIR retained litigation counsel. *See* Factual Background at ¶¶ 3-9. Then, LVMPD maintained a blanket objection to confidentiality for all of the requested records and even refused to provide a *Vaughn* index identifying records that were withheld. *Id.* at ¶¶ 10-15.

As a result of LVMPD's blatant refusal to comply with its obligations under the NPRA, CIR was forced to file its Petition, which LVMPD opposed in its entirety. *Id.* at ¶¶ 16-19. Indeed, LVMPD only changed its position and belatedly complied with the NPRA after the Court indicated LVMPD had failed to meet its burden of proving confidentiality and presented it with two options: (1) produce the requested records with redactions or (2) proceed to an *in-camera* evidentiary hearing. *Id.* at ¶¶ 19-26. To that end, LVMPD produced thousands of pages of records and other types of media related to the murder of Tupac Shakur along with the required *Vaughn* index, thereby mooting the instant litigation. *Id.* Based on these undisputed facts, the Court should find that there is a "causal nexus" between CIR's Petition and LVMPD's belated compliance with the NPRA such that CIR "prevailed" under NRS 239.011.

III. CONCLUSION

Based on the foregoing, CIR respectfully requests that the Court find that it prevailed under NRS 239.011 and enter the Proposed Findings of Fact and Conclusions of Law submitted concurrently herewith.

DATED this 12th day of October, 2018.

CAMPBELL & WILLIAMS

By /s/ ***Philip R. Erwin***
PHILIP R. ERWIN, ESQ. (11563)
SAMUEL R. MIRKOVICH, ESQ. (11662)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Petitioner

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Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 12th day of October, 2018, submit for service upon the following attorneys in this action a copy of the foregoing **The Center For Investigation Reporting Inc.'s Supplemental Brief Regarding Its Prevailing Status Under NRS 239.011** by the Court's ECF System through Wiznet:

MARQUIS AURBACH COFFING
Nick D. Crosby, Esq.
Jackie V. Nichols, Esq.
10001 Park Run Drive
Las Vegas, Nevada 89145

Attorneys for Las Vegas Metropolitan Police Department

By: /s/ ***Lucinda Martinez***
An Employee of Campbell & Williams

EXHIBIT 1

EXHIBIT 1

REDACTED

REDACTED

---------- Forwarded message ----------
From: **Andy Donohue** <adonohue@revealnews.org>
Date: Thu, Mar 15, 2018 at 12:30 PM
Subject: Re: Records request
To: PIO <PIO@lvmpd.com>, Victoria Baranetsky <vbaranetsky@revealnews.org>

Hello,

You are now nearly three months past the legal deadline for responding to this records request. I've attempted to work with you on this cordially, but if I do not get a response very soon, my attorney will be in

touch directly. She is copied on this email.

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076
Reveal
from The Center for Investigative Reporting
@add | podcast | website

On Mon, Jan 22, 2018 at 11:18 AM, Andy Donohue <adonohue@revealnews.org> wrote:

> Hello,
>
> I still haven't received any response to my records request. It is my understanding that under state public records law, you were to have responded by Dec. 18, more than one month ago. I have copied my attorney, Victoria Baranetsky, on this conversation.
>
> Andy Donohue
> Managing Editor
> o: 510.809.2205 c: 619.847.7076
> Reveal
> from The Center for Investigative Reporting
> @add | podcast | website
>
> On Wed, Jan 10, 2018 at 1:22 PM, PIO <PIO@lvmpd.com> wrote:
>
> > Hello Andy,
> >
> > I have forwarded your e-mail over to PIO Officer Hadfield for follow-up. He will be back in the office tomorrow.
> >
> > Thank you,
> >
> > **Office of Public Information**
> > **Las Vegas Metropolitan Police Department**
> > 400-B South Martin L. King Boulevard, Las Vegas, Nevada 89106
> > ☎ 702.828.4082 office | 🖷 702.828.1550 fax | ✉ PIO@LVMPD.com
> > Follow us on Facebook, Twitter and Instagram
> >
> > mg
> >
> > **From:** Andy Donohue [mailto:adonohue@revealnews.org]
> > **Sent:** Wednesday, January 10, 2018 12:59 PM

To: PIO <PIO@LVMPD.COM>; Victoria Baranetsky <vbaranetsky@revealnews.org>
Subject: Re: Records request

I'm writing to follow up on the below request, which was filed December 11.

It is my understanding that under the Nevada Public Records Act, a request must be fulfilled or acknowledged within five business days of receipt. I have yet to receive any communication from the department.

Please advise when the request will be fulfilled. Thank you.

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076

Reveal
from The Center for Investigative Reporting
@add | podcast | website

On Mon, Dec 11, 2017 at 3:03 PM, Andy Donohue <adonohue@revealnews.org> wrote:

> Las Vegas Police Department
>
> Office of Public Information
>
> PIO@lvmpd.com
>
> December 11, 2017
>
> Via email
>
> **Re: Nevada Open Records Act Request**
>
> Under the **Nevada Open Records Act § 239 et seq.**, I am requesting an opportunity to inspect or obtain copies of the following records:
>
> * Any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder.

* Any and all records related to the American rapper Christopher Wallace, aka Notorious B.I.G., aka Biggie Smalls, including but not limited to law enforcement files involving his murder.

The FBI has long since released its records, doing so in 2011, indicating that there should be no privacy or law enforcement concerns in releasing these files. Additionally all privacy concerns are moot, where both men have been deceased now for more than two decades, as are many of the people involved.

If there are any fees for searching or copying these records, please inform me if the cost will exceed $50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of unsolved murders of major historical figures. This information is not being sought for commercial purposes.

If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. Additionally, if you determine that some but not all of the information in the requested records is exempt from disclosure, please redact that information and make all segregable portions available.

Thank you for considering my request.

Sincerely,

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076
Reveal
from The Center for Investigative Reporting
@add | podcast | website

--
Victoria D. Baranetsky
General Counsel
(w) 510-982-2890
(c) 201-306-4831
PGP EA48 1FB7 98E3 156E 3AFF 6748 F7B1 8B23 0838 D7F5

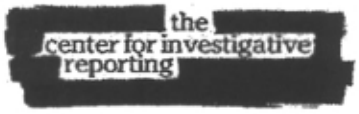


EXHIBIT 2

EXHIBIT 2

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW

March 28, 2018

VIA E-MAIL (PIO@LVMPD.COM)

Carla Alston
Director of Public Information
Las Vegas Metropolitan Police Department
400 Stewart Avenue
Las Vegas, Nevada 89101

Dear Ms. Alston:

Please be advised that this firm represents The Center for Investigative Reporting ("CIR").

On December 11, 2017, CIR's Managing Editor, Andy Donohue, served a public records request on the Las Vegas Metropolitan Police Department ("LVMPD") pursuant to NRS 239.010 for (i) any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder, and (ii) any and all records related to the American rapper Christopher Wallace, aka Notorious B.I.G., aka Biggie Smalls, including but not limited to law enforcement files involving his murder. *See* Exhibit "1," E-mail Correspondence. The LVMPD did not provide the requested records or otherwise respond to Mr. Donahue's request.

On January 10, 2018, Mr. Donohue followed up on his original request and was informed by the Office of Public Information that his request had been forwarded to PIO Officer Hadfield. *Id.* Nevertheless, neither the Officer Hadfield nor anyone else from the Office of Public Information responded to Mr. Donohue's original request for public records. *Id.* Mr. Donohue subsequently contacted the Office of Public Information on January 22, 2018 and, again, did not receive a response. *Id.* Finally, Mr. Donohue contacted the Office of Public Information for a fourth time on March 15, 2018 and achieved the same unsuccessful result. *Id.*

Pursuant to NRS 239.0107, the LVMPD was required to respond to Mr. Donahue's original request within five (5) business days yet it has failed to comply with its statutory obligations for more than three (3) months. Accordingly, we hereby demand that the LVMPD fully respond to Mr. Donahue's public records request by no later than the close of business on Wednesday, April 4, 2018. If the LVMPD fails to comply with the requirements of Nevada's Public Records Act by the foregoing date, the CIR will make application for judicial relief pursuant to NRS 239.011 and seek its attorney's fees and costs.

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

[redacted]

Thank you in advance for your cooperation and please do not hesitate to contact me with any questions.

Very truly yours,

CAMPBELL & WILLIAMS

Philip R. Erwin, Esq.

cc: Liesl K. Freedman, Esq., *via e-mail at L8706@lvmpd.com*
D. Victoria Baranetsky, Esq., General Counsel at The Center for Investigative Reporting

REDACTED

REDACTED

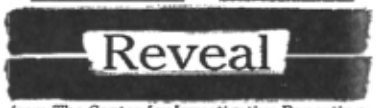
---------- Forwarded message ----------
From: **Andy Donohue** <adonohue@revealnews.org>
Date: Thu, Mar 15, 2018 at 12:30 PM
Subject: Re: Records request
To: PIO <PIO@lvmpd.com>, Victoria Baranetsky <vbaranetsky@revealnews.org>

Hello,

You are now nearly three months past the legal deadline for responding to this records request. I've attempted to work with you on this cordially, but if I do not get a response very soon, my attorney will be in

touch directly. She is copied on this email.

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076



@add | podcast | website

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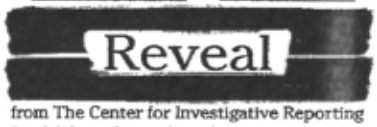
> Managing Editor
> o: 510.809.2205 c: 619.847.7076
>
> 
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> > Thank you,
> >
> > **Office of Public Information**
> > **Las Vegas Metropolitan Police Department**
> > 400-B South Martin L. King Boulevard, Las Vegas, Nevada 89106
> > ☎ 702.828.4082 office| 🖷 702.828.1550 fax | ✉ PIO@LVMPD.com
> > Follow us on Facebook, Twitter and Instagram
> >
> > mg
> >
> > **From:** Andy Donohue [mailto:adonohue@revealnews.org]
> > **Sent:** Wednesday, January 10, 2018 12:59 PM

To: PIO <PIO@LVMPD.COM>; Victoria Baranetsky <vbaranetsky@revealnews.org>
Subject: Re: Records request

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It is my understanding that under the Nevada Public Records Act, a request must be fulfilled or acknowledged within five business days of receipt. I have yet to receive any communication from the department.

Please advise when the request will be fulfilled. Thank you.

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076

Reveal
from The Center for Investigative Reporting
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> Las Vegas Police Department
>
> Office of Public Information
>
> PIO@lvmpd.com
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> December 11, 2017
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> Via email
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> **Re: Nevada Open Records Act Request**
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Thank you for considering my request.

Sincerely,

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076
Reveal
from The Center for Investigative Reporting
@add | podcast | website

--
Victoria D. Baranetsky
General Counsel
(w) 510-982-2890
(c) 201-306-4831
PGP EA48 1FB7 98E3 156E 3AFF 6748 F7B1 8B23 0838 D7F5

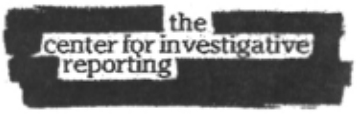

EXHIBIT 3

EXHIBIT 3

Las Vegas Metropolitan Police Department
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106

Case Report No: LLV960907002063

Administrative

Location **160 E FLAMINGO RD, Bldg#** Sector /Beat **M2**
Occurred On (Date and Time) **9/7/1996 11:17:00 PM** Or Between (Date and Time)
Reporting Officer Report Taken On **9/7/1996 12:30:00 AM**
Entered By Entered On **9/19/1996 6:04:00 PM**

Offenses:

MURDER
Completed **No** Domestic Violence **No** Hate/Bias

Victims:

Name: **CROOKS, LESANE PARISH**

Victim Type **Individual** Written Statement **No** Can ID Suspect **No**
DOB [redacted] Age **25** Sex **Male** Race **Black or African American**
Height **5' 11"** Weight **165** Hair Color **Black** Eye Color **Brown**
Employer/School
Occupation/Grade Work Schedule
Injuries

Addresses [redacted]

Nature/Cause **GSW,** Pronounced Date/Time Coroner Notified **No**
Transported To **UMC** Transported By **MERCY** Medical Attendant Type **PHYSICIAN**
Medical Attendant Name **DR CARRINGTON,** Next Of Kin Notified **No**
Notified By Medical Clearance Required **No** Medical Clearance By

Notes

: **KNIGHT, MARION**

Victim Type **Individual** Written Statement **No** Can ID Suspect **No**
DOB [redacted] Age **31** Sex **Male** Race **Black or African American**
Height **6' 2"** Weight **315** Hair Color **Black** Eye Color **Brown**
Employer/School
Occupation/Grade Work Schedule
Injuries

The Use and Dissemination of this Record is Regulated by Law. Secondary Dissemination of any kind is Prohibited and could subject the offender to Criminal and Civil Liability.
This Information Released To:
Robb-Dandie
By: [redacted] Date: 3/22/16
Las Vegas Metro Police Dept.

Suspects:

Name: **NAME NOT GIVEN,**
Aliases:
NAME NOT GIVEN,

Written Statement **No**
DOB Age **0** Sex **Male** Race **Black or African American**
Height **0' 0"** Weight **0** Hair Color Eye Color

Name: **NAME NOT GIVEN,**
Aliases:
NAME NOT GIVEN,

Written Statement **No**
DOB Age **0** Sex **Male** Race **Black or African American**
Height **0' 0"** Weight **0** Hair Color Eye Color

Properties:

Type:
Status **Used In the Commission of a Crime** Quantity Value Color
Description **CADILLAC SEVILLE AND STS / SLS [ ]**
Manufacturer **CADILLAC** Model **SEVILLE AND STS / SLS** Serial Number\VIN
Vehicle Year **1990** Lic Plate # Lic Plate State **Nevada** Lic Plate Exp
Body Style **4-door** Vehicle Type

Vehicle Colors
Primary **White**
Secondary **White**
Tertiary **White**
Notes

Type:
Status **Stolen Locally - Recovered Locally** Quantity Value Color
Description **CADILLAC SEVILLE AND STS / SLS [ ]**
Manufacturer **CADILLAC** Model **SEVILLE AND STS / SLS** Serial Number\VIN
Vehicle Year **1990** Lic Plate # Lic Plate State **Nevada** Lic Plate Exp
Body Style **4-door** Vehicle Type

Vehicle Colors
Primary **White**
Secondary **White**
Tertiary **White**
Notes

Narrative:

Subject: NARRATIVE # 002

Author: BECKER, B 2838 [2838]

Entered Date: 09/07/1996 00:30

Narrative Type: ENTRY-SU

PER OFFICER'S INCIDENT CRIME REPORT ATTEMPTED MURDER SHOULD BE ATTEMPTED MURDER 2CTS. ON 090796 AT 2317 LESANE CROOKS (AKA TUPAC SHAKUR) WAS SHOT MULTIPLE TIMES WHILE RIDING IN A CAR DRIVEN BY MARION KNIGHT AT FLAMINGO AND KOVAL. KNIGHT ALSO SUFFERED A MINOR GSW. THE SUSPECTS WERE IN A WHITE CADILLAC WHICH FLED THE SCENE.

EXHIBIT 4

EXHIBIT 4

Subject: Re: LVMPD Request
Date: Wednesday, April 11, 2018 at 1:47:40 PM Pacific Daylight Time
From: Phil Erwin
To: Lawrence Hadfield
CC: Samuel R. Mirkovich, Victoria Baranetsky
Attachments: 20180405154727644.pdf, image001.jpg, image002.jpg, image003.png, image004.jpg, image005.jpg

Dear Officer Hadfield,

On April 5, 2018, the Las Vegas Metropolitan Police Department ("LVMPD") produced the attached two-page police report in response to Mr. Andy Donohue's multiple public records requests and my letter dated March 28, 2018. The LVMPD did not produce a log of responsive documents or otherwise indicate whether additional documents exist or were withheld based on alleged confidentiality grounds.

Can you please confirm that the attached police report is the only document in the LVMPD's possession that is responsive to our public records request? Can you likewise confirm that the LVMPD did not withhold any responsive documents—e.g. investigative files, correspondence, memoranda, etc.—based on confidentiality? If the LVMPD did withhold certain documentation due to confidentiality, please provide notice of that fact along with a citation to the supporting statute(s) or other legal authorities as required by NRS 239.0107.

Given the prior delays associated with our public records request and the statutory deadlines in Nevada's Public Records Act, we would ask that you respond to this e-mail by no later than the close of business on Friday, April 13, 2018. Thank you and please do not hesitate to contact me with any questions.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

** This message is intended for the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this information in error, please notify us immediately by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank You.**

From: Lawrence Hadfield <L7171H@LVMPD.COM>
Date: Wednesday, March 28, 2018 at 1:10 PM
To: Phil Erwin <pre@cwlawlv.com>, Lucinda Martinez <lmm@cwlawlv.com>
Cc: Sam Mirkovich <srm@cwlawlv.com>

Subject: LVMPD Request

Mr. Erwin,

We are in receipt of your letter to the director of the PIO. Your request is being processed via our Records section.

Officer Larry Hadfield
Office of Public Information
Las Vegas Metropolitan Police Department
400-B South Martin L. King Boulevard, Las Vegas, Nevada 89106
☎ 702.828.4082 office | 702.828.1550 fax | L7171H@lvmpd.com

EXHIBIT 5

EXHIBIT 5

April 12, 2018

pre@cwlawlv.com
Phil R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, NV 89101

Re: Public Records Request dated December 11, 2017
LVMPD PIO Request Number 171212-02

Dear Mr. Erwin:

Your email dated April 11, 2018 addressed to Officer Lawrence Hadfield assigned to the Las Vegas Metropolitan Police Department (LVMPD) Office of Public Information was forwarded to the Office of General Counsel for response. In your email you are addressing concerns about a public records request that Mr. Andy Donohue submitted. Mr. Donohue requested the following records:

- Any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder.

- Any and all records related to the American rapper Christopher Wallace, aka Notorious B.I.G., aka Biggie Smalls, including but not limited to law enforcement files involving his murder.

Mr. Donohue made his initial public records request on December 11, 2017. LVMPD's practice is to forward the request to the custodians of records who may have records responsive to the request. You should have been advised LVMPD would research your request and respond to you within 30 days. See, NRS 239.0107(1)(c). In response to your records request, LVMPD provided you on or about March 18, 2018 a report responsive to your request. When your record request was forwarded to the Homicide Bureau, which is the custodian of records of other responsive records to your request, it was learned the criminal investigation of the murder of Lesane Parrish Crooks also known as Tupac Shakur is an open active investigation. For this reason, no other records were provided. Unfortunately, this information was not communicated to you or