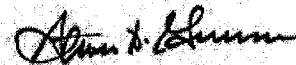


ORDER

CAMPBELL & WILLIAMS
J. COLBY WILLIAMS, ESQ. (5549)
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CLERK OF THE COURT

Attorneys for Defendant
Stephens Media, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

BOULES BANOUB, an individual; HANAN) CASE NO. A-12-669057-C
SALIP, and individual; MARY BANOUB, an) DEPT. NO. XIX
individual, MINA BANOUB, an individual,)

Plaintiffs,

ORDER

vs.

JOHN PITTMAN, an individual; STEPHENS)
MEDIA, LLC, a Nevada limited liability)
Company d/b/a LAS VEGAS REVIEW)
JOURNAL; DOES I through X, inclusive;)
and ROE CORPORATIONS I - X, inclusive)

Defendants.

This matter came on for hearing before the Honorable William Kephart this 2nd day of June 2015, on Defendant Stephens Media, LLC d/b/a Las Vegas Review-Journal's Motion for Attorney's Fees and Plaintiffs' Motion to Strike Defendant Stephens Media's Memorandum of Costs and Disbursements in its Totality. Philip R. Erwin, Esq., of Campbell & Williams, appeared on behalf of Defendant Stephens Media, LLC d/b/a Las Vegas Review-Journal; Anthony L. Ashby, Esq., of the Ladah Law Firm, appeared on behalf of Plaintiffs; the Court,

having reviewed the papers and pleadings on file in this matter, good cause appearing and with no just reason for delay, hereby rules as follows:

I. FINDINGS

1. This matter arises out of a traffic accident between Plaintiffs and Defendant John Pittman. Pittman delivered newspapers on behalf of Defendant Stephens Media, LLC d/b/a Las Vegas Review-Journal (the "Review-Journal") pursuant to the Independent Contractor Distribution Agreement. In the early morning of August 20, 2011, while he was in the act of delivering newspapers pursuant to said agreement, Pittman struck Plaintiffs' vehicle at the intersection of Spencer Street and Camero Avenue in Las Vegas, Nevada. As a result, Plaintiffs brought negligence-based claims against the Review-Journal under a theory of *respondeat superior*.

2. On December 8, 2014, the Review-Journal served the Offer of Judgment on Plaintiffs pursuant to NRCP 68 and NRS 17.115. More specifically, the Review-Journal offered to allow judgment to be entered against it and in favor of Plaintiffs Boules Banoub, Hanan Salip, Mary Banoub, and Mina Banoub, jointly, in the total amount of \$5,000.

3. Plaintiffs did not respond to the Offer of Judgment within ten (10) days of the date of service and, as a result, the Offer of Judgment was deemed rejected.

4. "If an offeree declines to accept an offer of judgment made pursuant to NRCP 68 and NRS 17.115, and the offeree receives a judgment at trial which is not more favorable than the offer, the offeree may be required to pay the offeror's attorney's fees." *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 722 (1993).

5. On February 19, 2015, this Court granted the Review-Journal's Renewed Motion for Summary Judgment and dismissed Plaintiffs' claims against the newspaper with prejudice. Accordingly, Plaintiffs failed to obtain a more favorable judgment than the Offer of Judgment served by the Review-Journal.

1 6. On March 13, 2015, the Court entered the Notice of Entry of Order granting the
2 Review-Journal's Renewed Motion for Summary Judgment.

3 7. At 6:14 p.m. on Friday, March 20, 2015, the Review-Journal filed its
4 Memorandum of Costs and Disbursements (the "Memorandum") pursuant to NRS 18.110 and
5 submitted the same for service through the Eighth Judicial District Court's eFiling system. The
6 Court's eFiling system, however, did not electronically serve Plaintiffs with the Memorandum
7 until 8:56 a.m. on the following Monday, March 23, 2015.

8 8. Because the Memorandum was filed after the close of business on Friday, March
9 20, 2015, and not electronically served through the eFiling system until 8:56 a.m. on the
10 following Monday, March 23, 2015, the Court finds that the Memorandum was untimely under
11 NRS 18.110(1).

12 9. On March 30, 2015, the Review-Journal filed the Motion for Attorney's Fees and
13 requested an award of \$34,055.00, which is the amount of its attorney's fees from December 8,
14 2015 through the entry of the Order granting summary judgment. Therein, the Review-Journal
15 analyzed the *Beattie* factors addressing an award of attorney's fees arising out of an offer of
16 judgment. *See Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). The Review-
17 Journal further analyzed the *Brunzell* factors addressing the reasonableness of its counsel's fees
18 and services. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 345, 455 P.2d 31, 33 (1969). In
19 support of the Motion, the Review-Journal submitted the Declaration of Philip R. Erwin, Esq. and
20 its counsel's billing records in this matter.

21 10. In response, Plaintiffs did not dispute that the Review-Journal's Offer of Judgment
22 was reasonable and made in good faith in amount and timing. Plaintiffs likewise acknowledged
23 that their refusal to accept the Offer of Judgment was unreasonable. Similarly, Plaintiffs
24 conceded the Review-Journal's attorney's fees were reasonable and justified in amount.
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1 11. Plaintiffs' only argument against an award of attorney's fees was that the Review-
2 Journal's Offer of Judgment was invalid under NRCP 68. First, Plaintiffs asserted that the Offer
3 of Judgment was defective because Plaintiffs' injuries were not derivative of an injury to the
4 others. Second, Plaintiffs alleged that the same person was not authorized to settle Plaintiffs'
5 claims on behalf of the others. Plaintiffs did not address the validity of the Offer of Judgment
6 under NRS 17.115.

7 12. NRCP 68(c)(3) provides, in pertinent part: "[a]n offer made to multiple plaintiffs
8 will invoke the penalties of this Rule only if (A) the damages claimed by the offeree plaintiffs are
9 solely derivative, such as that the damages claimed by some offerees are entirely derivative of an
10 injury to the others or that the damages claimed by all offerees are derivative of an injury to
11 another, and (B) the same entity, person or group is authorized to decide whether to settle the
12 claims of the offerees."

13 13. Under NRS 17.115, unapportioned offers made to multiple plaintiffs are not
14 considered valid unless certain requirements are met. As detailed in NRCP 17.115(9), the
15 penalties of this statute do not apply to "an offer of judgment made to multiple plaintiffs unless
16 the same person is authorized to decide whether to settle the claims of all the plaintiffs *and*: (1)
17 there is a single common theory of liability claimed by all the plaintiffs to whom the offer is
18 made; (2) the damages claimed by one or more plaintiffs to whom the offer is made are entirely
19 derivative of an injury to the remaining plaintiffs to whom the offer is made; *or* (3) the damages
20 claimed by all the plaintiff to whom the offer is made are entirely derivative of an injury to
21 another person."

22 14. Here, the Court finds—and the Review-Journal does not dispute—that Plaintiffs'
23 respective injuries are not derivative and, therefore, the Offer of Judgment was invalid under
24 NRCP 68.
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15. In addressing whether the Review-Journal's Offer of Judgment was valid under NRS 17.115, the Court finds the analogous case of *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022 (2006), to be controlling. There, the Nevada Supreme Court considered the validity of an unapportioned offer of judgment under NRS 17.115 that was made to a husband and wife who filed suit against the same defendant under a common theory of liability. Like Plaintiffs, the family in *Albios* argued that the offer of judgment was invalid because "neither spouse sustained damages that were derivative of an injury to the other spouse, nor did they sustain damages that are entirely derivative of an injury to another person." *Id.* at 421, 132 P.3d at 1030. Similarly, the *Albios* family also argued the defendant was required to "demonstrate that the same entity, person, or group was allowed to settle the case." *Id.*

16. The Nevada Supreme Court noted that "NRS 17.115 includes an alternative requirement that can be met instead of the derivative damages requirement—an unapportioned offer is also proper if there is a single common theory of liability claimed by all plaintiffs." *Id.* at 422, 132 P.3d at 1030; *see also M.C. Multi-Family Dev., L.L.C. v. Crestdale Assoc., Ltd.*, 124 Nev. 901, 916, 193 P.3d 536, 546 (2008) ("in order to invoke the offer of judgment penalty provisions as to multiple plaintiffs, the defendant must show either (1) a single common theory of liability or (2) derivative damages."). As a result, the Nevada Supreme Court held that "[b]ecause the Albioses jointly sued Horizon under the same constructional defect theory, Horizon satisfied the first requirement necessary for a valid offer of judgment involving multiple plaintiffs." *Albios*, 122 Nev. at 422, 132 P.3d at 1030.

17. Here, Plaintiffs jointly sued the Review-Journal for negligence under the same theory of liability, *i.e.*, the doctrine of *respondent superior*. To be sure, Plaintiffs unsuccessfully argued that Pittman was an employee of the Review-Journal such that the newspaper was responsible for his negligent conduct. Accordingly, there was a single common theory of liability claimed by Plaintiffs and, therefore, the Review-Journal's Offer of Judgment met the first

1 requirement of NRS 17.115 even though Plaintiffs' claimed damages were not derivative of the
2 same injury.

3 18. The *Albios* family then argued that there was no single person authorized to accept
4 the offer of judgment because the husband and wife "owned their property in joint tenancy and []
5 therefore each [spouse] had a separate interest in the property and that one joint tenant cannot act
6 on behalf of the other joint tenant in controlling the other's interest." *Id.* at 422, 132 P.3d at 1031.
7 The Nevada Supreme Court, however, disregarded the plaintiffs' argument and held that "one
8 plaintiff spouse is presumed to have authority to settle the claims for both plaintiff spouses" when
9 they brought claims under a common theory of liability. *Id.* at 423, 132 P.3d 1031.

10 19. Like the Nevada Supreme Court, federal courts have determined that a joint
11 unapportioned offer of judgment to a family of plaintiffs is valid. *See, e.g., Roska v. Sneddon*,
12 366 Fed.Appx. 930 (10th Cir. 2010) (joint unapportioned offer of judgment was valid where the
13 plaintiffs were "a single family represented by one attorney, claiming [] damages arising from the
14 same set of facts."); *Doe v. Rutherford County, Tenn., Bd. of Educ.*, 2015 WL 475414, *14-16
15 (M.D.Tenn. Feb. 4, 2015) (joint unapportioned offer of judgment to three sisters was valid where
16 sisters brought claims arising out of same set of facts through the same attorney, negotiated
17 settlement as a unit and gave no indication of any interest in settling individually, and never
18 sought clarification of the amount offered to each sister); *Jordan ex rel. Jordan v. Russo*, 2014
19 WL 869482 (W.D.Pa. Mar. 5, 2014) (joint unapportioned offer of judgment was effective where
20 plaintiffs were "all related, resided in the same household, and were jointly represented by the
21 same attorney.").

22 20. In this case, Plaintiffs—a family consisting of a husband, wife, and two
23 daughters—jointly sued the Review-Journal under a common theory of liability through the same
24 legal counsel. Plaintiffs, who litigated this case as a unit and only sought to settle as a group,
25 were in the best position to evaluate the allocation of the Review-Journal's Offer of Judgment.
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1 The Court further notes that Plaintiffs never sought clarification of the Offer of Judgment or
2 asserted that they could not evaluate the Offer of Judgment without apportionment. The Court
3 determines it would be unreasonable to conclude that Plaintiffs could not settle their claims
4 against the Review-Journal as a family unit especially when the amount offered was a mere
5 fraction of their alleged damages.

6 21. Based on the foregoing, and pursuant to the Nevada Supreme Court's decision in
7 *Albios*, the Court finds that the Review-Journal's Offer of Judgment was valid under NRS 17.115.
8 Because Plaintiffs rejected the Offer of Judgment and failed to obtain a more favorable result, the
9 Review-Journal is entitled to an award of attorney's fees.

10 22. The Nevada Supreme Court has instructed that the Court should consider the
11 following four (4) factors in determining whether to award attorney's fees arising out of an offer
12 of judgment: 1) whether the plaintiff's claim was brought in good faith, 2) whether the
13 defendants' offer of judgment was reasonable and in good faith in both its timing and amount, 3)
14 whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or
15 in bad faith, and 4) whether the fees sought by the offeror are reasonable and justified in amount.
16 *See Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). Here, a review of each
17 factor demonstrates that the Review-Journal is entitled to all of its attorney's fees from the date of
18 the offer through the entry of summary judgment:
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21 a) While Plaintiffs' claims against Pittman were brought in good faith,
22 Plaintiffs' inclusion of the Review-Journal was improper. Plaintiffs were aware
23 that Pittman was subject to the Independent Contractor Distribution Agreement
24 from the outset of this litigation. Nevertheless, Plaintiffs continued to litigate
25 against the Review-Journal in the face of warnings from the Court and
26 overwhelming legal authority from around the country standing for the proposition
27 that newspaper deliverymen are not employees.
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1 b) The Review-Journal made its Offer of Judgment on December 8, 2014,
2 which was a year-and-a-half after Plaintiffs filed the Amended Complaint and
3 weeks after the close of discovery. It is indisputable that Plaintiffs had ample
4 opportunity to discover and review any relevant evidence. The timing of the offer
5 of judgment was, therefore, reasonable.

6 The amount of the offer of judgment was also reasonable. While \$5,000
7 was a fraction of Plaintiffs' claimed damages, it was reasonable in light of the
8 Review-Journal's absolute defense to liability.

9 c) Plaintiffs had been admonished regarding the apparent deficiencies in their
10 claims against the Review-Journal approximately nine (9) months before the
11 Review-Journal served the Offer of Judgment. Because neither the facts nor the
12 law had changed in that nine (9) month period, Plaintiffs should have been aware
13 that they would likely be unsuccessful in opposing the Renewed Motion for
14 Summary Judgment. The Offer of Judgment would have also covered some or all
15 of Plaintiffs' costs in this action and absolved them of any potential responsibility
16 for the Review-Journal's attorney's fees and costs. Accordingly, Plaintiffs'
17 rejection of the Offer of Judgment was unreasonable.

18 23. As to the final *Beattie* factor, Plaintiffs did not dispute the reasonableness of the
19 Review-Journal's attorney's fees from December 8, 2014 through the entry of summary
20 judgment. The Court finds that the Review-Journal has adequately supported its request for
21 attorneys' fees with appropriate evidence in the form of (i) a declaration from counsel, Philip R.
22 Erwin, addressing the factors set forth in *Brunzell*; (ii) a detailed record of the work performed by
23 counsel in this matter. The Court has carefully analyzed the *Brunzell* factors as follows:

24 a) Regarding the qualities of counsel, the Court finds that the Review-Journal's
25 counsel are experienced litigators in general and that their written and oral
26

1 presentations to the Court were of the highest ability. The Court further finds that the
2 hourly rates charged by the respective counsel and paralegals, which were reduced
3 from the normal rate charged by Mr. Williams, are consistent with reasonable
4 community standards for work in similar matters and for firms with similar pedigrees.
5 The requested rates are also consistent with those sought and/or awarded to the
6 Review-Journal's counsel in previous cases.

7 b) Next, the character of the work to be performed was of significant importance
8 to the Review-Journal as an adverse ruling would have had a sweeping impact on the
9 manner in which the Review-Journal operated its business and delivered newspapers.
10 Indeed, had Plaintiffs prevailed on the theory that Pittman was an employee of the
11 Review-Journal rather than an independent contractor, such precedent could have
12 impacted the Review-Journal's potential liability for other independent contractors
13 who deliver newspapers.

14 c) The Court finds that the work actually performed by the Review-Journal's
15 counsel—which included extensive briefing on discovery issues and the Renewed
16 Motion for Summary Judgment, multiple depositions and hearings, and pre-trial
17 motion practice—was reasonable, necessary and skillfully accomplished.

18 d) With respect to the final *Brunzell* factor, the result obtained, the Court has
19 previously detailed its findings that Petitioners were entitled to summary judgment on
20 the issue of *respondeat superior* as a matter of law. The Court incorporates those
21 findings as if fully set forth herein.

22 II. ORDER

23 1. IT IS HEREBY ORDERED AND ADJUDGED that Defendant Stephens Media,
24 LLC d/b/a Las Vegas Review-Journal's Motion for Attorney's Fees is GRANTED.
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2. Plaintiffs shall pay the Review-Journal \$34,055.00 in attorney's fees within thirty (30) days from the date of this Order.

3. IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs' Motion to Strike Defendant Stephens Media's Memorandum of Costs and Disbursements in its Totality is GRANTED.

DATED this 19th day of June, 2015.

W. Keith Kephart
HON. JUDGE WILLIAM KEPHART

Respectfully submitted by:
CAMPBELL & WILLIAMS

By [Signature]
J. COLBY WILLIAMS, ESQ. (5549)
PHILIP R. ERWIN, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101
*Attorneys for Defendant
Stephens Media, LLC*

Approved As To Form By:
LADAH LAW FIRM

BY: /s/ Anthony L. Ashby
ANTHONY L. ASHBY, ESQ. (4911)
517 South Third Street
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Attorneys for Plaintiffs

EXHIBIT 6

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN GARDNER,)
on behalf of minor child, LELAND GARDNER,)

Plaintiffs,

vs.

HENDERSON WATER PARK, LLC dba)
COWABUNGA BAY WATER PARK, a Nevada)
limited liability company; DOES I through X,)
inclusive; ROE Corporations I through X, inclusive;)
and ROE Limited Liability Company I through X,)
inclusive,)

Defendants.

Case No.: A-15-722259-C
Dept. No.: XXX

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION

Date of Hearing:

October 14, 2016 at 9:00 a.m.

For Plaintiffs:

Samuel R. Mirkovich, Esq. of
CAMPBELL & WILLIAMS

For Defendant:

Alexandra B. McLeod, Esq. of
THORNDAL, ARMSTRONG et al.
(Appearing by telephone)

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CLERK OF THE COURT

I. FINDINGS

1. The Court heard Plaintiffs' Application for Attorneys' Fees.

II. RECOMMENDATIONS

1. IT IS HEREBY RECOMMENDED that Plaintiffs' counsel be awarded the entirety of the \$9,290.00 requested in their Application for Attorneys' Fees.

2. IT IS FURTHER RECOMMENDED that in awarding Plaintiffs' counsel \$9,290.00 in attorneys' fees, the Court applied the Brunzell factors as follows:

a. *Qualities of the advocates:* Plaintiffs' counsel are experienced and well respected

in the community and as more fully set forth in plaintiffs Memorandum for attorneys' fees.

b. *Character of the work.* The work done by Plaintiffs' counsel was time consuming

and somewhat tedious; there were limitations that Defendants artificially made that

caused Plaintiffs' counsel to do more work and research and in particular the discoverability of subsequent remedial measures.

c. *Work actually performed.* The Court finds that the work performed by Plaintiffs'

counsel was very fine work and well done.

d. *Result.* The motion to compel was reasonable and necessary, and it was granted.

3. IT IS FURTHER RECOMMENDED that Plaintiffs' counsel's rates of \$750 an hour for Mr. Campbell and \$350 an hour for Messrs. Erwin and Mirkovich are reasonable and have been approved by other district court judges.

Mr. Campbell only billed for one hour of his time at a rate of \$750⁰⁰. More than seven years ago Mr. Campbell's rate was in the range of \$600⁰⁰-650, so the Commissioner does not find his hourly rate of \$750⁰⁰ unreasonable, especially in light of the work that had to be done. Although Mr. Campbell only seeks to recover one hour of his 2 time, perhaps in the effort to be reasonable, Mr. Campbell has spent more time than that because he's been in Discovery multiple occasions.

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CASE NAME: *Gardner v. Henderson Water Park, LLC et al.*
CASE NUMBER: A-15-722259-C
10/14/2016 HEARING

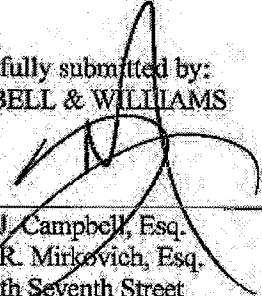
4. IT IS FURTHER RECOMMENDED that the full amount of attorney fees is due within 30 days after the Report and Recommendations are signed by the District Court Judge.

The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 29 day of November, 2016.


DISCOVERY COMMISSIONER

Respectfully submitted by:
CAMPBELL & WILLIAMS

By 
Donald J. Campbell, Esq.
Samuel R. Mirkovich, Esq.
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

Approved as to form and content by:
THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

By REFUSED TO SIGN
Paul F. Eisinger, Esq.
Alexandra B. McLeod, Esq.
1100 E. Bridger Ave.
Las Vegas, Nevada 89101
Attorneys for Defendant,
HENDERSON WATER PARK, LLC dba COWABUNGA BAY WATER PARK

CASE NAME: *Gardner v. Henderson Water Park, LLC et al.*
CASE NUMBER: A-15-722259-C
10/14/2016 HEARING

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of the party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to the Plaintiff/Defendant at the following address on the _____ day of _____, 20____.

_____ Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the _____ day of _____, 20____.

✓ _____ Electronically served counsel on the 5 day of Dec., 20____, pursuant to N.E.F.C.R. Rule 9.

By: Natalie Lehman
Commissioner Designee

CASE NAME: *Gardner v. Henderson Water Park, LLC et al.*
CASE NUMBER: A-15-722259-C
10/14/2016 HEARING

ORDER

The Court having reviewed the above Findings and Recommendations of the Discovery Commissioner, and:

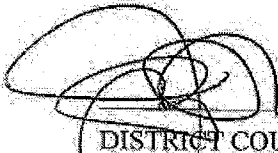
_____ The parties having waived the right to object thereto,
_____ No timely objection having been received in the office of the Discovery Commissioner pursuant to EDCR 2.34(f),
✓ NF _____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

_____ IT IS HEREBY ORDERED that the Discovery Commissioner's Findings and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED that the Discovery Commissioner's Findings and Recommendations are affirmed and adopted as modified in the following manner (attached hereto).

✓ EB _____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for January 26, ²⁰¹⁷~~2016~~, @ 9:00am

DATED this 5 day of January, ²⁰¹⁷~~2016~~.


DISTRICT COURT JUDGE
EB

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Mandamus

COURT MINUTES

December 21, 2018

A-18-773883-W Center for Investigative Reporting Inc, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

December 21, 2018 3:00 AM Investigative Reporting Inc.'s Motion for
Attorney's Fees and Costs

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

PARTIES None. Minute order only - no hearing held.
PRESENT:

JOURNAL ENTRIES

- The Court having reviewed the Motion for Attorney's Fees and the related briefing and being fully informed, GRANTS the motion. The decision to not comply with the public records request was not made in good faith. After evaluation of the Brunzell factors, all weigh in favor of the award requested by Movant in the reply brief in amount of \$50,402.89 and costs in the amount of \$20.65. As no memorandum of costs has been filed, the Counsel for Movant is directed to submit a proposed order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment.

CLERK'S NOTE: A copy of this minute order was distributed to the parties via the E-Service List. / dr
12-24-18

PRINT DATE: 12/24/2018

Page 1 of 1

Minutes Date: December 21, 2018

Steven D. Grierson

NEOJ
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Attorneys for Plaintiff

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 7th day of January, 2019, an Order Granting The Center for Investigative Reporting, Inc.'s Motion for Attorneys' Fees and Costs, 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 8th day of January, 2019.

CAMPBELL & WILLIAMS

By: /s/ Philip Erwin

Philip R. Erwin, Esq. (11563)
Samuel R. Mirkovich, Esq. (11662)
700 South Seventh Street
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 8th day of January, 2019, 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

EXHIBIT 1

EXHIBIT 1

Steven D. Grierson

ORDR

CAMPBELL & WILLIAMS

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Attorneys for Plaintiff

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 GRANTING THE CENTER FOR
INVESTIGATIVE REPORTING INC.'S
MOTION FOR ATTORNEYS' FEES
AND COSTS**

This matter came on for hearing in chambers before the Honorable Elizabeth Gonzalez this 21st day of December, 2018 on Petitioner The Center for Investigative Reporting Inc.'s Motion for Attorneys' Fees and Costs. The Court, having reviewed the Motion for Attorneys' Fees and Costs and related briefing, and being fully informed, hereby rules as follows:

I. FINDINGS

1. This matter arose out of the Las Vegas Metropolitan Police Department's ("LVMPD") noncompliance with the Nevada Public Records Act ("NPR") in connection with The Center for Investigative Reporting Inc.'s ("CIR") requests for public records concerning the

01-07-19A06:33 RCVD

1

Case Number: A-18-773883-W

1 murder of Tupac Shakur in Las Vegas, Nevada in September 1996. Because LVMPD maintained
2 a blanket objection to confidentiality and refused to produce any records beyond a two-page police
3 report, CIR commenced this action by filing its Petition for Writ of Mandamus (the "Petition")
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7 and ultimately provided CIR with approximately 1,400 pages of records and other media related to
8 Tupac Shakur's murder.
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10 2. In Nevada, an award of attorneys' fees is permitted when "allowed by express or
11 implied agreement or when authorized by statute." See *Schouweiler v. Yancey Coi*, 101 Nev. 827,
12 829, 712 P.2d 786, 788 (1985). Under the NPRA, "[i]f the requester prevails, the requester is
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14 governmental entity whose officer has custody of the book or record." NRS 239.011(2). Here, the
15 parties submitted comprehensive briefs on this issue and the Court determined that CIR "prevailed"
16 pursuant to NRS 239.011(2) because this lawsuit caused LVMPD to comply with the NPRA. See
17 Order Regarding The Center for Investigative Reporting, Inc.'s Petition for Writ of Mandamus (on
18 file). Based on this finding, CIR submitted its Motion for Attorneys' Fees and Costs.
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20 3. LVMPD asserts that a non-prevailing government entity is only subject to an award
21 of fees and costs under NRS 239.011(2) if it acted in bad faith. LVMPD's argument hinges on its
22 contention that NRS 239.011(2) must be read in conjunction with NRS 239.012, which provides
23 that "[a] public officer or employee who acts in good faith in disclosing or refusing to disclose
24 information and the employer of the public officer or employee are immune from liability for
25 damages, either to the requestor or to the person to whom the information concerns." Put another
26 way, LVMPD argues that an award of attorney's fees and costs under NRS 239.011(2) is subsumed
27 within the "damages" contemplated by the good faith immunity statute of NRS 239.012. LVMPD,
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1 in turn, asserts that it acted in good faith in response to CIR's public records requests, which
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3 4. The Court finds that LVMPD's attempt to interpolate a good faith requirement in
4 NRS 239.011(2) is misplaced. Again, NRS 239.011(2) provides that "[i]f the requester prevails,
5 the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding
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17 5. Nevada law is clear that a statutory award of attorney's fees and costs differs from
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1 Cf., *Albos v. Horizon Communities, Inc.*, 122 Nev. 409, 414, 132 P.3d 1022, 1025 (2006) ("Nev.
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3 an element of damages[.]"). Accordingly, the Court finds that an award of attorney's fees and costs
4 under NRS 239.011(2) is separate and distinct from the damages addressed by NRS 239.012.

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6 in NRS 239.011(2). NRS 239.012 immunizes an individual employee from damages for any good
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12 that NRS 239.011(2) incorporates the good faith immunity provision contained in NRS 239.012.
13

14 7. LVMPD's position conflicts with the underlying policy of the NPRA, which is "to
15 foster democratic principles by providing members of the public with access to inspect and copy
16 public books and records to the extent permitted by law." NRS 239.001(1). In that regard, "the
17 provisions of the [NPRA] must be construed liberally to carry out this important purpose[.]" and
18 "[a]ny exemption, exception or balancing of interests which limits or restricts access to public
19 books and records by members of the public must be construed narrowly." NRS 239.001(2) and
20 (3). The Court will not interpret a good faith requirement in NRS 239.011(2) because an expansive
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23 A.3d 553, 557 (D.C. Ct. App. 2015) (adopting broad interpretation of fee provision as it "advances
24 [the] goals [of D.C. FOIA] by allowing more litigants to recover attorney's fees and creating an
25 incentive for the D.C. government to disclose more documents in the first place.").
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1 8. Regardless, to the extent NRS 239.011(2) incorporates the good faith requirement
2 set forth in NRS 239.012, the Court finds that LVMPD's decision not to comply with CIR's public
3 records requests was not made in good faith.

4 9. In determining the amount of attorneys' fees and costs to be awarded, the Nevada
5 Supreme Court ruled in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 345, 455 P.2d 31, 31
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7 his training, education, experience, professional standing and skill; (2) *the character of the work to*
8 *be done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility
9 imposed and the prominence and character of the parties where they affect the importance of the
10 litigation, (3) *the work actually performed by the lawyer*: the skill, time and attention given to the
11 work; (4) *the result*: whether the attorney was successful and what benefits were derived.

12 10. The Court has carefully analyzed the *Brunzell* factors as follows:

13 a) Regarding the qualities of counsel, the Court finds that CIR's counsel are
14 experienced and skilled litigators in general. The Court further finds that the hourly
15 rate of \$450 charged by Messrs. Erwin and Mirkovich is consistent with reasonable
16 community standards for work in similar matters and for firms with similar pedigrees.
17 The requested rates are also consistent with those sought and/or awarded to CIR's
18 counsel in previous cases.

19 b) Next, the character of the work performed was high quality and concerned at
20 least one issue of first impression in this State. This case also involved a dispute
21 between CIR, a critically acclaimed media outlet, and LVMPD, the primary law
22 enforcement agency in Southern Nevada, regarding CIR's efforts to obtain information
23 related to a matter of significant public interest.
24
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1 c) The Court finds that the work actually performed by CIR's counsel—which
2 included extensive briefing and numerous court appearances—was reasonable,
3 necessary and skillfully accomplished.

4 d) With respect to the result obtained, the Court has previously detailed its
5 findings that CIR prevailed in this matter and incorporates those findings as if fully set
6 forth herein.

7
8 11. The Court finds that CIR has adequately supported its request for attorney's fees with
9 appropriate evidence in the form of (i) a declaration from Philip R. Erwin, Esq., addressing the *Brunzell*
10 factors and (ii) a detailed record of the work performed by counsel and costs expended in this matter.

11 **II. ORDER**

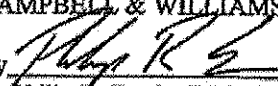
12 1. IT IS HEREBY ORDERED AND ADJUDGED that CIR's Motion for Attorneys'
13 Fees and Costs is GRANTED.

14 2. LVMPD shall pay CIR and its counsel \$50,402.89 in attorney's fees and costs within
15 thirty (30) days from the date of this Order.

16 DATED this 7 day of January, 2019.

17
18 
19 HON. JUDGE ELIZABETH GONZALEZ

20
21 Respectfully submitted by:
22 CAMPBELL & WILLIAMS

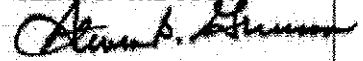
23 By 
24 Philip R. Erwin, ESQ. (11563)
25 Samuel R. Mirkovich (11662)
26 700 South Seventh Street
27 Las Vegas, Nevada 89101

28 *Attorneys for Petitioner*

Approved As To Form By:
MARQUIS AURBACH COFFING

By REFUSED TO SIGN
Nick D. Crosby, Esq. (8996)
Jackie V. Nichols, Esq. (14246)
10001 Park Run Drive
Las Vegas, Nevada 89145

Attorneys for Respondent



1 Marquis Aurbach Coffing
2 Nick D. Crosby, Esq.
3 Nevada Bar No. 8996
4 Jackie V. Nichols, Esq.
5 Nevada Bar No. 14246
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 ncrosby@maclaw.com
11 jnichols@maclaw.com

12 *Attorneys for Respondent, Las Vegas*
13 *Metropolitan Police Department*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 THE CENTER FOR INVESTIGATIVE
17 REPORTING, INC.,

18 Petitioner,

Case No.: A-18-773883-W
Dept. No.: 11

19 vs.

20 LAS VEGAS METROPOLITAN POLICE
21 DEPARTMENT,

22 Respondent.

23 **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S NOTICE**
24 **OF APPEAL**

25 Respondent Las Vegas Metropolitan Police Department, by and through its attorneys of
26 record, Nicholas Crosby, Esq. and Jackie Nichols, Esq., of the law firm of Marquis Aurbach
27 Coffing, hereby appeals to the Supreme Court of Nevada from the Order Granting The Center
28 For Investigative Reporting Inc.'s Motion for Attorneys' Fees and Costs filed on January 7, 2019

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MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 and noticed on January 8, 2019, attached hereto as **Exhibit A**, respectively.

2 Dated this 16 day of January, 2019.

3 MARQUIS AURBACH COFFING

4
5
6 By: 

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jaekle V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

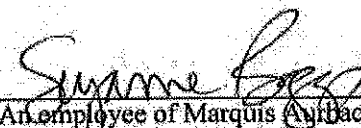
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 16th day of January, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Philip R. Erwin, Esq.
Samuel Mirkovich, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
jyc@cwlawlv.com
pre@cwlawlv.com
lmm@cwlawlv.com
srm@cwlawlv.com
rpr@cwlawlv.com
maw@cwlawlv.com
*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

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT “A”

Steven D. Grierson

ORDR

CAMPBELL & WILLIAMS
PHILIP R. ERWIN, ESQ. (11563)

pre@cwlawlv.com

SAMUEL R. MIRKOVICH, ESQ. (11662)

smr@cwlawlv.com

700 South Seventh Street

Las Vegas, Nevada 89101

Telephone: (702) 382-5222

Facsimile: (702) 382-0540

Attorneys for Plaintiff

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 GRANTING THE CENTER FOR
INVESTIGATIVE REPORTING INC.'S
MOTION FOR ATTORNEYS' FEES
AND COSTS**

This matter came on for hearing in chambers before the Honorable Elizabeth Gonzalez this 21st day of December, 2018 on Petitioner The Center for Investigative Reporting Inc.'s Motion for Attorneys' Fees and Costs. The Court, having reviewed the Motion for Attorneys' Fees and Costs and related briefing, and being fully informed, hereby rules as follows:

I. FINDINGS

1. 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

1 murder of Tupac Shakur in Las Vegas, Nevada in September 1996. Because LVMPD maintained
2 a blanket objection to confidentiality and refused to produce any records beyond a two-page police
3 report, CIR commenced this action by filing its Petition for Writ of Mandamus (the "Petition")
4 pursuant to NRS 239.011. Thereafter, the Honorable Joanna Kishner conducted a hearing on CIR's
5 Petition and stated that LVMPD had failed to meet its burden of demonstrating confidentiality as
6 required by Nevada law. Following the hearing, LVMPD agreed to produce the requested records
7 and ultimately provided CIR with approximately 1,400 pages of records and other media related to
8 Tupac Shakur's murder.

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10 2. In Nevada, an award of attorneys' fees is permitted when "allowed by express or
11 implied agreement or when authorized by statute." See *Schouweiler v. Yancey Co.*, 101 Nev. 827,
12 829, 712 P.2d 786, 788 (1985). Under the NPRA, "[i]f the requester prevails, the requester is
13 entitled to recover his or her costs and reasonable attorneys' fees in the proceeding from the
14 governmental entity whose officer has custody of the book or record." NRS 239.011(2). Here, the
15 parties submitted comprehensive briefs on this issue and the Court determined that CIR "prevailed"
16 pursuant to NRS 239.011(2) because this lawsuit caused LVMPD to comply with the NPRA. See
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18 file). Based on this finding, CIR submitted its Motion for Attorneys' Fees and Costs.

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22 contention that NRS 239.011(2) must be read in conjunction with NRS 239.012, which provides
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24 information and the employer of the public officer or employee are immune from liability for
25 damages, either to the requestor or to the person to whom the information concerns." Put another
26 way, LVMPD argues that an award of attorney's fees and costs under NRS 239.011(2) is subsumed
27 within the "damages" contemplated by the good faith immunity statute of NRS 239.012. LVMPD,
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1 in turn, asserts that it acted in good faith in response to CIR's public records requests, which
2 precludes an award of fees and costs to CIR under NRS 239.011(2).

3 4. The Court finds that LVMPD's attempt to interpolate a good faith requirement in
4 NRS 239.011(2) is misplaced. Again, NRS 239.011(2) provides that "[i]f the requester prevails,
5 the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding
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22 A.3d 553, 557 (D.C. Ct. App. 2015) (adopting broad interpretation of fee provision as it "advances
23 [the] goals [of D.C. FOIA] by allowing more litigants to recover attorney's fees and creating an
24 incentive for the D.C. government to disclose more documents in the first place.").

1 8. Regardless, to the extent NRS 239.011(2) incorporates the good faith requirement
2 set forth in NRS 239.012, the Court finds that LVMPD's decision not to comply with CIR's public
3 records requests was not made in good faith.

4 9. In determining the amount of attorneys' fees and costs to be awarded, the Nevada
5 Supreme Court ruled in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 345, 455 P.2d 31, 31
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10 litigation, (3) *the work actually performed by the lawyer*: the skill, time and attention given to the
11 work; (4) *the result*: whether the attorney was successful and what benefits were derived.

12 10. The Court has carefully analyzed the *Brunzell* factors as follows:

13 a) Regarding the qualities of counsel, the Court finds that CIR's counsel are
14 experienced and skilled litigators in general. The Court further finds that the hourly
15 rate of \$450 charged by Messrs. Erwin and Mirkovich is consistent with reasonable
16 community standards for work in similar matters and for firms with similar pedigrees.
17 The requested rates are also consistent with those sought and/or awarded to CIR's
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21 between CIR, a critically acclaimed media outlet, and LVMPD, the primary law
22 enforcement agency in Southern Nevada, regarding CIR's efforts to obtain information
23 related to a matter of significant public interest.
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c) The Court finds that the work actually performed by CIR's counsel—which included extensive briefing and numerous court appearances—was reasonable, necessary and skillfully accomplished.

d) With respect to the result obtained, the Court has previously detailed its findings that CIR prevailed in this matter and incorporates those findings as if fully set forth herein.

11. The Court finds that CIR has adequately supported its request for attorney's fees with appropriate evidence in the form of (i) a declaration from Philip R. Erwin, Esq., addressing the *Brunzell* factors and (ii) a detailed record of the work performed by counsel and costs expended in this matter.

II. ORDER


1. IT IS HEREBY ORDERED AND ADJUDGED that CIR's Motion for Attorneys' Fees and Costs is GRANTED.

2. LVMPD shall pay CIR and its counsel \$50,402.89 in attorney's fees and costs within thirty (30) days from the date of this Order.

DATED this 7 day of January, 2019.


HON. JUDGE ELIZABETH GONZALEZ

Respectfully submitted by:
CAMPBELL & WILLIAMS

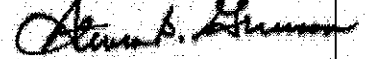
By 
Philip R. Erwin, ESQ. (11563)
Samuel R. Mirkovich (11662)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Petitioner

Approved As To Form By:
MARQUIS AURBACH COFFING

By REFUSED TO SIGN
Nick D. Crosby, Esq. (8996)
Jackie V. Nichols, Esq. (14246)
10001 Park Run Drive
Las Vegas, Nevada 89145

Attorneys for Respondent



1 Marquis Aurbach Coffing
2 Nick D. Crosby, Esq.
3 Nevada Bar No. 8996
4 Jackie V. Nichols, Esq.
5 Nevada Bar No. 14246
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 ncrosby@maclaw.com
11 jnichols@maclaw.com
12 Attorneys for Respondent, Las Vegas
13 Metropolitan Police Department

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE CENTER FOR INVESTIGATIVE
11 REPORTING, INC.,

12 Petitioner,

Case No.: A-18-773883-W
Dept. No.: 11

13 vs.

14 LAS VEGAS METROPOLITAN POLICE
15 DEPARTMENT,

16 Respondent.

17 RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S CASE
18 APPEAL STATEMENT

19 Respondent Las Vegas Metropolitan Police Department, by and through their attorneys of
20 record, Marquis Aurbach Coffing, hereby files this Case Appeal Statement.

- 21 1. Name of appellant filing this Case Appeal Statement:
22 Las Vegas Metropolitan Police Department
- 23 2. Identify the Judge issuing the decision, judgment, or order appealed from:
24 Honorable Elizabeth Gonzalez
- 25 3. Identify each appellant and the name and address of counsel for each appellant:
26 Appellant: Las Vegas Metropolitan Police Department
27 Nick D. Crosby, Esq.
28 Jackie V. Nichols, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as much and provide the name and address of that respondent's trial counsel):

Respondent: The Center for Investigative Reporting, Inc.

Philip R. Erwin, Esq.
Samuel R. Mirkovich, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

May 2, 2018.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This action concerns a Petition for Writ of Mandamus regarding Nevada's Public

1 Records Act. Respondents sought public records from Appellant regarding its
2 investigation concerning the murder of Tupac Shakur in September 1996. The
3 Court ordered an evidentiary hearing to determine whether the records were
4 confidential. Ultimately, the Parties came to an agreement regarding the
5 requested records and the Petition for Writ of Mandamus was rendered moot.
6 Although the Court did not grant the Petition or order LVMPD to produce
7 records, the District Court determined that the Center for Investigative Reporting,
8 Inc. nonetheless prevailed. As such, the Center for Investigative Reporting, Inc.
9 moved for attorneys' fees and cost. The Court granted the motion in the amount
10 of \$50,402.89.

11 11. Indicate whether the case has previously been the subject of an appeal to or
12 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
13 number of the prior proceeding:

14 This case is currently pending in the Nevada Supreme Court on an appeal of the
15 District Court's Order regarding the Petition for Writ of Mandamus, Las Vegas
16 Metropolitan Police Department v. The Center for Investigative Reporting, Inc.,
17 Case No. 77617.

18 12. Indicate whether this appeal involves child custody or visitation:

19 N/A

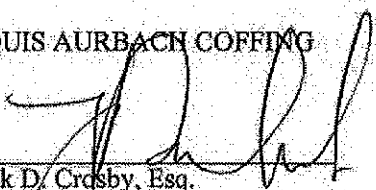
20 13. If this is a civil case, indicate whether this appeal involves the possibility of
21 settlement:

22 This case does not involve the possibility of settlement.

23 Dated this 14 day of January, 2019.

24 MARQUIS AURBACH COFFING

25 By:

26 
27 Nick D. Crosby, Esq.
28 Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Respondent, Las Vegas
Metropolitan Police Department

MARQUIS AURBACH COFFING

10001 Pais Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

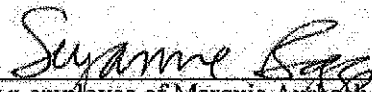
I hereby certify that the foregoing RESPONDENT LAS VEGAS METROPOLITAN
POLICE DEPARTMENT'S CASE APPEAL STATEMENT was submitted electronically for
filing and/or service with the Eighth Judicial District Court on the 16th day of January, 2019.
Electronic service of the foregoing document shall be made in accordance with the E-Service
List as follows:¹

Philip R. Erwin, Esq.
Samuel Mirkovich, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
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lmm@cwlawlv.com
srm@cwlawlv.com
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maw@cwlawlv.com

*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

¹ 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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REGISTER OF ACTIONS

CASE NO. A-18-773883-W

Center for Investigative Reporting Inc, Plaintiff(s) vs. Las Vegas
Metropolitan Police Department, Defendant(s)

5
4
3
2
1
0

Case Type: Writ of Mandamus
Date Filed: 05/02/2018
Location: Department 11
Cross-Reference Case Number: A773883
Supreme Court No.: 77617
77965

PARTY INFORMATION

Defendant	Las Vegas Metropolitan Police Department	Lead Attorneys Nick D Crosby <i>Retained</i> 702-382-0711(W)
Plaintiff	Center for Investigative Reporting Inc	Phillip R. Erwin, ESQ <i>Retained</i> 702-382-5222(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

01/07/2019 **Order** (Judicial Officer: Gonzalez, Elizabeth)
Debtors: Las Vegas Metropolitan Police Department (Defendant)
Creditors: Center for Investigative Reporting Inc (Plaintiff)
Judgment: 01/07/2019, Docketed: 01/08/2019
Total Judgment: 50,402.69

OTHER EVENTS AND HEARINGS

03/02/2018 **Petition for Writ of Mandamus**
Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011

05/02/2018 **Initial Appearance Fee Disclosure**
Initial Appearance Fee Disclosure

05/03/2018 **Summons Electronically Issued - Service Pending**
Summons to Las Vegas Metropolitan Police Department

05/07/2018 **Writ of Mandamus**
Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011

05/08/2018 **Affidavit of Service**
Affidavit of Service

05/10/2018 **Response**
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

05/14/2018 **Errata**
Notice of Errata to Reply in Support of Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011

05/14/2018 **Reply**
Reply in Support of Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011

05/15/2018 **Petition for Writ of Mandamus (9:00 AM)** (Judicial Officer Kishner, Joanna S.)
05/15/2018, 09/13/2018, 09/25/2018
Plaintiff's Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011
Parties Present
Minutes
05/23/2018 Reset by Court to 07/24/2018
07/24/2018 Reset by Court to 08/30/2018
08/30/2018 Reset by Court to 09/13/2018

09/28/2018 **Result: Matter Continued**
Status Check (3:00 AM) (Judicial Officer Kishner, Joanna S.)
Status Check: Letter from Counsel with Simultaneous Briefing Date and if Oral Argument is Requested regarding prevailing party re Writ
Minutes
Result: Set Status Check

10/05/2018 **Transcript of Proceedings**
Transcript - Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011
5/15/18

10/12/2018 **Notice of Change of Hearing**
Notice of Change of Hearing

10/12/2018 **Supplemental Brief**
Petitioner the Center for Investigative Reporting Inc. s Supplemental Brief Regarding Its Prevailing Status Under NRS 239.011

10/12/2018 **Brief**
Respondent Las Vegas Metropolitan Police Department's Brief Regarding Issue of Prevailing Party

10/15/2018 **Case Reassigned to Department 11**
Reassigned from Department 31

10/30/2018 **Hearing (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)**
Hearing: Petition for Writ of Mandamus
Parties Present
Minutes
 Result: Matter Heard

11/02/2018 **CANCELED Status Check (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)**
Vacated
Status check for supplemental briefs and proposed Findings of Fact and Conclusions of Law
10/19/2018 Reset by Court to 11/02/2018

11/05/2018 **Order**
Order Regarding the Center for Investigative Reporting, Inc.'s Petition for Writ of Mandamus

11/06/2018 **Notice of Entry of Order**
Notice of Entry of Order

11/14/2018 **Motion for Attorney Fees and Costs**
The Center for Investigative Reporting Inc.'s Motion for Attorneys' Fees and Costs

11/19/2018 **Notice**
Notice of Hearing on the Center for Investigative Reporting Inc's Motion for Attorneys' Fees and Costs

12/04/2018 **Opposition to Motion**
Respondent Las Vegas Metropolitan Police Department's Response to Motion for Attorneys' Fees and Costs

12/04/2018 **Notice of Appeal**
Respondent Las Vegas Metropolitan Police Department's Notice of Appeal

12/04/2018 **Case Appeal Statement**
Respondent Las Vegas Metropolitan Police Department's Case Appeal Statement

12/12/2018 **Reply in Support**
The Center for Investigative Reporting Inc.'s Reply in Support of Motion for Attorneys' Fees and Costs.

12/21/2018 **Motion for Attorney Fees and Costs (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)**
Notice of Hearing on the Center for Investigative Reporting Inc's Motion for Attorneys' Fees and Costs
Minutes
 Result: Granted

01/07/2019 **Order**
Order Granting The Center for Investigative Reporting, Inc.'s Motion for Attorneys' Fees and Costs

01/08/2019 **Notice of Entry of Order**
Notice of Entry of Order

01/11/2019 **Order to Statistically Close Case**
Civil Order to Statistically Close Case

01/11/2019 **Request**
Request for Transcript of Proceedings

01/16/2019 **Notice of Appeal**
Respondent Las Vegas Metropolitan Police Department's Notice of Appeal

01/16/2019 **Case Appeal Statement**
Respondent Las Vegas Metropolitan Police Department's Case Appeal Statement

01/16/2019 **Stipulation and Order**
Stipulation and Order for Stay Pending Appeal

01/18/2019 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order for Stay Pending Appeal

01/30/2019 **Transcript of Proceedings**
Transcript of Proceedings: Hearing on Petition for Writ of Mandamus

FINANCIAL INFORMATION

Defendant Las Vegas Metropolitan Police Department		
	Total Financial Assessment	48.00
	Total Payments and Credits	48.00
	Balance Due as of 04/25/2019	0.00
12/04/2018	Transaction Assessment	24.00
12/04/2018	Fee Waiver	(24.00)
01/16/2019	Transaction Assessment	24.00
01/16/2019	Fee Waiver	(24.00)
Plaintiff Center for Investigative Reporting Inc		
	Total Financial Assessment	280.00
	Total Payments and Credits	280.00
	Balance Due as of 04/25/2019	0.00
05/03/2018	Transaction Assessment	270.00
05/03/2018	File Payment	(270.00)
05/07/2018	Transaction Assessment	10.00
05/07/2018	File Payment	(10.00)

55. Nev. Rev. Stat. § 239.005(5) defines “governmental entity” as follows:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State, including, without limitation, an agency of the Executive Department, or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; or

(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools.

56. The officers and employees whose “good faith” actions are subject to immunity pursuant to the Damages Immunity Statute are not governmental entities. In contrast, the Respondent (in this case, CCSD) is a “governmental entity” within the meaning of Nev. Rev. Stat. § 239.005(5) and is therefore responsible for fees pursuant to the Fees Statute. Thus, the difference in terms between the Fees Statute and the Damages Immunity Statute supports not reading a “good faith” requirement from the separate Damages Immunity Statute into the Fees Statute.

57. Fourth, the Damages Immunity Statute provides immunity to public officers or employees for disclosing *or* refusing to disclose public records, whereas a prevailing party's entitlement to fees and costs under Nev. Rev. Stat. § 239.011(2) attaches only in those instances where a requester successfully petitions court after a governmental entity refuses to disclose public records. This fact further urges against reading a “good faith” requirement from the separate Damages Immunity Statute into the Fees Statute.

*8 58. Fifth, it is not necessary to read a good faith requirement into the Fees Statute to reconcile it with the separate Damages Immunity Statute. This is so because the good faith provision applies to an entirely different matter than the attorney fees and costs provision. As set forth above, the Damages Immunity Statute addresses when a public officer or employee (and his or her employer) is immune from *damages to anyone for producing* records or for failing to produce records if the *officer or employee* acted in good faith. In contrast, the Fees Statute sets forth when a *governmental entity* is responsible to a *requester* for fees and costs in a petition to obtain records. *See Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (“Courts must construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.”) (citation omitted) (emphasis added).

59. Sixth, reading a “good faith” exception into the Fees Statute would be inconsistent with the legislative mandates regarding interpretation of the NPRA, which specifically sets forth “[l]egislative findings and declaration.” Nev. Rev. Stat. § 239.001. Nev. Rev. Stat. § 239.001(1) explains that “[t]he purpose of [the NPRA] is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law.” Nev. Rev. Stat. § 239.001(2) and (3) in turn provide that “[t]he provisions of this chapter must be construed liberally to carry out this important purpose;” and that “[a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Reading a good faith limitation into the Fees Statute would be inconsistent with these mandates, and would hinder access to records by making it more expensive for requesters to seek court redress when governmental entities fail to produce public records.

60. Further, a strict reading of the Fees Statute (one without a good faith exception read into it) is more in keeping in with the policy favoring access expressed in the NPRA as well as the provision allowing for a court remedy upon a governmental entity's failure to produce public records, *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“We conclude a strict reading of the statute is more in keeping with the policy favoring open meetings expressed in NRS chapter 241 and the spirit of the Open Meeting Law...”).

61. Accordingly, the Review-Journal, which prevailed in this litigation, is entitled to its reasonable attorney's costs and fees that it expended in this matter to obtain public records from CCSD, regardless of whether CCSD acted in "good faith."

***The Review-Journal's Requested Fees and Costs Are Reasonable, and the
Brunzell Factors Support a Full Award of Fees and Costs to the Review-Journal***

62. As noted above, the Review-Journal is entitled to its "reasonable" attorney's fees and costs in this matter.

63. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), a court must consider four elements in determining the reasonable value of attorneys' services:

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

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

64. The Court has carefully reviewed and considered the motion for fees, supporting detail of work performed and costs, and supporting declarations in light of the *Brunzell* factors in determining an appropriate award of fees and costs to the Review-Journal.

65. The Court has also carefully reviewed the Review-Journal's Supplement to Motion for Attorney's Fees and Costs, the supporting detail of work performed and costs, and supporting declaration.

66. As to the first factor, the qualities of the advocate," the Court finds that the rates sought are reasonable in light of their ability, training, education, experience, professional standing and skill. The rates sought for staff are also reasonable, and compensable.

67. The Court also finds that the second *Brunzell* factor, the "character of the work" performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of a full award of fees and costs to the Review-Journal.

68. This case involved analysis and application of the NPRA, as well as a careful consideration of protecting the rights and interests of CCSD employees and balancing these rights and interests against the public's right to information regarding alleged misconduct by an elected official. Further, because CCSD borrowed from a number of areas of law to argue the requested records were confidential, counsel for the Review-Journal was required to perform extensive research of state and federal case law to effectively litigate this matter. And, as the NPRA reflects, the work involved in seeking access to public records is important: access to public records fosters democratic principles. Nev. Rev. Stat. § 239.001(1). Representing the newspaper of record also necessarily involves a high level of responsibility and immediate attention. Further, NPRA matters involve matters of high prominence.

69. As to the third factor, the work actually performed by counsel, the Court finds that counsel for the Review-Journal exercised appropriate discretion in the time and attention they dedicated to litigating this matter, and how they structured work in this matter. Review-Journal counsel deducted or omitted entries where appropriate.

70. Further, counsel necessarily had to dedicate significant time in this case due both to its character and due to the fact CCSD asserted numerous purported bases for refusing to provide public records.

71. Thus, this factor weighs in favor of a full award of costs and fees to the Review-Journal.

72. The final *Brunzell* factor requires this Court to consider “the result: whether the attorney was successful and what benefits were derived.” *Brunzell*, 85 Nev. at 349, 455 P. 2d at 33.

73. As set forth above, the Review-Journal is the prevailing party in this public records litigation, and as a result of its counsel's efforts, obtained an order from this Court directing CCSD to produce the requested records pertaining to its investigation of Trustee Kevin Child.

*10 74. Thus, this final factor weighs in favor of an award of fees and costs to the Review-Journal.

75. Having considered the *Brunzell* factors, and having considered the papers and pleadings on file in this matter, including the documentation provided by the Review-Journal in support of its Motion for Attorney's Fees and Costs, the Court finds the Review-Journal is entitled to all its attorney's fees and costs through January 11, 2018 in the sum of \$125,241.37.

CCSD Did Not Act in Bad Faith

76. Under the facts of this case, the Court finds that CCSD did not act in bad faith in declining to provide the requested records to the Review-Journal.

III.

ORDER

77. Based on the foregoing findings of fact and conclusions of law, the Court hereby ORDERS that CCSD must pay the Review-Journal \$125,241.37 to compensate it for the costs and reasonable attorney's fees it expended through January 11, 2018 in litigating this matter.

78. Nothing in this Order precludes the Review-Journal from seeking compensation for fees and costs incurred after January 11, 2018 if appropriate upon conclusion of the appeal in this matter.

79. Further, the Court hereby (ORDERS that the Review-Journal's Motion to Find CCSD in Bad Faith is DENIED.

IT IS SO ORDERED this 19th day of March, 2018.

<<signature>>

HONORABLE JUDGE TIMOTHY C. WILLIAMS

Respectfully submitted,

<<signature>>

Margaret A. McLetchie, Nevada State Bar No. 10931

Alina M. Shell, Nevada State Bar No. 11711

MCLETCHE SHELL, LLC

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Counsel for Petitioner, Las Vegas Review-Journal

Approved as to Form and Content:

<<signature>>

Carlos McDade, Nevada State Bar No. 11205

Adam Honey, Nevada State Bar No. 9588

CLARK COUNTY SCHOOL DISTRICT

OFFICE OF GENERAL COUNSEL

5100 W. Sahara Avenue

Las Vegas, NV 89146

Counsel for Respondent, Clark County School District

Footnotes

- 1 This total reflected voluntary reductions for some time entries, made by counsel for the Review-Journal in her billing discretion.
- 2 See *supra* n.1.

EXHIBIT 3

mail
04/14

REC'D & FILED

2014 APR 11 AM 10:57

ALAN GLOVER

BY  CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF CARSON CITY

NATIONAL REVIEW, INC., a New York.
Corporation: STEPHENS MEDIA, LLC
A Nevada limited liability company d/b/a
LAS VEGAS REVIEW JOURNAL,

Case No. 14 OC 00003 1B

Dept. No. 2

Petitioners,

v.

STATE OF NEVADA, DEPARTMENT
BUSINESS AND INDUSTRY, DIVISION
OF INSURANCE; and SCOTT J.
KIPPER, Commissioner, in his
Representative capacity

Respondents.

**ORDER GRANTING, IN PART, PETITIONERS' MOTION
FOR ATTORNEYS' FEES AND COSTS**

Procedural Background

Petitioners filed a Motion for Attorneys' Fees and Costs ("Motion"). The Division filed an Opposition ("Opposition"), and Petitioners filed a Reply ("Reply").

Petitioners' Motion includes the affidavit of its counsel, Don Campbell. (Ex. 1.) The affidavit describes generally the experience of Don Campbell and Colby Williams, including practice experience and inclusion as top attorneys in certain publications. The affidavit identifies the rates Campbell and Williams agreed to charge in representing

1 National Review, \$500 per hour. The affidavit indicates that associates usually charge
2 between \$250 and \$350 per hour.

3 Petitioners' Motion includes a billing sheet, explaining the work performed by
4 employees and the time spent accomplishing the task. (Ex. 2.) The employees are
5 identified by initials: DJC, JCW, PRE, SRM, and LM. After the attorneys' fees, a cost
6 sheet lists costs of certain services. Petitioners' Reply included Declaration of Colby
7 Williams referencing an attached order of fees from an Eighth Judicial District Court
8 case involving his firm and a brief description of SRM and LM, as well as certain
9 invoices.

10 LEGAL STANDARD

11 In Nevada, in matters involving public records requests, "If **the requester**
12 prevails, **the requester** is entitled to recover his or her costs and reasonable attorney's
13 fees in the proceeding from the governmental entity whose officer has custody of the
14 book or record." NRS 239.011(2) (emphasis added). The reasonableness of an
15 attorney's fee is determined by the Court's consideration of four factors:
16

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

26 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 345, 455 P.2d 31, 33 (1969) (citations
27 omitted) (emphasis in original). All of the components of requested fees must be
28 reasonable considering these four elements. "[N]o one element should predominate or
be given undue weight." *Id.* at 350 (emphasis added). See also Nev. Rules of Prof'l

1 Conduct 1.5 (identifying additional factors in determining the reasonableness of
2 attorney's fees).

3 For non-attorneys, the Nevada Supreme Court has held that the *Brunzell* test
4 must also be applied for purposes of determining the reasonableness of services billed.
5 See *Las Vegas Metropolitan Police Dep't v. Yeghiazarian* 129 Nev. __, 312 P.3d 503, 510
6 (2013) (finding that the work of paralegals is included in an award for attorney's fees).
7 "Purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of
8 who performs them." *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 285 n.10 (1989).
9 Courts have also held that clerical tasks, such as filing and organization "should [be]
10 subsumed in firm overhead rather than billed at paralegal rates". *Nadarajah v. Holder*
11 569 F.3d 906, 921 (9th Cir. 2009).

12 A party seeking costs must provide sufficient justifying documentation or
13 itemizations to allow a court to determine the accuracy or reasonableness of costs. See
14 *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348,
15 1353, 971 P.2d 383, 386 (1998) (holding that the district court abused its discretion in
16 awarding costs where it was impossible to determine reasonableness of these costs due
17 to insufficient documentation and itemization in the cost memoranda). "[S]tatutes
18 permitting the recovery of costs are to be strictly construed because they are in
19 derogation of the common law." *Id.* at 1352 (citing *Gibellini v. Klindt*, 110 Nev. 1201,
20 1205, 885 P.2d 540, 543 (1994)). "...[T]he phrase 'reasonable costs' [must] be
21 interpreted to mean actual costs that are also reasonable..." *Gibellini*, 110 Nev. at
22 1206, 885 P.2d at 543.

24 DISCUSSION

25 A. Attorneys' Fees (Total Deduction \$1,295.61)

26 1. Under the Public Records Act, the Requester Is Entitled to Recover 27 Attorney's Fees & Costs

1 In this case, Melchior submitted a public records request to the Division on
2 behalf of the National Review, and is the requester under NRS 239.011. Although LVRJ
3 joined the Petition, LVRJ is not the requester for purposes of NRS 239.011. The Court
4 awarded 65 percent of reasonable attorney's fees and costs pursuant to NRS 239.011(2).
5 (Ord:11:8-10.) The National Review, as the requester, is entitled to the awarded fees
6 and costs. Because LVRJ was not the "requester," the Court must reject attorney's fees
7 and costs associated with the joinder of LVRJ in this matter. Therefore, the total
8 amount requested for attorneys' fees related to legal services provided to LVRJ must be
9 reduced by **\$950**.

10 **2. Attorney's Fees Must Be Reasonable**

11 a) Attorneys' Fees - Rates

12 In considering the reasonableness of Petitioners' attorney's fees, the Court must
13 rely on the *Brunzell* factors. The party seeking the fees must, therefore, present
14 sufficient evidence that the attorneys' fees sought are reasonable. The rates must be
15 reasonable in view of the rates "customarily charged in the locality for similar legal
16 services." Nevada Rules of Professional Conduct Rule 1.5(a)(3).
17

18 Petitioners presented sufficient evidence that the hourly rates of \$500 and \$350
19 are the prevailing rates in Las Vegas for partners and associate attorneys.

20 b) Fees for Non-Attorneys

21 For non-attorneys, the Nevada Supreme Court has held that the *Brunzell* test
22 must also be applied for purposes of determining the reasonableness of services billed.
23 *Yeghiazarian*, 129 Nev. ___, 312 P.3d 503 at 510. However, "[p]urely clerical or
24 secretarial tasks should not be billed at a paralegal rate, regardless of who performs
25 them." *Missouri vs. Jenkins by Agyei*, 491 U.S. at 285 n.10.

26 c) Fees for LM

1 Calls to a messenger service regarding status of service or filing and service of a
2 document are a clerical task. Such calls do not require specialized legal training or skills
3 to justify an hourly fee of \$125. These inquiries will be calculated at an administrative
4 assistant or legal secretary rate pursuant to *Missouri v. Jenkins*. The U.S. Department
5 of Labor has determined the median for rate for legal secretaries to be \$21.34 per hour
6 in 2012, the last year and most recent data provided.¹ \$21.34 per hour x 2.7 hours =
7 \$57.62. Therefore, the total of \$337.50 billed by Petitioners is reduced by **279.88**.

8 d) Fees for SRM

9 The same analysis applies to SRM call regarding contacting Department 2 as to
10 recording of the hearing billed for .2 hours at \$350 per hour (\$70). Calls to a court
11 regarding the recording of a hearing is a clerical task. Such calls do not require any
12 specialized legal training or skills to justify an hourly fee of \$350. The Court finds that
13 said activity should be charged at the rate for legal secretaries, \$21.34 (.2 x \$21.34 =
14 \$4.27).² Therefore, the total of \$70 billed by Petitioners for calls to the Court by SRM is
15 reduced by \$65.73 (\$70.00 - \$4.27). Total deduction for this entry: **\$65.73**.

16 e) DJC

17 Respondents' arguments regarding the hours billed by DJC are rejected. The
18 hours claimed are reasonable.

19 **3. Costs (Total Deduction \$1,032.27)**

20 In addition to substantiating actual costs, parties are also required to
21 demonstrate that costs they seek are reasonable and necessary. *Bergmann v. Boyce* 109
22 Nev. 670, 856 P.2d 560 (1993). There are other limitations on costs; for example, a
23 party is limited to seeking the cost of one copy of a transcript of testimony. *Garaventa v.*
24 *Garaventa Land & Livestock Co.*, 61 Nev. 414, 132 P.2d 619 (1943). In this case,
25

26 ¹ U.S. Bureau of Labor Statistics for Occupational Code 43-6012 Legal Secretaries
27 <http://data.bls.gov/cgi-bin/print.pl/oes/current/oes436012.htm>

28 ² Total allowed: \$4.26(pre-apportionment).

1 Petitioners obtained a copy of the video of the hearing for \$10. Petitioners seek
2 additional costs for converting the Court's video to a different file format and making 6
3 copies of the video. Petitioners have not presented any justification or need for the file
4 conversion or for 6 copies of the video. The file conversion cost \$40.00 and the copies
5 of the video cost \$15.00 each copy. A deduction of \$130 is, therefore, required. Total
6 deduction for this entry: **\$130.**

7 a) Miscellaneous Costs

8 Petitioners have included in their Reply copies of receipts associated with
9 expenses such as courier services, express mail delivery services, and video recording
10 services. It appears that the first service to the Division was made to 1830 College
11 Parkway, Suite 100, Carson City, Nevada 89706, which is the incorrect address for the
12 Division, and a rush order was placed on service for \$20. There is no justification as to
13 the need for the \$20 rush order. The copies of these receipts should have been filed
14 with the Motion to avoid unnecessary litigation of this matter. However, the Court is
15 willing to conclude that because these services coincide with dates the Court received
16 documents, that they were reasonable and necessary, except that rush service upon the
17 Division was unnecessary. Total deduction for this entry: **\$20.**

18 b) Deductions for Unreasonable and Unnecessary Costs

19 The Court considers rental of a "Premium" car³ as opposed to an "Economy,"
20 "Compact," or "Standard" car extraneous and unnecessary absent evidence that the
21 attorney requires a "Premium" car. No evidence was presented to justify the need for a
22 premium vehicle. Whereas the use of an economy car serves the same purpose to
23 provide transportation for the attorney on a 40-minute drive from Reno to Carson City,
24 the Court considers the premium car rental unnecessary and deducts \$144.68.
25

26
27

³ Petitioner's Reply Exhibit 3
28

1 Additionally, the Court considers the "Early Bird" check in fee⁴ of \$25 for
2 Campbell's flights to be extraneous and unnecessary. No evidence was presented to
3 justify the need to obtain an early check in. Regardless of the early check in, the
4 attorney would have arrived at the same location with all other passengers on that flight
5 whether or not an "Early Bird" check in was utilized for personal comfort. As such, the
6 Court determines that the fee is unnecessary and deducts the \$25 fee.

7 Total deduction for travel entries: **\$169.68.**

8 c) Electronic Research Fees

9 The Court agrees with Petitioners that NRS 18.005 specifically states, as
10 amended in 1995, "any other reasonable and necessary expense incurred in connection
11 with the action, including reasonable and necessary expenses for computerized services
12 for legal research." However, while computerized service fees for legal research are
13 allowable, the Court finds that Petitioners have failed to document that these costs were
14 actually incurred and were "reasonable and necessary." The statute relied upon by
15 Petitioners references the "reasonable and necessary" standard twice, and the Division
16 cited case law that establishes that the Nevada Supreme Court requires determination of
17 whether costs are reasonable and necessary.⁵

18 In this matter, the Court is unable to conclude that documents submitted by the
19 Petitioner for electronic research prove that the research costs for this case were actual,
20 reasonable, and necessary, as required by *Berosini*. Petitioners, in their Reply, have
21 only submitted bills from Thomson Reuters for the months covering December 2013
22

23
24 ⁴ Petitioner's Reply Exhibit 3

25 ⁵ *Bobby Berosini, Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971
26 P.2d 383, 386 (1998) (holding that the district court abused its discretion in awarding costs where it was
27 impossible to determine reasonableness of these costs due to insufficient documentation and itemization
28 in the cost memoranda). In *Berosini*, the Court found that, although the party submitting for costs
submitted itemized material in support of its request for investigative fees, costs for photocopying and
long-distance calls, and juror fees, the party "did not attempt to demonstrate how such fees were
necessary to and incurred in the action" and denied the costs. *Id.*

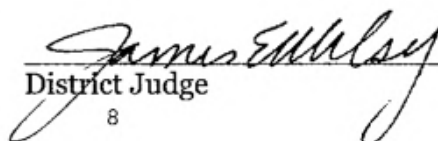
1 and January 2014, presumably covering all of their electronic research needs and a plain
2 printout of hours spent on "Client National Review" without Thomson Reuters
3 letterhead, allegedly documenting time spent researching the case. These documents
4 alone do not provide the Court enough supporting documentation to consider whether
5 the amount charged for electronic research was "reasonable and necessary." The
6 documents do not contain information as to what exactly was researched and how it is
7 relevant to the case at hand. As such, no determination of reasonable and necessary is
8 possible. Thus, the Court is denying the \$712.59 West Group – Westlaw research charge
9 listed under "Client Expenses" due to insufficient information to make a determination
10 as to whether the charge is reasonable and necessary under the *Berosini* standards.
11 Total deduction for this entry: **\$712.59.**

12 **ORDER**

13 Based on the foregoing, a strict construction of the law requires the Court to
14 order as follows:

- 15
- 16 1. Petitioners' Motion is granted in part.
 - 17 2. Respondents will pay 65 percent of Petitioners' attorneys fees and costs
18 with the following deductions being calculated prior to the apportionment:
 - 19 a. Attorneys' fees submitted by the Petitioners in the amount of
20 \$39,710.00 are reduced as set forth in this Order by the amount of
21 \$1,295.61 prior to apportionment.
 - 22 b. Costs submitted by the Petitioners in the amount of \$ 1,919.81 are
23 reduced as set forth in this Order as follows by the amount of
24 \$1,032.27 prior to apportionment.
 - 25 c. Respondent shall pay Petitioners a total of \$39,301.93 in attorneys'
26 fees and costs.

27 April 11, 2014

28 
District Judge
8

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the First Judicial District Court and that on this ____/__/____ day of April, 2014, I faxed and deposited for mailing at Carson City, Nevada, or caused to be delivered by messenger service, a true and correct copy of the foregoing Order and addressed to the following:

Joanna N. Grigoriev
Senior Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
Fax: (702) 486-3412

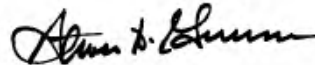
Alexia Emmermann
Insurance Counsel
Nevada Division of Insurance
1818 College Pkwy, Ste. 103
Carson City, NV 89706
Fax: (775) 687-0787

Donald J. Campbell
Campbell & Williams
700 South Seventh Street
Las Vegas, NV 89101
Fax: (702) 382-0540



Judicial Assistant

EXHIBIT 4


CLERK OF THE COURT

MAFC
CAMPBELL & WILLIAMS
J. COLBY WILLIAMS, ESQ. (5549)
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Attorneys for Defendant
Stephens Media, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

BOULES BANOUB, an individual; HANAN)	CASE NO. A-12-669057-C
SALIP, and individual; MARY BANOUB, an)	DEPT. NO. XIX
individual, MINA BANOUB, an individual,)	
)	DEFENDANT STEPHENS MEDIA,
Plaintiffs,)	LLC'S MOTION FOR ATTORNEY'S
)	<u>FEES</u>
vs.)	
)	
JOHN PITTMAN, an individual; STEPHENS)	
MEDIA, LLC, a Nevada limited liability)	
Company d/b/a LAS VEGAS REVIEW)	
JOURNAL; DOES I through X, inclusive;)	
and ROE CORPORATIONS I – X, inclusive)	
)	
Defendants.)	

Defendant Stephens Media, LLC d/b/a Las Vegas Review-Journal ("Review-Journal"), through its undersigned counsel, hereby submits the following Motion for Attorney's Fees. 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.

.....

.....

.....

NOTICE OF MOTION

TO: ALL PARTIES and

TO: THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on ~~April~~ ^{May 14,} 2015 at ~~the hour of~~ ^{In Chambers} ~~___:___ o'clock A.M.~~, or as soon thereafter as counsel can be heard, Plaintiff will bring the foregoing motion on for hearing before the above-entitled Court at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, 89155.

POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arose out of a routine traffic accident between Plaintiffs and Defendant John Pittman. Pittman delivered newspapers on behalf of the Review-Journal pursuant to a written independent contractor agreement. In the early morning of August 20, 2011, Pittman struck Plaintiffs' vehicle at the intersection of Spencer Street and Camero Avenue in Las Vegas, Nevada. As a result, Plaintiffs filed the instant lawsuit against Pittman based on assorted claims of negligence and, in an attempt to find deeper pockets, also sued the Review-Journal under the theory of *respondeat superior*. After almost two years of litigation in which Plaintiffs did nothing but stall the ultimate resolution of their claims against the Review-Journal, the Court granted summary judgment in favor of the Review-Journal, which warrants an award of attorney's fees and costs under NRCP 68 and NRS 17.115.

Before turning to the grounds for an award of attorney's fees, the Review-Journal will first address the procedural history in this case. Plaintiffs filed the Amended Complaint and named the Review-Journal as a Defendant on April 15, 2013. Discovery in this action commenced on July 9, 2013. On that same date, the Review-Journal served its initial disclosures, which included Pittman's Independent Contractor Distribution Agreement. Accordingly, Plaintiffs were aware of Pittman's status as an independent contractor from the very first day that discovery opened.

The Review-Journal filed its first motion for summary judgment on January 29, 2014 at which time Plaintiffs had not conducted any discovery even though discovery had been open for more than six (6) months. The Review-Journal, on the other hand, had propounded extensive written discovery to Plaintiffs and conducted the deposition of Pittman. In short, the Review-Journal had conducted the necessary discovery to conclusively demonstrate that Pittman was an independent contractor such that the doctrine of *respondeat superior* did not apply.

As a result of Plaintiffs' failure to conduct any discovery before opposing summary judgment, Plaintiffs requested additional time under NRCP 56(f) to conduct "numerous depositions" on the issue of *respondeat superior*. Plaintiffs' proposed deponents included the Review-Journal's person most knowledgeable along with unidentified supervisors, managers, and co-workers of Pittman. During the March 13, 2014 hearing on the motion for summary judgment, Plaintiffs' counsel admitted that "[n]o depositions [had] been taken" and, in fact, claimed that he had intentionally decided *not* to conduct any depositions "for strategy purposes," a statement which was understandably met with skepticism from the Court. *See* Exhibit "A," Transcript of March 13, 2014 Hearing at 5:3-18.

Despite Plaintiffs' counsel's dubious excuses, the Court denied the Review-Journal's motion for summary judgment based on NRCP 56(f) because there were only two (2) months left in discovery.¹ In doing so, the Court acknowledged the gaping holes in Plaintiffs' *respondeat superior* argument and instructed Plaintiffs' counsel to start conducting discovery as follows:

All right. Since discovery has only got two months to run, I'm gonna deny this without prejudice. I want discovery completed. You'd better spend some time on this issue, counsel, because right now you're behind. And so let's see what you've got that actually points out that, under the case law of Nevada, you've got a respondeat superior argument here...

¹ The parties subsequently extended the discovery deadlines by approximately seven (7) months, but only after the Review-Journal was forced to file a motion due to Plaintiffs' counsel's gamesmanship. *See* Motion to Extend filed March 19, 2014. Indeed, Plaintiffs' counsel initially requested an extension of the discovery deadlines and, more specifically, the expert disclosure deadlines. *Id.* While the Review-Journal's first motion for summary judgment was pending before the Court, the Discovery Commissioner denied the parties' stipulation to extend the deadlines and requested additional reasoning for the extension. *Id.* After the Court denied the motion for summary judgment based on NRCP 56(f), however, Plaintiffs' counsel refused to enter into a new stipulation to extend the expert disclosure deadlines. Plaintiffs' counsel reneged on the prior agreement in an attempt to deprive the Review-Journal of expert witnesses and, in turn, coerce an undeserved settlement. *Id.* To be sure, Plaintiffs' counsel asserted in an e-mail that it was in the "best interest" of the Review-Journal to settle the case because Plaintiffs were the only parties with expert witnesses, *i.e.*, their treating physicians. *Id.* It was only after the Review-Journal exposed Plaintiffs' counsel's attempt to extract a settlement through this "bait-and-switch" tactic that Plaintiffs agreed to extend the discovery deadlines.

1 *Id.* at p. 6:2-6 (emphasis added).

2 Nevertheless, in keeping with their purported legal “strategy,” and despite the Court’s
3 explicit warning that their case lacked merit, Plaintiffs did not even try to develop any new facts
4 that would preclude the entry of summary judgment. Indeed, in the approximately eight (8)
5 months of discovery that followed the March 13, 2014 hearing, Plaintiffs did not conduct *any*
6 discovery on the issue of *respondeat superior*. Then, on November 12, 2014—just two (2) days
7 before the discovery cut-off deadline—Plaintiffs unilaterally noticed the depositions of the
8 Review-Journal’s ex-Distribution Director and two other employees. Because Plaintiffs
9 scheduled these depositions to take place after the close of discovery, the Review-Journal
10 objected to the depositions.

11 On December 8, 2014, the Review-Journal served the Offer of Judgment on Plaintiffs.
12 More specifically, the Review-Journal offered to allow judgment to be entered against it in the
13 total amount of \$5,000. *See* Exhibit “B,” Offer of Judgment. Four days later, the Review-Journal
14 filed its Renewed Motion for Summary Judgment (“Renewed MSJ”), which was based on the
15 same facts, law and evidence as its first request for summary judgment. Despite the pendency of
16 the meritorious Renewed MSJ, Plaintiffs did not respond to the Offer of Judgment and instead let
17 it expire on December 22, 2014.

18 With the knowledge that they would be responsible for the Review-Journal’s attorney’s
19 fees pursuant to NRCP 68 and NRS 17.115 if the Renewed MSJ were granted, Plaintiffs forced
20 the Review-Journal’s legal counsel to perform extensive work on this case. Initially, Plaintiffs
21 filed a scathing motion to extend discovery deadlines on order shortening time in which
22 Plaintiffs’ counsel accused the Review-Journal of “procedural gamesmanship,” “unprofessional
23 litigation tactics,” and “nefarious” conduct. *See* Motion to Extend Discovery Cut-Off. Because
24 Plaintiffs relied exclusively on baseless insults rather than substantive law, the Discovery
25 Commissioner denied their request to extend the discovery deadlines.

1 Shortly thereafter, Plaintiffs forestalled the entry of summary judgment by requesting
2 additional time to conduct two (2) depositions. Plaintiffs' request not only required the Review-
3 Journal's counsel to prepare for and attend the depositions, but also submit supplemental briefing
4 on the Renewed MSJ. Moreover, this short extension implicated certain pretrial deadlines such as
5 the EDCR 2.47 deadline to file evidentiary motions. As such, the Review-Journal filed multiple
6 motions *in limine* in anticipation of the March 3, 2015 trial date.

7 On February 19, 2015, this Court granted the Renewed MSJ and dismissed Plaintiffs'
8 claims against the Review-Journal with prejudice. After all of their excuses and delays, the
9 totality of Plaintiffs' response to the Renewed MSJ was to re-submit their opposition to the
10 Review-Journal's original motion for summary judgment. In other words, Plaintiffs delayed the
11 resolution of this proceeding for more than a year with false promises to conduct additional
12 discovery and develop new facts only to offer the same meritless arguments that had previously
13 failed to persuade the Court. Thus, Plaintiffs needlessly consumed the time and resources of this
14 Court and caused the Review-Journal to expend tens of thousands of dollars in attorney's fees for
15 which Plaintiffs are responsible.

18 II. ARGUMENT

19 A. The Review-Journal Is Entitled To Recover Its Attorney's Fees Incurred 20 After The Expiration Of The Offer Of Judgment.

21 "If an offeree declines to accept an offer of judgment made pursuant to NRCP 68 and NRS
22 17.115, and the offeree receives a judgment at trial which is not more favorable than the offer, the
23 offeree may be required to pay the offeror's attorney's fees." *Allianz Ins. Co. v. Gagnon*, 109 Nev.
24 990, 993, 860 P.2d 720, 722 (1993). The Nevada Supreme Court has instructed that the Court
25 should consider the following four (4) factors in determining whether to award attorney's fees: (1)
26 whether the plaintiff's claim was brought in good faith, 2) whether the defendants' offer of
27 judgment was reasonable and in good faith in both its timing and amount, 3) whether the
28

1 plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith,
2 and 4) whether the fees sought by the offeror are reasonable and justified in amount. *See Beattie*
3 *v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). Here, a review of each factor
4 demonstrates that the Review-Journal is entitled to all of its attorney's fees from the date of the
5 offer through the entry of summary judgment.

6 **1. Plaintiffs' Claims Against The Review-Journal Were Not Brought In**
7 **Good Faith.**

8 While Plaintiffs' claims against Pittman were brought in good faith, Plaintiffs' inclusion
9 of the Review-Journal was highly improper. To be sure, Plaintiffs knew that Pittman was an
10 independent contractor who was not subject to *respondeat superior* from the outset of this
11 litigation. Nevertheless, Plaintiffs continued to litigate against the Review-Journal in the face of
12 warnings from the Court and overwhelming legal authority from around the country standing for
13 the proposition that newspaper deliverymen are not employees. To that end, Plaintiffs' real
14 motivation in suing the Review-Journal was laid bare by their counsel's attempt to extort a
15 settlement offer by reneging on an agreement to extend the discovery deadlines.
16

17 **2. The Review-Journal's Offer Of Judgment Was Reasonable And In**
18 **Good Faith In Amount And Timing.**

19 The Review-Journal made its offer of judgment on December 8, 2014, which was a year-
20 and-a-half after Plaintiffs filed the Amended Complaint and weeks after the close of discovery.
21 Although Plaintiffs' effort to conduct discovery was virtually nonexistent, it is indisputable that
22 Plaintiffs had ample opportunity to discover and review any relevant evidence. Moreover, the
23 Court expressly admonished Plaintiffs regarding the deficiencies in their claims against the
24 Review-Journal approximately nine (9) months before the Review-Journal served the offer of
25 judgment. Because neither the facts nor the law had changed in that nine (9) month period,
26 Plaintiffs were obviously aware that they had little to no chance of surviving another motion for
27 summary judgment. The timing of the offer of judgment was, therefore, exceedingly reasonable.
28

1 The amount of the offer of judgment was also reasonable. While \$5,000 was a fraction of
2 Plaintiffs' purported damages, it was eminently reasonable in light of the Review-Journal's
3 absolute defense to liability. Simply put, Plaintiffs had failed to establish anything close to a
4 genuine issue of material fact regarding the application of *respondeat superior* despite multiple
5 bites at the apple.

6 **3. Plaintiffs Were Unreasonable In Rejecting The Review-Journal's Offer**
7 **Of Judgment.**

8 It is hard to comprehend why Plaintiffs refused to accept the Review-Journal's offer of
9 judgment. The offer of judgment would have covered Plaintiffs' minimal costs in this action and
10 absolved them of any potential responsibility for the Review-Journal's attorney's fees and costs.
11 Plaintiffs were well aware that the Court would grant the Review-Journal's Renewed MSJ given
12 that Plaintiffs had failed to conduct any discovery since they were warned about the glaring
13 defects in their claims against the Review-Journal. Suffice it to say, Plaintiffs' refusal to accept
14 the offer of judgment was not just unreasonable, but also reckless in the extreme.

15 **4. The Review-Journal's Are Reasonable And Justified In Amount.**

16 *a. The Amount Sought and Counsel's Affidavit*

17 The Review-Journal seeks attorney's fees in the amount of Thirty Four Thousand And
18 Fifty Five Dollars (\$34,055.00). As set forth in the Affidavit of undersigned counsel, the subject
19 fees were actually and necessarily incurred in the litigation and are reasonable. See Exhibit "C,"
20 Declaration of Philip R. Erwin. The Review-Journal has likewise included documentation that
21 describes the work performed by each attorney that worked on this matter, the billing rates
22 applicable thereto, and the total amount of attorney's fees being sought. *Id.*²
23
24
25

26
27 ² The Review-Journal likewise seeks \$13,952.85 in costs incurred in this matter. The
28 Review-Journal previously filed its Memorandum of Costs and Disbursements on March 20, 2015
pursuant to NRS 18.110. Despite the lapse of more than 3 days since the filing and service of the
Review-Journal's Memorandum, Plaintiffs have not sought to retax the costs as of the filing of the

b. *The Applicable Brunzell Factors*

In determining the amount of attorney's fees to be awarded, the Nevada Supreme Court ruled in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 345, 455 P.2d 31, 33 (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 attorney's 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) (emphasis in original).

Id.

The *quality* of the pleadings prepared and the work performed on behalf of the Review-Journal are self-proving. This Court has had ample opportunity to review and consider the *character* of the services rendered in this action—an action involving a legal issue of the utmost importance to the Review-Journal. Given the Court's familiarity with the efforts of the Review-Journal's 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 C.

With respect to the work *actually* performed by the Review-Journal's counsel, the undersigned respectfully asks the Court to consider the hard fought nature of this litigation after the offer of judgment was served. The Review-Journal not only submitted extensive briefing related to its Renewed MSJ, but was also obligated to prepare for the rapidly approaching trial date. Plaintiffs likewise forced the Review-Journal's counsel to perform extensive work related to their requests to extend discovery before the Discovery Commissioner and His Honor. To that end, the Review-

instant motion. See NRS 18.110(4). Accordingly, the Review-Journal's costs may be appropriately awarded under the provision of NRS 18.110.

1 Journal's counsel was required to prepare and attend multiple depositions and address the novel
2 issues raised by Plaintiffs' counsel during the Renewed MSJ proceedings. As such, the Review-
3 Journal's counsel devoted a significant amount of time to this litigation in the period following
4 service of the offer of judgment and the dismissal of Plaintiffs' claims.

5 Moreover, while this case arose out of a routine traffic accident, an adverse ruling would
6 have had a sweeping impact on the manner in which the Review-Journal operated its business and
7 delivered newspapers. Indeed, had Plaintiffs prevailed in the theory that Pittman was an employee of
8 the Review-Journal rather than an independent contractor then that precedent could have impacted
9 the Review-Journal's potential liability for other independent contractors who deliver newspapers.
10 As such, the importance of the Court's ruling upholding the validity of the Independent Contractor
11 Distribution Agreement cannot be understated.

12
13 Insofar as the last factor to be considered by the Court, the undersigned humbly suggests
14 that the *result* speaks for itself.

15 **III. CONCLUSION**

16 Based on the foregoing, the Review-Journal respectfully submits that its Motion for
17 Attorney's Fees should be granted in its entirety.

18 DATED this 30th day of March, 2015.

19
20 CAMPBELL & WILLIAMS

21 By /s/ Philip R. Erwin

22 J. COLBY WILLIAMS, ESQ. (5549)

23 PHILIP R. ERWIN, ESQ. (11563)

24 700 South Seventh Street

25 Las Vegas, Nevada 89101

26 Telephone: (702) 382-5222

27 Facsimile: (702) 382-0540

28 *Attorneys for Defendant*

Stephens Media, LLC

CERTIFICATE OF SERVICE

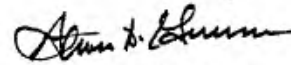
Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 30th day of March, 2015 I caused the foregoing document entitled **Defendant Stephens Media, LLC's Motion for Attorney's Fees** to be served upon those persons designated by the parties in the E-Service Master 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/ Philip R. Erwin

An employee of Campbell & Williams

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

1 RTRAN

2

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5

6

DISTRICT COURT
CLARK COUNTY, NEVADA

7

8

BOULES BANOUB, ET AL.,

9

Plaintiffs,

10

vs.

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JOHN PITTMAN, ET AL.,

12

Defendants.

13

14

BEFORE THE HONORABLE ALLAN R. EARL, DISTRICT COURT JUDGE

15

THURSDAY, MARCH 13, 2014

16

TRANSCRIPT OF PROCEEDINGS

17

DEFENDANT STEPHENS MEDIA LLC'S MOTION FOR SUMMARY JUDGMENT

18

19

APPEARANCES:

20

For the Plaintiffs:

RAMZY P. LADAH, ESQ.

21

22

For Defendant Las Vegas Review Journal:

PHILIP R. ERWIN, ESQ.

23

24

25

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Thursday, March 13, 2014, 9:43 a.m.

2 * * * * *

3 THE COURT: Case number A669057, Banoub versus John Pittman.

4 MR. LADAH: Good morning, Your Honor. Ramzy Ladah, Bar number 11405, on
5 behalf of Plaintiffs.

6 MR. ERWIN: Good morning, Your Honor. Phil Erwin, Campbell and Williams, on
7 behalf of Defendant Las Vegas Review Journal.

8 THE COURT: Question: Does the Review Journal insure Mr. Pittman's truck?

9 MR. ERWIN: Mr. Pittman was required to have his own insurance on his vehicle.

10 THE COURT: Okay. So it was not insured by the RJ.

11 MR. ERWIN: No, sir.

12 THE COURT: All right. These damages that were deducted from Mr. Pittman's
13 check, what were those?

14 MR. ERWIN: I believe he broke a window on his route by throwing a paper through
15 it, and --

16 THE COURT: You mean somebody's house?

17 MR. ERWIN: Correct. And I believe -- and I believe the Review Journal received a
18 call about the paper going through the window. Those damages were repaired, and Mr.
19 Pittman paid for that damage.

20 THE COURT: So that has nothing to do with this accident.

21 MR. ERWIN: No.

22 THE COURT: Okay. Well, the real issue raised by the case law in this area is
23 control. Does the Review Journal control this fellow's operation, and, I mean, I'm going
24 back now, you know, more years than we can even contemplate, but I used to be a paper boy,
25 and I certainly remember what control they had over me, which was a lot. So let's -- I mean,

1 I guess they sign a document about independent contractors. They weren't as sophisticated
2 back then. But they can control a lot of things. They can control what time the papers have
3 to be delivered by. They can, to some extent, control in what condition the papers have to be
4 in when they're delivered, if it's raining or bad weather. I don't know how often the RJ
5 sends a supervisor out to go with him during his route, which brings up another point. I
6 realize I'm using a shotgun approach here.

7 This van that showed up, was that your family, or was that the RJ's people?

8 MR. LADAH: It was definitely the RJ's people, Your Honor.

9 MR. ERWIN: It was an RJ supervisor from another warehouse, apparently closer to
10 where the accident occurred. It was not anybody from Mr. Pittman's warehouse, and there's
11 no evidence, contrary to what was in the briefs, that that was an RJ vehicle, but it was an RJ
12 employee.

13 THE COURT: It was an RJ employee, but not an RJ vehicle?

14 MR. ERWIN: There's no evidence in the record of that.

15 MR. LADAH: My clients say it actually said -- the newspaper name was on it --

16 MR. ERWIN: And, once again --

17 MR. LADAH: -- on the van.

18 MR. ERWIN: -- there's no evidence in the record of that.

19 THE COURT: Well, there's eyewitness testimony to it; that's some evidence.

20 MR. ERWIN: Their depositions have not been taken. They haven't testified to that
21 point.

22 THE COURT: Okay.

23 MR. ERWIN: And as to the issue of control, this incident didn't occur in a vacuum.
24 The Review Journal, as you pointed out, is sophisticated and has implemented a program
25 involving these contracts whereby their only control is the result, which is the definition of

1 an independent contractor relationship, and that result is that the newspaper be delivered to
2 the subscriber by 6 a.m. on the weekdays and 7 a.m. on the weekends. And the Review
3 Journal is not interested in how Mr. Pittman accomplished that task so long as it got done.

4 MR. LADAH: Your Honor, if I may?

5 THE COURT: Yes.

6 MR. LADAH: The problem with the contract is it doesn't represent the daily
7 activities and relationship between Mr. Pittman and the RJ. Clearly from his deposition
8 there's a different relationship between the RJ and Mr. Pittman. They're training him.
9 They're supervising him. He meets with a supervisor on a daily basis at the warehouse. A
10 supervisor has gone with him on the route at least two to three times he testified to.
11 Someone comes out, when he gets in an accident, from the RJ. He felt like he could get --
12 his contract could be voided or terminated at any time if he didn't do what he was being told
13 to do. He's told how to do the route. He's told when to do the route. He gets in trouble if he
14 doesn't do it certain ways. I mean, there's significant control here, and the issue of control is
15 an issue of fact. It needs to be decided on by a jury, Your Honor, and that's why I didn't file
16 a counter-motion for summary judgment, 'cause I don't believe it's an issue of law. It is an
17 issue of fact that a jury needs to decide on.

18 MR. ERWIN: And, Your Honor, we addressed Plaintiff's representations on the
19 amount of times a supervisory accompanied on -- accompanied Mr. Pittman on his route. It
20 was once, when he was first retained. We -- or we addressed the issue of him being trained.
21 We addressed the issue of suggestions he may have received from the Review Journal; he
22 was not obligated to follow those.

23 And as to termination, either party could terminate the contract without cause
24 on 30 days' notice, and now there was a for cause termination in the contract for the Review
25 Journal, and the only thing identified as cause was the failure to accomplish the result, which

1 is failure to deliver the newspaper. It didn't have anything to do with the method by which
2 he accomplished that.

3 THE COURT: Where is the discovery stage?

4 MR. ERWIN: I believe there's two months left in discovery.

5 MR. LADAH: No depositions have been taken of any of the employees. I plan on
6 taking those depositions.

7 THE COURT: Okay.

8 MR. LADAH: And I also attached my -- or my opposition, Your Honor, was a 56F
9 affidavit regarding the deposition I plan on taking, and defense pointed out that I haven't
10 taken any depositions yet. Nothing in 56F talks about when the depositions needed to be
11 taken, and for strategy purposes that's why I haven't taken any depositions yet.

12 MR. ERWIN: And, Your Honor 56 --

13 THE COURT: Strategy? What's the strategy?

14 MR. LADAH: I'd rather not --

15 THE COURT: That's okay. You don't have to --

16 MR. LADAH: I'd rather not disclose that --

17 THE COURT: -- tell me.

18 MR. LADAH: -- Your Honor.

19 MR. ERWIN: 56F also requires that counsel point out specific facts that he hopes to
20 develop through those depositions. He has not done that. He also hasn't addressed the
21 impact of Cathy Minnick's [phonetic] sworn declaration, who is the distribution director of
22 the RJ, and she confirmed that Mr. Pittman is an independent contractor.

23 And, like I said, that testimony is not gonna change because this is an
24 established system on the part of the RJ.

25 MR. LADAH: Just because someone in the RJ says he's an independent contractor

1 doesn't mean he qualifies as that under the law, Your Honor.

2 THE COURT: All right. Since discovery has only got a couple of months to run, I'm
3 gonna deny this without prejudice. I want discovery completed. You'd better spend some
4 time on this issue, counsel, because right now you're behind. And so let's see what you've
5 got that actually points out that, under the case law of Nevada, you've got a respondeat
6 superior argument here, and I'll take a look at it again. Just bring it again.

7 MR. ERWIN: Thank you, Your Honor.

8 MR. LADAH: Who would you like to draft the order, Your Honor?

9 THE COURT: It's your motion -- no, it's the RJ's motion.

10 MR. ERWIN: RJ's motion.

11 THE COURT: You draft it.

12 MR. ERWIN: We'll be happy to draft the order, Your Honor.

13 MR. LADAH: Thank you, Your Honor.

14 MR. ERWIN: Thank you.

15 THE COURT: Okay. Run it by each other.

16 [Proceeding concluded at 9:51 a.m.]

17 * * *

18 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
19 video recording of this proceeding in the above-entitled case.

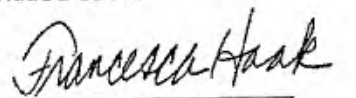
20 
21 FRANCESCA HAAK
22 Court Recorder/Transcriber
23
24
25

EXHIBIT B

EXHIBIT B

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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OFFER

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Attorneys for Defendant
Stephens Media, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

BOULES BANOUB, an individual; HANAN) CASE NO. A-12-669057-C
SALIP, and individual; MARY BANOUB, an) DEPT. NO. XIX
individual, MINA BANOUB, an individual,)

Plaintiffs,

OFFER OF JUDGMENT

vs.

JOHN PITTMAN, an individual; STEPHENS)
MEDIA, LLC, a Nevada limited liability)
Company d/b/a LAS VEGAS REVIEW)
JOURNAL; DOES I through X, inclusive;)
and ROE CORPORATIONS I – X, inclusive)

Defendants.

Pursuant to NRCP 68 and NRS 17.115, Defendant Stephens Media, LLC offers to allow judgment to be taken against it and in favor of Plaintiffs Boules Banoub, Hanan Salip, Mary Banoub, and Mina Banoub, jointly, in the above-entitled matter in the total amount of FIVE THOUSAND DOLLARS AND 00/100 (\$5,000.00), inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be claimed by Plaintiffs against Defendant Stephens Media, LLC in the above-captioned action.

1 This Offer of Judgment is made in accordance with NRCP 68 and NRS 17.115 and is not
2 to be construed either as an admission that Defendant Stephens Media, LLC is liable in this
3 action, or that Plaintiffs have suffered any damage. Acceptance of this Offer of Judgment would
4 fully discharge and release Defendant Stephens Media, LLC from all claims as alleged in the
5 Complaint on file herein against Defendant Stephens Media, LLC. If this Offer of Judgment is
6 not accepted within ten (10) days from receipt by Plaintiffs, then it shall be deemed withdrawn.

7
8 DATED this 8th day of December, 2014.

9 CAMPBELL & WILLIAMS

10 By /s/ Philip R. Erwin

11 J. COLBY WILLIAMS, ESQ. (5549)

12 PHILIP R. ERWIN, ESQ. (11563)

13 700 South Seventh Street

14 Las Vegas, Nevada 89101

15 Telephone: (702) 382-5222

16 Facsimile: (702) 382-0540

17 Attorneys for Defendant

18 Stephens Media, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 8th day of December, 2014 I caused the foregoing document entitled **Offer of Judgment** 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/ Philip R. Erwin
An employee of Campbell & Williams

EXHIBIT C

EXHIBIT C

DECLARATION OF PHILIP R. ERWIN

PHILIP R. ERWIN declares under penalty of perjury as follows:

1. I am retained counsel for Defendant Stephens Media, LLC d/b/a Las Vegas Review-Journal (the "Review-Journal") in the instant action. I make this declaration in support of the Review-Journal's Motion for Attorney's Fees and specifically with regard to the reasonableness of the Review-Journal's requested attorney's 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 forth herein and, if called as a witness, I could and would testify competently with respect thereto.

2. J. Colby Williams is a Senior Partner in the law firm Campbell & Williams and has been a member of the bar for more than twenty (20) years and has likewise obtained the highest possible rating in Martindale-Hubbell ("AV"). During that time, counsel has sat first and second chair in numerous civil trials involving a wide range of complex matters in both state and federal court. Counsel has also developed an emphasis in appellate practice and First Amendment/media law. These efforts have resulted in numerous published opinions. *See, e.g., American Broadcasting Companies, Inc. v. Miller*, 550 F.3d 786 (9th Cir. 2008) (reversing district court's denial of attorney's fees to six media corporations that had prevailed in § 1983 action); *Stephens Media, LLC v. Eighth Jud. Dist. Ct.*, 125 Nev. 849, 221 P.3d 1240 (2009) (holding in matter of first impression that First Amendment's guarantee of public access to criminal proceedings extends to juror questionnaires); *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006) (affirming six-figure jury verdict in defamation action); *DR Partners v. Bd. of County Com'rs*, 116 Nev. 616, 6 P.3d 465 (2000) (awarding attorney's fees and costs to newspaper seeking disclosure of county cellular phone records). Mr. Williams has also been included in Woodward & White's *The Best*

1 *Lawyers in America* for his work in the First Amendment area, Super Lawyers, and Chambers
2 USA ("Band 1" for litigation).

3 3. I am a Partner in the law firm Campbell & Williams and have been a member of the
4 bar for over six (6) years. I am a *cum laude* graduate of the William S. Boyd School of Law, and
5 for the past three years have been included as a "Rising Star" in Super Lawyers as well as one of
6 Nevada's "Legal Elite" in Nevada Business Magazine. During that time, I have drafted countless
7 legal briefs (including the obtaining of a \$1 million judgment by way of summary judgment),
8 handled a variety of motion and evidentiary hearings, and sat second chair at various trials,
9 arbitrations and appellate proceedings. Like Mr. Williams, I have also began developing an
10 emphasis on appellate practice. *See, e.g., The Power Co., Inc. v. Henry*, 130 Nev. Adv. Op. 21,
11 321 P.3d 858 (2014).
12

13 4. Campbell & Williams normally charges hourly rates of \$650 per hour for Mr.
14 Williams' time and \$350 for my time. These rates are consistent with reasonable community
15 standards, and numerous courts have approved similar rates in other matters handled by Campbell
16 & Williams. Due to our longstanding business relationship with the Review-Journal, Campbell &
17 Williams agreed to reduce the hourly rate being charged by Mr. Williams in this matter.
18 Accordingly, Mr. Williams charged our time in this matter at \$350 per hour.
19

20 5. From December 8, 2014 through the entry of summary judgment, the true and
21 correct total of attorney's fees incurred in prosecuting this matter on behalf of the Review-Journal
22 is \$34,055.00. A true and correct itemization of the work performed by Campbell & Williams is
23 attached hereto and all of the work was actually performed, and the corresponding fees were
24 necessarily incurred and paid by the clients. Based on my experience, I believe the work
25 performed and fees charged were reasonable.
26

27 6. I declare under penalty of perjury that the foregoing is true and correct.
28

1 7. Declarant further says naught.

2 DATED this 30th day of March, 2015.

3 
4 PHILIP R. ERWIN



**CAMPBELL
& WILLIAMS**
ATTORNEYS AT LAW

Re: Statement of services rendered and costs incurred in reference to Banoub
(through March 11, 2015)

DJC Donald J. Campbell, Esq.
JCW J. Colby Williams, Esq.
PRE Philip R. Erwin, Esq.
LM Lucinda Martinez, Paralegal

DATE	SERVICE PERFORMED:	HOURS
2014		
12/08	Drafted email to opposing counsel regarding threat to file Motion for Sanctions and Plaintiff's Failure to Conduct Discovery.	.6 PRE
12/09	Drafted renewed Motion for Summary Judgment; reviewed earlier Motion for Summary Judgment and supporting exhibits.	3.5 PRE
12/10	Drafted and edited renewed Motion for Summary Judgment; email correspondence with Mark Hinueber regarding declaration; reviewed supporting case law for accuracy and continued effect.	5.0 PRE
12/11	Reviewed and edited Renewed Motion for Summary Judgment.	.6 JCW
12/11	Multiple edits to Renewed Motion to Summary Judgment and redrafted section on Plaintiffs anticipated arguments; JCW edits to same.	3.0 PRE
12/12	Client edits to Renewed Motion for Summary Judgment and filed; prepared exhibits.	1.0 PRE
12/26	Reviewed Plaintiff's Motion to Extend Discovery Cut-Off and to Strike Distribution Agreement and crafted counter-arguments.	1.0 PRE
12/29	Reviewed Plaintiff's Motion to Extend Discovery Deadlines and Strike Independent Contractors Agreement; researched excusable neglect standard and reasons based on extensive	3.0 PRE

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

	delay, lack of addresses and failure to consensually agree on dates.	
12/31	E-mail to Anthony Ashby regarding request to postpone Motion for Summary Judgment hearing.	.5 PRE
01/05	Reviewed Plaintiff's Opposition to Renewed Motion for Summary Judgment; draft Reply in Support of Renewed Motion for Summary Judgment and edited; draft Limited Opposition to Joint Request for Stay and edited; email correspondence with Mark Hineuber regarding same.	7.6 PRE
01/06	Edited Reply in Support of Motion for Summary Judgment and Limited Opposition to Request for Stay and filed; drafted Opposition to Motion to Extend Discovery.	13.0 PRE
01/07	Reviewed and edited Opposition to Plaintiffs Motion to Re-open Discovery; meeting with PRE.	.5 JCW
01/07	Edited Opposition to Motion to Extend Discovery and filed; prepared courtesy copies with case law of Motion for Summary Judgment Briefing and Opposition to Motion to Extend for Judge Kephart and Discovery Commissioner Bulla.	7.2 PRE
01/08	Hearing prep on Motion to Extend Discovery cut off.	1.0 PRE
01/09	Hearing prep and attend hearing on Plaintiff's Motion to Extend Discovery Cutoff; e-mail correspondence to Mark Hineuber regarding same.	3.5 PRE
01/12	Hearing prep for Motion for Summary Judgment hearing.	1.5 PRE
01/13	Meeting with PRE regarding results of Motion for Summary Judgment Hearing and next steps.	.5 JCW
01/13	Hearing prep and attend hearing on Motion for Summary Judgment; email correspondence with Mark Hineuber regarding same and strategy moving forward.	2.0 PRE
01/14	Performed necessary research and drafted Motions in Limine regarding Review Journal's financial condition, testimony of treating physicians, evidence of psychological damages, and unauthenticated documents.	6.0 PRE
01/15	Drafted and edited Motions in Limine; researched other	6.7 PRE

	potential evidentiary issues.	
01/16	E-mail with opposing counsel regarding Motions in Limine and EDCR 2.47; e-mail with Mark Hineuber regarding depositions.	.3 PRE
01/19	Edited Motions in Limine.	1.5 PRE
01/20	Edited, prepared and filed Motions in Limine; e-mail correspondence with opposing counsel regarding same; telephone conference with Mark Hineuber regarding depositions and case status.	3.0 PRE
01/23	E-mail correspondence with Anthony Ashby regarding depositions and Discovery Commissioner's Report and Recommendations.	.5 PRE
02/11	Meet with Mark Hineuber and employees regarding deposition preparation.	1.5 PRE
02/12	Depositions of Pete Cruz and Brian Muller; telephone conference with Mark Hineuber regarding same.	3.5 PRE
02/17	Drafted Supplement to Renewed Motion for Summary Judgment; drafted, edited and filed Notice of Non-Opposition regarding Motions in Limine; researched effect of insurance requirement on independent contractor analysis and law on third party beneficiaries; reviewed e-mail correspondence with Anthony Ashby regarding settlement offer.	9.0 PRE
02/18	Edited Supplement to Renewed Motion for Summary Judgment; JCW edits; prepared courtesy copy for court and filed; hearing preparation.	4.0 PRE
02/19	Meeting with PRE regarding results of hearing and strategy going forward.	.3 JCW
02/19	Motion for Summary Judgment hearing preparation and hearing; telephone conferences with client regarding hearing and motion for Attorney's Fees and Costs.	2.5 PRE
02/21	Drafted and edited Proposed Order Granting Renewed Motion for Summary Judgment.	2.0 PRE
02/23	Reviewed and edited Order Granting Motion for Summary Judgment.	.5 JCW

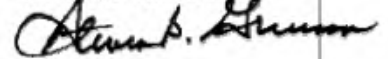
02/23	JCW and client edits to Order Granting Renewed Motion for Summary Judgment; e-mail correspondence with opposing counsel regarding same.	1.0 PRE
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97.3 Attorney hours at \$350.00 per hour \$34,055.00

Total Fees: **\$34,055.00**

EXHIBIT 5

TAB 28 – Other Agency Reports (Hotel Info)			
Luxor Documents (002666-002669)	Luxor Guest List for 9/5/96-9/14/96	Guest List containing individuals' names	1; 5
Monte Carlo Documents (002670-002676)	Monte Carlo Invoice	Personal information and telephone numbers	1; 5
Treasure Island Key Card	Key Card	Key Card	5
TAB 30 – Persons related to victims, suspects, or witnesses			
Criminal History Information /DMV Records (002677-003162; 003177-003240)	Criminal History Records and photographs	Criminal History Records and photographs	1; 2; 3
CCW Application (003163-003176)	Upton's application for conceal firearm permit	Personal Information	1
List of names and addresses (003241-003242)	Names and addresses of potential suspects	Names and address of potential suspects	1;3
TAB 31 – 662 Club Security information			
Work Cards issued to 662 Security Employees (003243-003256)	Personal information of employees and comments about when work cards were issued	Personal Identifying information	1
LVMPD Security Information (003257-003271)	Security Records	Personal information and photographs	1
Inside Binder 5 Flap			
Witness Cards (003272-003285)	Personal identifying information including name, DOB, SSN, addresses	Personal Identifying information and photographs	1

**Marquis Aurbach Coffing**

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
ncrosby@maclaw.com
jnichols@maclaw.com

*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 NOTICE
OF APPEAL**

Respondent Las Vegas Metropolitan Police Department, by and through its attorneys of record, Nicholas Crosby, Esq. and Jackie Nichols, Esq., of the law firm of Marquis Aurbach Coffing, hereby appeals to the Supreme Court of Nevada from the Order Regarding the Center For Investigative Reporting Inc.'s Petition for Writ of Mandamus filed on November 5, 2018 and noticed on November 6, 2018, attached

///

///

///

///

///

///

1 hereto as **Exhibit A**, respectively.

2 Dated this 4th day of December, 2018.

3
4 MARQUIS AURBACH COFFING

5
6 By: /s/ Jackie V. Nichols
7 Nick D. Crosby, Esq.
8 Nevada Bar No. 8996
9 Jackie V. Nichols, Esq.
10 Nevada Bar No. 14246
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 *Attorneys for Respondent, Las Vegas*
14 *Metropolitan Police Department*
15
16
17
18
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28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S NOTICE OF APPEAL** 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:¹

Philip R. Erwin, Esq.
Samuel Mirkovich, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
jyc@cwlawlv.com
pre@cwlawlv.com
lmm@cwlawlv.com
srm@cwlawlv.com
rpr@cwlawlv.com
maw@cwlawlv.com

*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:

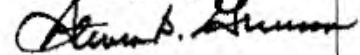
N/A



An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT A



1 CAMPBELL & WILLIAMS
2 PHILIP R. ERWIN, ESQ. (11563)
3 pre@cwlawlv.com
4 SAMUEL R. MIRKOVICH, ESQ. (11662)
5 srm@cwlawlv.com
6 700 South Seventh Street
7 Las Vegas, Nevada 89101
8 Telephone: (702) 382-5222
9 Facsimile: (702) 382-0540

10 Attorneys for Petitioner

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 THE CENTER FOR INVESTIGATIVE
14 REPORTING INC., a California Nonprofit
15 Organization,

16 Petitioner,

17 vs.

18 LAS VEGAS METROPOLITAN POLICE
19 DEPARTMENT,

20 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.

21 This matter came on for hearing on Petitioner The Center For Investigative Reporting
22 Inc.'s Verified Petition for Writ of Mandamus and Incorporated Application for Order and
23 Expedited Hearing Pursuant to NRS 239.011 (the "Petition") on October 30, 2018. Philip R.
24 Erwin, Esq. of the law firm Campbell & Williams appeared on behalf of Petitioner The Center
25 For Investigative Reporting Inc. ("CIR") and Jackie V. Nichols, Esq. of the law firm Marquis
26 Aurbach Coffing appeared on behalf of Respondent Las Vegas Metropolitan Police Department
27 ("LVMPD"). Having considered CIR's Petition, LVMPD's Response, CIR's Reply, the parties'
28 supplemental briefing regarding CIR's prevailing status under NRS 239.011(2), and the
arguments of counsel, and good cause appearing therefore:

1 I. FINDINGS

2 THE COURT HEREBY FINDS THAT prior to the filing of this lawsuit, LVMPD did not
3 comply with the Nevada Public Records Act in response to CIR's requests seeking public records
4 related to the murder of Tupac Shakur in September 1996.

5 THE COURT FURTHER FINDS THAT as a result of the filing of this lawsuit, LVMPD
6 complied with the Nevada Public Records Act and made a satisfactory production of the public
7 records sought by CIR's Petition.

8 THE COURT FURTHER FINDS THAT because the filing of this lawsuit caused
9 LVMPD to comply with the Nevada Public Records Act, CIR prevailed pursuant to NRS
10 239.011(2).
11

12 II. ORDER

13 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Verified Petition for
14 Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to
15 NRS 239.011 is DENIED as moot.

16 IT IS FURTHER ORDERED THAT CIR shall be deemed to have prevailed in this
17 litigation pursuant to NRS 239.011(2).
18

19 IT IS FURTHER ORDERED THAT CIR shall submit a motion for attorney's fees and
20 costs within ten (10) days of the notice of entry of this Order.

21 IT IS SO ORDERED.

22 DATED this 5 day of November, 2018.

23
24 
25 DISTRICT COURT JUDGE
26 EIGHTH JUDICIAL DISTRICT COURT
27
28

1 Respectfully submitted by:

2 CAMPBELL & WILLIAMS

3 By: 

4 Philip E. Erwin, Esq. (11563)
5 Samuel R. Mirkovich, Esq. (11662)
6 700 South Seventh Street
Las Vegas, Nevada 89101

7 *Attorneys for Petitioner*

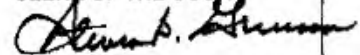
8 Approved as to form and content:

9 MARQUIS AURBACH COFFING

10 By: 

11 Nick D. Crosby, Esq. (8996)
12 Jackie V. Nichols, Esq. (14246)
13 10001 Park Run Drive
Las Vegas, Nevada 89145

14 *Attorneys for Respondent*



CAMPBELL & WILLIAMS
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Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Petitioner

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)
Samuel R. Mirkovich, Esq. (11662)
700 South Seventh Street
Las Vegas, Nevada 89101

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

EXHIBIT 1

EXHIBIT 1

Steven D. Grierson

CAMPBELL & WILLIAMS
PHILIP R. ERWIN, ESQ. (11563)
pre@cwlawlv.com
SAMUEL R. MIRKOVICH, ESQ. (11662)
srm@cwlawlv.com
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Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Petitioner

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:

1 I. FINDINGS

2 THE COURT HEREBY FINDS THAT prior to the filing of this lawsuit, LVMPD did not
3 comply with the Nevada Public Records Act in response to CIR's requests seeking public records
4 related to the murder of Tupac Shakur in September 1996.

5 THE COURT FURTHER FINDS THAT as a result of the filing of this lawsuit, LVMPD
6 complied with the Nevada Public Records Act and made a satisfactory production of the public
7 records sought by CIR's Petition.

8 THE COURT FURTHER FINDS THAT because the filing of this lawsuit caused
9 LVMPD to comply with the Nevada Public Records Act, CIR prevailed pursuant to NRS
10 239.011(2).
11

12 II. ORDER

13 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Verified Petition for
14 Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to
15 NRS 239.011 is DENIED as moot.

16 IT IS FURTHER ORDERED THAT CIR shall be deemed to have prevailed in this
17 litigation pursuant to NRS 239.011(2).
18

19 IT IS FURTHER ORDERED THAT CIR shall submit a motion for attorney's fees and
20 costs within ten (10) days of the notice of entry of this Order.

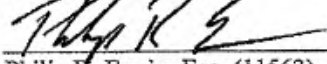
21 IT IS SO ORDERED.

22 DATED this 5 day of November, 2018.

23
24 
25 DISTRICT COURT JUDGE
26 EIGHTH JUDICIAL DISTRICT COURT
27
28

1 Respectfully submitted by:

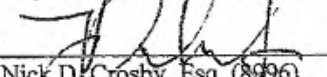
2 CAMPBELL & WILLIAMS

3 By: 
4 Philip F. Erwin, Esq. (11563)
5 Samuel R. Mirkovich, Esq. (11662)
6 700 South Seventh Street
Las Vegas, Nevada 89101

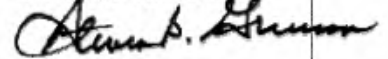
7 *Attorneys for Petitioner*

8 Approved as to form and content:

9 MARQUIS ALBRECHT COFFING

10 By: 
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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 CASE
APPEAL STATEMENT**

Respondent Las Vegas Metropolitan Police Department, by and through their attorneys of record, Marquis Aurbach Coffing, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Las Vegas Metropolitan Police Department

2. Identify the Judge issuing the decision, judgment, or order appealed from:

Honorable Elizabeth Gonzalez

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Las Vegas Metropolitan Police Department

Nick D. Crosby, Esq.

Jackie V. Nichols, Esq.

Marquis Aurbach Coffing

10001 Park Run Drive

Las Vegas, Nevada 89145

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as much and provide the name and address of that respondent's trial counsel):

Respondent: The Center for Investigative Reporting, Inc.

Philip R. Erwin, Esq.
Samuel R. Mirkovich, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

May 2, 2018.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This action concerns a Petition for Writ of Mandamus regarding Nevada's Public

1 Records Act. Respondents sought public records from Appellant regarding its
2 investigation concerning the murder of Tupac Shakur in September 1996. The
3 Court ordered an evidentiary hearing to determine whether the records were
4 confidential. Ultimately, the Parties came to an agreement regarding the
5 requested records and the Petition for Writ of Mandamus was rendered moot.
6 Although the Court did not grant the Petition or order LVMPD to produce
7 records, the District Court determined that the Center for Investigative Reporting,
8 Inc. nonetheless prevailed.

9 11. Indicate whether the case has previously been the subject of an appeal to or
10 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
11 number of the prior proceeding:

12 This case has not been the subject of any prior case in the Nevada Supreme Court.

13 12. Indicate whether this appeal involves child custody or visitation:

14 N/A

15 13. If this is a civil case, indicate whether this appeal involves the possibility of
16 settlement:

17 This case does not involve the possibility of settlement.

18 Dated this 4th day of December, 2018.

19 MARQUIS AURBACH COFFING

20 By: /s/ Jackie V. Nichols

21 Nick D. Crosby, Esq.
22 Nevada Bar No. 8996
23 Jackie V. Nichols, Esq.
24 Nevada Bar No. 14246
25 10001 Park Run Drive
26 Las Vegas, Nevada 89145
27 *Attorneys for Respondent, Las Vegas*
28 *Metropolitan Police Department*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S CASE APPEAL STATEMENT** 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:¹

Philip R. Erwin, Esq.
Samuel Mirkovich, Esq.
Campbell & Williams
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*Attorneys for Petitioner,
The Center for Investigative Reporting, Inc.*

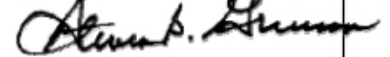
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

¹ 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).



RPLY

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Attorneys for Petitioner

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 REPLY IN
SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS**

Hearing Date: December 21, 2018
Hearing Time: In Chambers

Petitioner The Center for Investigative Reporting Inc. ("CIR"), through its undersigned counsel, hereby submits the following Reply in Support of Motion for Attorneys' Fees and Costs. This Reply is made and based upon the papers and pleadings on file herein, the exhibits attached hereto, and the Points and Authorities that follow.

.....

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.....

.....

POINTS AND AUTHORITIES

I. INTRODUCTION

Respondent Las Vegas Metropolitan Police Department (“LVMPD”) contests CIR’s request for attorney’s fees and costs on multiple grounds. Like other local government agencies in recent months, LVMPD advances the fallacious argument that the unambiguous fee provision in NRS 239.011(2) is somehow subject to NRS 239.012, which immunizes a public officer or employee from damages for actions taken in good faith. Based on this flawed exercise in statutory construction, LVMPD argues that CIR cannot recover attorney’s fees and costs because LVMPD acted in good faith when it stonewalled CIR for months in violation of the Nevada Public Records Act (“NPRA”). Suffice it to say, LVMPD’s factual argument is as shaky as the legal foundation on which it is premised.

Next, LVMPD challenges the reasonableness of CIR’s attorney’s fees and costs under the *Brunzell* factors. LVMPD blithely asserts that this NPRA litigation was simple and straightforward such that CIR cannot meet the second *Brunzell* factor. LVMPD further contends that the hourly rates of CIR’s counsel are unreasonable based on a litany of inapplicable cases involving different law firms and subject matter. Lastly, LVMPD argues that CIR failed to submit evidence to support its litigation costs even though the majority of these costs are evidenced by the court record. None of LVMPD’s arguments are persuasive.

II. ARGUMENT

A. LVMPD’s Immunity Argument Is Specious In The Extreme.

Over the course of the past year, local government agencies in Clark County have advanced the theory that the fee provision in NRS 239.011(2) should be read together with the immunity provision in NRS 239.012 such that a non-prevailing government entity is only subject to an award of fees and costs if it acted in bad faith. This proposition has been soundly rejected by courts in the Eighth Judicial District. See Exhibit “1,” *Las Vegas Review-Journal v. Clark Cty. Office of the*

1 *Coroner/Med. Exam'r*, 2018 WL 1896250 (Nev. Dist. Ct. Feb. 1, 2018); Exhibit "2," *Las Vegas*
2 *Review-Journal v. Clark Cty. School Dist.*, 2018 WL 1896249 (Nev. Dist. Ct. Mar. 22, 2018). CIR
3 will address the many flaws in LVMPD's statutory interpretation along with the preposterous
4 notion that LVMPD acted in good faith with respect to CIR's repeated requests for public records.

5 **1. CIR is Entitled to Seek Attorney's Fees and Costs Pursuant to the Plain**
6 **Language of NRS 239.011(2).**

7 NRS 239.011(2) provides that "[i]f the requester prevails, the requester is entitled to recover
8 his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose
9 officer has custody of the book or record." *Id.* In a recent case involving LVMPD, the Nevada
10 Supreme Court confirmed that "by its plain meaning, [NRS 239.011(2)] grants a requester who
11 prevails in NPRA litigation the right to recover attorney's fees and costs[.]" *Las Vegas Metro.*
12 *Police Dep't v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015). There is no
13 language in NRS 239.11(2) that provides a requesting party is only entitled to attorney's fees and
14 costs if the governmental entity acted in bad faith. *See Savage v. Pierson*, 123 Nev. 86, 89, 157
15 P.3d 697, 699 (2007) ("When examining a statute, a purely legal inquiry, this court should ascribe
16 to its words their plain meaning, unless this meaning was clearly not intended."). Rather, the
17 requesting party must only "prevail" in order to seek attorney's fees and costs as CIR did here. *See*
18 *Order Regarding The Center For Investigate Reporting's Petition for Writ of Mandamus* (on file).
19

20
21 LVMPD's argument hinges on its contention that NRS 239.011(2) must be read in
22 conjunction with NRS 239.012, which provides that "[a] public officer or employee who acts in
23 good faith in disclosing or refusing to disclose information and the employer of the public officer
24 or employee are immune from liability for damages, either to the requestor or to the person to whom
25 the information concerns." Put another way, LVMPD argues that an award of attorney's fees and
26 costs under NRS 239.011(2) is subsumed within the "damages" contemplated by the good faith
27 immunity statute of NRS 239.012. This is wrong.
28

1 To begin, Nevada law is clear that a statutory award of attorney’s fees and costs differs from
2 special damages in the form of attorney’s fees incurred as a result of tortious conduct or a breach
3 of contract. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 955-57,
4 956 P.3d 964, 968 (2001) (clarifying Nevada jurisprudence “regarding the difference between
5 attorney fees as a cost of litigation and attorney fees as an element of damage[,]” and listing cases
6 where fees were awarded as a cost of litigation or as an element of special damages). Here, CIR is
7 plainly seeking its attorney’s fees as a cost of litigation pursuant to a statute and not as special
8 damages subject to the pleading requirements of NRC 9(g). Accordingly, LVMPD’s assertion
9 that an award of attorney’s fees and costs under NRS 239.011(2) is synonymous with the damages
10 addressed by NRS 239.012 is decidedly misplaced.¹

12 The plain language of NRS 239.011(2) and NRS 239.012 also illustrates the differences
13 between the two statutes. For example, NRS 239.011(2) provides that a “governmental entity”—a
14 defined term in NRS 239.005(5)—will be subject to an award of attorney’s fees and costs for failure
15 to disclose public records. NRS 239.012, however, does not reference the defined term
16 “governmental entity” and instead immunizes a “public officer or employee” from liability for
17 damages. The Court must presume that this “variation in language indicates a variation in
18 meaning”—*i.e.* that NRS 239.011(2) is intended to subject a government body to an award of
19 attorney’s fees and costs while NRS 239.012 is designed to immunize an individual employee who
20
21
22
23
24

25 ¹ Notably, unlike other statutory schemes in Nevada, the NPRA does not expressly define
26 attorney’s fees and costs as an element of damages. *Cf., Albos v. Horizon Communities, Inc.*, 122
27 Nev. 409, 414, 132 P.3d 1022, 1025 (2006) (“Nev. Rev. Stat. § 40.655 allows constructional defect
28 claimants to recover attorney’s fees and costs as an element of damages[.]”).

1 acts in good faith from liability for damages. *Williams v. State Dep't of Corr.*, 402 P. 3d 1260,
2 1264 (Nev. 2017).²

3 NRS 239.012 also applies to a broader set of circumstances than the narrow fee provision
4 in NRS 239.011(2). NRS 239.012 immunizes an individual employee from damages for any good
5 faith response to a public records request whereas NRS 239.011(2) only applies when a requester
6 prevails in a judicial action to obtain records that were wrongfully withheld by a governmental
7 entity. Similarly, NRS 239.012 immunizes an individual employee for the disclosure *or* refusal to
8 disclose public records, but NRS 239.011(2) is only invoked based on a governmental entity's
9 refusal to disclose public records. These distinctions also weigh against a finding that NRS
10 239.011(2) incorporates the good faith immunity provision contained in NRS 239.012.

12 Lastly, LVMPD's position conflicts with the underlying policy of the NPRA, which is "to
13 foster democratic principles by providing members of the public with access to inspect and copy
14 public books and records to the extent permitted by law." NRS 239.001(1). In that regard, "the
15 provisions of the [NPRA] must be construed liberally to carry out this important purpose[.]" and
16 "[a]ny exemption, exception or balancing of interests which limits or restricts access to public
17 books and records by members of the public must be construed narrowly." NRS 239.001(2) and
18

20 ² LVMPD cites to a number of out-of-state cases where courts have applied a good faith exemption
21 to liability for attorney's fees and costs in public records litigation. *See* Resp. at 6-7 (citing cases
22 from Florida, Kentucky, Arizona and Tennessee). These cases are inapposite as a finding of bad
23 faith or willful/unlawful conduct is a prerequisite to an award of attorney's fees under the plain
24 language of those state public records acts. *See, e.g.*, Fla. Stat. § 119.12 (requiring a finding of
25 unlawful refusal to disclose a public record); Ky. Rev. Stat. Ann. § 61.882 (requiring a finding that
26 public records were willfully withheld); Ariz. Rev. Stat. Ann. § 39-121.02(B) (requiring a finding
27 of bad faith); Tenn. Code. Ann. § 10-7-505(g) (requiring a finding of knowing and willful refusal
28 to disclose a public record). In fact, LVMPD cited *Althouse v. Palm Beach Cty. Sheriff's Office*,
92 So.3d 899, 901 (Fla. Ct. App. 2012) for the proposition that fee provision in Florida's public
records act contains a "good faith exception" despite the fact that the Florida Supreme Court
subsequently overruled *Althouse* and other similar cases to the extent they "require a showing that
the public agency acted unreasonably or in bad faith before allowing recover of attorney's fees
under the Public Records Act." *Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*,
189 So.3d 120, 122 (Fla. 2016). LVMPD's reliance on bad or otherwise inapplicable law speaks
volumes.

(3). The Court should refuse to interpolate a good faith requirement in NRS 239.011(2) because an expansive application of the NPRA's fee provision encourages governmental entities such as LVMPD to comply with the law. *See, e.g., Frankel v. Dist. of Columbia Office for Planning and Econ. Dev.*, 110 A.3d 553, 557 (D.C. Ct. App. 2015) (adopting broad interpretation of fee provision as it "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.").³

2. LVMPD's Reliance on Legislative History is Improper.

It is well-settled that the Court may not consider legislative history where, as here, the plain language of NRS 239.011(2) is facially clear. *See, e.g., Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) ("To determine legislative intent, this court will not go beyond a statute's plain language if the statute is facially clear."); *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) ("When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it."). NRS 239.011(2) is absolutely clear that CIR is entitled to seek attorney's fees and costs because it prevailed against LVMPD and, as demonstrated above, the good faith immunity provision in NRS 239.012 does not create ambiguity as the two statutes serve completely different purposes. Regardless, the mere fact that the Legislature enacted the fee provision and good faith immunity provision in the same bill is indicative of nothing especially when numerous other aspects of the NPRA were amended during the same legislative session. *See Resp., Ex. B.*

³ Refusing to manufacture a good faith requirement in NRS 239.011(2) would not render NRS 239.012 meaningless as argued by LVMPD because an individual employee could conceivably become liable for damages in a number of scenarios. A party could conceivably sue a public employee for defamation or a privacy tort if the employee disclosed public records that were alleged to contain false or private information. In a different real-life example, the Hawaii Supreme Court held that a government employee was immune from damages for the plaintiff's loss in property value based on the allegedly negligent retention and production of public records. *See Molfino v. Yuen*, 399 P.3d 679 (2014). Accordingly, the mere fact that NRS 239.012 has no application in this case does not render the immunity statute a nullity across the board.

1 **3. Even if the Court Adopts LVMPD’s Tortured Statutory Construction—**
2 **and it Should not—LVMPD did not Act in Good Faith in Response to**
3 **CIR’s Public Records Requests.**

4 The Court is familiar with the background of this litigation and CIR will not rehash the
5 procedural history here. In that regard, it is telling that LVMPD spent less than half a page
6 addressing whether it actually acted in good faith after devoting the majority of its brief to the
7 baseless argument that NRS 239.011(2) contains a good faith immunity component. It is also
8 notable that LVMPD completely ignored its conduct prior to the filing of CIR’s Petition and instead
9 focused on its actions after it became clear that LVMPD would lose on the merits. *See Resp.* at 11-
10 12. Simply put, LVMPD cannot even muster a credible argument that it acted in good faith when
11 its pre-Petition conduct was marked by serial violations of the NPRA based on an improper blanket
12 claim of confidentiality that LVMPD ultimately withdrew in the face of an impending defeat. *See*
13 The Center for Investigative Reporting, Inc.’s Supplemental Brief Regarding Its Prevailing Status
14 Under NRS 239.011 at 2-8 (on file). In reality, LVMPD’s belated production of the requested
15 records only confirms that the records never should have been withheld in the first place.⁴

16 **B. CIR Adequately Demonstrated The Reasonableness Of The Work Expended**
17 **And Its Counsel’s Hourly Rates.**

18 **1. The Character of the Work Performed in the Face of LVMPD’s Militant**
19 **Defense Warrants a Full Award of Attorney’s Fees.**

20 LVMPD apparently asserts that the Court should either deny or reduce CIR’s requested
21 attorney’s fees because “this case was rather simple” and “[t]here was no witness preparation, no
22 evidentiary hearing [and] no testimony of witnesses.” *See Resp.* at 12. If the Court adopts that
23 logic, then fee awards in NPRA litigation will effectively be subject to an automatic reduction as it
24

25
26 ⁴ Suffice it to say, CIR disputes LVMPD’s rose-colored depiction of its production in this case.
27 *See Resp.* at 11-12 and Ex. C. LVMPD’s itemization contains errors—*e.g.* that the transcript of
28 Dwayne Davis’s interview was withheld—and the use of the term “heavily redacted” in reference
 to LVMPD’s 2200-page production is, frankly, absurd. *Id.* Nevertheless, LVMPD’s revisionist
 history is irrelevant to the Court’s inquiry so CIR will not belabor the point.

1 is the rare public records case that culminates in an evidentiary hearing. Here, CIR was forced to
2 address the litany of inapplicable exemptions raised by LVMPD and explain why the Court should
3 overrule its blanket claims of confidentiality before LVMPD waved the white flag. And even then,
4 CIR was still required to brief an issue of first impression in the State when LVMPD challenged its
5 status as the “prevailing” party under NRS 239.011(2).

6 These legal questions required ample research, legal drafting, and court appearances, and
7 LVMPD cannot rely on the “caliber and experience of CIR’s attorneys” to claim that the second
8 *Brunzell* factor is not met.⁵ See Resp. at 12. In short, LVMPD “cannot litigate tenaciously and then
9 be heard to complain about the time necessarily spent by [CIR] in response.” *City of Riverside v.*
10 *Rivera*, 477 U.S. 561, 580 n. 11 (1986) (citing *Copeland v. Marshall*, 641 F.2d 880, 904 (D.C. Cir.
11 1980) (same)); *Wolf v. Frank*, 555 F.2d 1213, 1217 (5th Cir. 1977) (“Obviously, the more stubborn
12 the defense the more time” would be required by the other side); *Chrapliwy v. Uniroyal, Inc.*, 583
13 F.Supp. 40, 49 (N.D. Ind. 1983) (“Those who elect a militant defense in the face of a statute allowing
14 attorney fees if they are defeated must take into account the time and effort they extract from their
15 opponents. It was [the defendant’s] right to contest every aspect of this claim, but they cannot now
16 disclaim the consequences of their actions.”).

19 2. The Hourly Rates of CIR’s Counsel are Reasonable.

20 Ironically, LVMPD cites the “caliber and experience of CIR’s attorneys” as a basis to
21 contest the second *Brunzell* factor and, in the very next breath, attacks the hourly rates of CIR’s
22 counsel as unreasonable. In support of its argument, LVMPD again references the supposedly
23 simple nature of NPRA litigation and relies on a number of inapposite cases—many of which are
24 more than four years old—where courts have found hourly rates of \$300 or less to be reasonable.
25

26
27
28 ⁵ CIR does not dispute LVMPD’s claimed reduction of \$5,310 for pre-litigation fees. See Resp. at 12.

1 LVMPD's scattershot argument is not persuasive and the hourly rates of CIR's counsel are
2 reasonable as Nevada courts have approved the same or similar rates on many occasions.

3 In the context of NPRA litigation, the Honorable James Wilson in the First Judicial District
4 found that the hourly rates of \$500 and \$350 were reasonable for partners and associates in 2014
5 when CIR's counsel filed suit against the State of Nevada on behalf of the National Review. *See*
6 Exhibit "3," Order Granting, in Part, Petitioners' Motion for Attorneys' Fees and Costs.⁶ Other
7 courts in this District have also determined that the comparable hourly rate of \$350 was reasonable
8 for Messrs. Erwin and Mirkovich long before this litigation commenced in May 2018. *See, e.g.,*
9 Exhibits "4" and "5," Motion for Attorney's Fees and Costs and Order dated 6/22/2015; Exhibit
10 "6," DCRR dated 1/18/2017. Moreover, courts in this District have repeatedly approved hourly
11 rates of \$450 in NPRA litigation within the last year. Exs. 1-2. The Court should find that this
12 evidence of the reasonableness of CIR's counsel's hourly rates outweighs the smattering of
13 inapplicable and outdated cases cited by LVMPD.
14

15 **3. CIR's Litigation Costs are Reasonable and Self-Proving.**

16 Rather than debate the propriety of a negligible amount of costs, CIR will waive its printing
17 and parking expenses. The Court should, however, award CIR its costs incurred in filing documents
18 with the court, effectuating service of process, and obtaining hearing transcripts as these costs are
19 self-proving. Indeed, CIR itemized these expenses—as opposed to submitting them in one lump
20 sum—and the reasonableness and necessity of such costs does not require any evidentiary support
21 beyond the undersigned counsel's declaration and a review of the Court's docket. Accordingly,
22 CIR seeks costs in the amount of \$632.89 rather than the original sum of \$1,053.54.
23
24
25
26

27 ⁶ Messrs. Erwin and Mirkovich were associate attorneys in 2014 and billed at the hourly rate of
28 \$350, which Judge Wilson found to be reasonable more than four years ago. Campbell & Williams
increased the hourly rates of Messrs. Erwin and Mirkovich to \$450 in or around January 2018 after
they were named Partners in the firm.

1 **III. CONCLUSION**

2 Based on the foregoing, CIR respectfully submits that the Court should award \$50,402.89
3 in attorney's fees and costs incurred in prosecuting this matter under the NPRA, which equals the
4 original amount sought (\$56,133.54) less \$5,310 in pre-litigation attorney's fees and \$420.65 in
5 costs. CIR likewise does not oppose LVMPD's request for a stay pending appeal.

6 Dated: December 12, 2018

CAMPBELL & WILLIAMS

7 By /s/ Philip R. Erwin

8 PHILIP R. ERWIN, ESQ. (11563)

9 SAMUEL R. MIRKOVICH, ESQ. (11662)

10 700 South Seventh Street

11 Las Vegas, Nevada 89101

12 Telephone: (702) 382-5222

13 Facsimile: (702) 382-0540

14 Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 12th day of December, 2018 I caused the foregoing document entitled **The Center For Investigative Reporting Inc.'s Reply in Support of 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

2018 WL 1896250 (Nev. Dist. Ct.) (Trial Order)
District Court of Nevada.
Clark County

LAS VEGAS REVIEW-JOURNAL, Petitioner,
v.
CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER, Respondent.

No. 17A758501.
February 1, 2018.

Order Granting Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs

Margaret A McLetchie, Nevada Bar No. 10931, Alina M. Shell, Nevada Bar No. 11711, McLetchie Shell LLC, 701 East Bridger Ave., Suite 520, Las Vegas, Nevada 89101, Telephone: (702) 728-5300; Fax: (702) 425-8220, Email: maggie@nvlitigation.com, Counsel for Petitioner.

*1 The Las Vegas Review-Journal's Motion of Attorney's Fees and Costs, having come on for hearing on January 11, 2018, the Honorable Jim Crockett presiding, Petitioner Las Vegas Review-Journal (the "LVRJ") appearing by and through its counsel, Margaret A. McLetchie, and Respondent Clark County Office of the Coroner/Medical Examiner ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

The Records Request and The Coroner's Office's Response

1. On April 13, 2017, the LVRJ sent the Coroner's Office a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPRA").
2. The LVRJ's request sought all autopsy reports of autopsies conducted of anyone under the age of 18 from 2012 through the date of the request.
3. The Coroner's Office responded via email on April 13, 2017. It provided a spreadsheet with information consisting of the Coroner case number, name of decedent, date of death, gender, age, race, location of death, and cause and manner of death, but refused to provide "autopsy reports, notes or other documents." In its April 13, 2017 email, the Coroner's Office stated it would not disclose the autopsy reports because they contain medical information and confidential information about a decedent's body. The Coroner's Office relied on Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 ("AGO 82-12") as the basis for non-disclosure.
4. The LVRJ followed up by emailing the Clark County District Attorney's Office on April 13, 2017, requesting legal support for the refusal to provide records.

5. The District Attorney's Office, Civil Division, on behalf of the Coroner's Office, responded via email on April 14, 2017, again relying on AGO 82-12 and also relying on Assembly Bill 57, 79th Sess. (Nev. 2017) (a bill then pending consideration in the 2017 session of the Nevada Legislature and proposing changes to Nevada law regarding a coroner's duty to notify next-of-kin of the death of a family member but not addressing public records) as the bases for its refusal to disclose the requested records.

6. The Coroner's Office did not assert any other basis for withholding records within five (5) business days.

7. On May 9, 2017, following a meeting between the Coroner and the LVRJ, the Coroner mailed a second spreadsheet to the LVRJ listing child deaths dating back to 2011 in which the Coroner conducted autopsies.

8. On May 23, 2017, counsel for the LVRJ wrote to the Coroner's Office to address concerns with the Coroner's Office's refusal to provide access to any of the requested juvenile autopsy reports.

9. On May 26, 2017, the Coroner's Office (via the District Attorney) responded to the May 23, 2017 letter, again relying on the legal analysis in AGO 82-12 to justify non-disclosure, and agreed to consider providing redacted versions of autopsies of juveniles if the LVRJ provided a specific list of cases it wished to review.

*2 10. In its May 26, 2017 response, the Coroner's Office for the first time also asserted that the records may be protected by Nev. Rev. Stat. § 432B.407 and that privacy interests outweighed public disclosure.

11. The LVRJ provided the Coroner's Office with a list of specific cases it wanted reports for via email on May 26, 2017.

12. The Coroner's Office responded to the May 26, 2017 email on May 31, 2017.

13. In its May 31, 2017 response, the Coroner's Office stated that responsive records were "subject to privilege will not be disclosed" and that it would also redact other records. However, it did not assert any specific privilege.

14. The Coroner's Office also asked the LVRJ to specify the records it wanted to receive first, which the LVRJ did on June 12, 2017.

15. On July 9, 2017, in a response to a further email from the LVRJ inquiring on the status of the records, the Coroner's Office indicated it would not produce any records that pertained to any case that was subsequently handled by a child death review team pursuant to Nev. Rev. Stat. § 432B.407. By that time, the Coroner had determined which cases were not handled by the child death review team and provided a list to the LVRJ.

16. On July 11, 2017, the Coroner's Office provided sample files of redacted autopsy reports for other autopsies of juveniles that were not handled by a child death review team. The sample files were heavily redacted; the Coroner's Office asserted that the redacted language consisted of information that was medical, related to the health of the decedent's mother, could be marked with stigmata or considered an invasion of privacy. Statements of diagnosis or opinion that were medical or health related that went to the cause of death were not redacted.

17. On July 11, 2017, the Coroner's Office also demanded that the LVRJ commit to payment for further work in redacting files for production, and declined to produce records without payment. The Coroner's Office indicated it would take two persons 10-12 hours to redact the records it was willing to produce, and that the LVRJ would have to pay \$45.00 an hour for the two reviewers, one of which would be an attorney. The Coroner's Office contended that conducting a privilege review and redacting autopsy reports required the "extraordinary use of personnel" under Nev. Rev. Stat. § 239.055. The Coroner's Office stated it did not intend to seek fees for the work associated with the previously provided spreadsheets and redacted reports.

The Litigation

18. On July 17, 2017, the LVRJ filed its Application Pursuant to Nev. Rev. Stat. § 239.001/Application for Writ of Mandamus/Application for Declaratory and Injunctive Relief ("Application"), and requested expedited consideration pursuant to Nev. Rev. Stat. §239.011(2).

19. On August 17, 2017, the LVRJ submitted a Memorandum in support of its Application. The Coroner's Office submitted its Response on August 30, 2017, asserting a number of arguments against production of the public records. The LVRJ submitted its Reply on September 7, 2017.

20. The Court held a hearing on the LVRJ's Application on September 28, 2017.

21. Subsequently, on November 9, 2017, the Court entered an order rejecting each of the Coroner's Office's arguments and granting the LVRJ's Application, requiring the Coroner's Office to produce the requested records. The Court also ordered that the Coroner's Office was not entitled to any fees or costs for the record, other than the medium the records were to be electronically provided on.

The LVRJ's Motion for Attorney's Fees and Costs

*3 22. On November 29, 2016. The LVRJ filed a Motion for Attorney's Fees and Costs pursuant to Nev. Rev. Stat. § 239.011(2).

23. In its Motion and supporting exhibits, the LVRJ requested compensation at the following rates for work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	27.9	\$450.00	\$12,465.00 ¹
Alina M. Shell	51.3	\$350.00	\$17,220.00 ²
Leo Wolpert	2.1	\$175.00	\$367.50
Pharan Burchfield	8.9	\$150.00	\$1,335.00
Administrative Support	6.6	\$25.00	\$165.00
Total Fees Requested			\$31,552.50

24. The LVRJ also requested \$825.02 in costs associated with the litigation, for a combined total request for \$32,377.52 in fees and costs.

25. The LVRJ provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

26. The Coroner's Office filed an Opposition to the LVRJ's Motion on December 14, 2017, and the LVRJ filed a Reply on January 4, 2018.

27. In its Opposition, the Coroner's Office asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of the NPRA which provides immunity from damages for public officers who act in good faith in disclosing or refusing to disclose records—the LVRJ had to establish the Coroner's Office acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

28. Alternatively, the Coroner's Office argued the fees and costs sought by counsel for the LVRJ should be apportioned and reduced, largely relying on case law regarding prevailing market rates from federal cases (including Prison Litigation Reform Act case law).

29. This Court conducted a hearing on the LVRJ's Motion on January 11, 2018.

II.

CONCLUSIONS OF LAW

Legal Standard for the Recovery of Attorney's Fees in NPRA Cases

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

31. In this case, recovery of attorney's fees is authorized by the NPRA, which provides in pertinent part that “[i]f the requester prevails [on a petition for public records], the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.” Nev. Rev. Stat. §239.011(2).

32. Thus, pursuant to Nev. Rev. Stat. § 239.011(2) (the “Fees Statute”), a prevailing party (in this case, the LVRJ) is entitled to its reasonable fees and costs.

33. The Fees Statute is explicit and plain. There is no limitation on the entitlement to fees it contains other than the fact that the fees and costs be “reasonable.” The Fees Statute does not have any language requiring a prevailing requester to demonstrate that a public officer or employee acted in bad faith in refusing to disclose public records.

34. The fact that a separate statute, § 239.012 (the “Damages Immunity Statute”), provides for immunity for good faith actions of public officers of employees in responding to NPRA requests does not change the interpretation of the Fees Statute for multiple reasons.

*4 35. First, as set forth above, the language of the Fees Statute is plain: if a requester prevails in an action to obtain public records, “the requester is entitled to recover his or her reasonable costs and attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.” Nev. Rev. Stat. § 239.011(2). The Fees Statute does not require a requester to demonstrate a governmental entity acted in bad faith; it only requires that the requester prevail.

36. Because the Fees Statute is clear on its face, this court “cannot go beyond the statute in determining legislative intent.” *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (citation and internal quotation marks omitted); *see also Robert E. v. Justice Court*, 99 Nev. 443,445, 664 P.2d 957,959 (1983) (same); *see also State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (“We must attribute the plain meaning to a statute that is not ambiguous.”); *see also Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) (“When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.”)

37. Second, the separate Damages Immunity Statute only provides for immunity from *damages*—not immunity from fees. See Nev. Rev. Stat. § 239.012 (specifying that a public officer or his or her employer are “immune from liability for damages, either to the requester or to the person whom the information concerns”). Damages and fees are different. See, e.g., *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 956 35 P.3d 964, 968 (2001) (comparing procedure for seeking attorney’s fees as a cost of litigation with fees sought as special damages pursuant to Nev. R. Civ. P. 9(g)); see also *Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617 (7th Cir. 2013) (noting that “an award of attorneys’ fees differs from ‘damages’”); see also *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993) (noting that attorney fees may be awarded for unfair practice, while punitive damages are awarded for tort based on same conduct).

38. Third, the Damages Immunity Statute specifically only refers to immunity for actions of “[a] public officer or employee,” (i.e., an individual), whereas the Fees Statute makes “governmental entit[ies]” liable for fees for failing to disclose records. Nev. Rev. Stat. § 239.011(2).

39. Nev. Rev. Stat. § 239.005(5) defines “governmental entity” as follows:

- (a) An elected or appointed officer of this State or of a political subdivision of this State;
- (b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State, including, without limitation, an agency of the Executive Department, or of a political subdivision of this State;
- (c) A university foundation, as defined in NRS 396.405; or
- (d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools.

40. The officers and employees whose “good faith” actions are subject to immunity pursuant to the Damages Immunity Statute are not governmental entities. In contrast, the Respondent (in this case, the Coroner’s Office) is a “governmental entity” within the meaning of Nev. Rev. Stat. § 239.005(5) and is therefore responsible for fees pursuant to the Fees Statute. Thus, the difference in terms between the Fees Statute and the Damages Immunity Statute supports not reading a “good faith” requirement from the separate Damages Immunity Statute into the Fees Statute.

*5 41. Fourth, the Damages Immunity Statute provides immunity to public officers or employees for disclosing *or* refusing to disclose public records, whereas a prevailing party’s entitlement to fees and costs under Nev. Rev. Stat. § 239.011(2) attaches only in those instances where a requester successfully petitions court after a governmental entity refuses to disclose public records. This fact further urges against reading a “good faith” requirement from the separate Damages Immunity Statute into the Fees Statute.

42. Fifth, it is not necessary to read a good faith requirement into the Fees Statute to reconcile it with the separate Damages Immunity Statute. This is so because the good faith provision applies to an entirely different matter than the attorney fees and costs provision. As set forth above, the Damages Immunity Statute addresses when a public officer or employee (and his or her employer) is immune from *damages* to *anyone* for *producing* records or for failing to produce records if the *officer or employee* acted in good faith. In contrast, the Fees Statute sets forth when a *governmental entity* is responsible to a *requester* for fees and costs in a petition to obtain records). See *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (“Courts must construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.”) (citation omitted) (emphasis added).

43. Sixth, reading a “good faith” exception into the Fees Statute would be inconsistent with the legislative mandates regarding interpretation of the NPRA, which specifically sets forth “[l]egislative findings and declaration.” Nev. Rev. Stat. § 239.001. Nev. Rev. Stat. § 239.001(1) explains that “[t]he purpose of [the NPRA] is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law.” Nev. Rev. Stat. § 239.001(2) and (3) in turn provide that “[t]he provisions of this chapter must be construed liberally to carry out this important purpose;” and that [a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Reading a good faith limitation into the Fees Statute would be inconsistent with these mandates, and would hinder access to records by making it more expensive for requesters to seek court redress when governmental entities fail to produce public records.

44. Seventh, even if it were relevant, the legislative history of the NPRA does not support the Coroner's Office's position and makes clear there is no bad faith requirement in the fees and costs provision. In 1993, via AB 365,³ the NPRA was amended to strengthen the NPRA. Section 2 of AB 365 addressed fees and costs, while Section 3 separately addressed good faith liability from damages. With regard to Section 2, on May 7, 1993, there was discussion making clear that, as initially written, Section 2 mandated that if the requester prevails, “he was entitled to recover his costs and fees and attorney's fees in the proceeding, from the agency whose officer had custody of the record.” (*Id.*, pp. 43-44.) That is all it said as originally written. The Legislature did, however, write one (and only one) limitation into the fees and costs provision: it added the word “reasonable” to qualify the fees and costs to which a requester is entitled. (*Id.*, p. 44.) Then, a separate discussion ensued regarding Section 3 and addressing good faith immunity (*id.*, p. 44 (*after passing a motion finalizing the fees and costs language*, the committee went on to discuss Section 3).) The discussion included an explanation that Section 3 “was for a civil penalty to be imposed on a public employee who acted in bad faith.” (*Id.*, p. 45.) Thus, the legislative history does not support a “good faith” limitation on the Fees Statute.

*6 45. Further, a strict reading of the Fees Statute (one without a good faith exception read into it) is more in keeping in with the policy favoring access expressed in the NPRA as well as the provision allowing for a court remedy upon a governmental entity's failure to produce public records. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) “(We conclude a strict reading of the statute is more in keeping with the policy favoring open meetings expressed in NRS chapter 241 and the spirit of the Open Meeting Law...).”

46. Accordingly, the LVRJ, which prevailed in this litigation, is entitled to its reasonable attorney's costs and fees that it expended in this matter to obtain public records from the Coroner's Office, regardless of whether the Coroner's Office acted in “good faith.”

***The LVRJ's Requested Fees and Costs Are Reasonable, and the
Brunzell Factors Support a Full Award of Fees and Costs to the LVRJ***

47. As noted above, the LVRJ is in entitled to its “reasonable” attorney's fees and costs in this matter.

48. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), a court must consider four elements in determining the reasonable value of attorneys' services:

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

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

49. The Court has carefully reviewed and considered the motion for fees, supporting detail of work performed and costs, and supporting declarations in light of the *Brunzell* factors in determining an appropriate award of fees and costs to the LVRJ.

50. As to the first factor, the “qualities of the advocate,” the Court finds that the rates sought are reasonable in light of their ability, training, education, experience, professional standing and skill. The rates sought for staff are also reasonable, and compensable.

51. The Court also finds that the second *Brunzell* factor, the “character of the work” performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of a full award of fees and costs to the LVRJ.

52. As the Coroner's Office noted in its Opposition to the LVRJ's Motion for Attorney's Fees and Costs, this case involved an unsettled and contentious area of public records law with serious legal questions of public importance. The Coroner's Office asserted a number of claims of confidentiality requiring versatility and comfort with various areas of law. And, as the NPRA reflects, the work involved in seeking access to public records is important: access to public records fosters democratic principles. Nev. Rev. Stat. § 239.001(1). Representing the newspaper of record also necessarily involves a high level of responsibility and immediate attention. Further, NPRA matters involve matters of high prominence.

53. As to the third factor, the work actually performed by counsel, the Court finds that counsel for the LVRJ exercised appropriate discretion in the time and attention they dedicated to litigating this matter, and how they structured work in this matter. LVRJ counsel deducted or omitted entries where appropriate.

*7 54. Further, counsel necessarily had to dedicate significant time in this case due both to its character and due to the fact that the Coroner's Office asserted numerous purported bases for refusing to provide public records.

55. Thus, this factor weighs in favor of a full award of costs and fees to the LVRJ.

56. The final *Brunzell* factor requires this Court to consider “the result: whether the attorney was successful and what benefits were derived.” *Brunzell*, 85 Nev. at 349, 455 P. 2d at 33.

57. As set forth above, the LVRJ is the prevailing party in this public records litigation, and as a result of its counsel's efforts, obtained an order from this Court directing the Coroner's Office to produce the requested autopsy records.

58. Thus, this final factor weighs in favor of an award of fees and costs to the LVRJ.

59. Having considered the *Brunzell* factors, and having considered the papers and pleadings on file in this matter, including the documentation provided by the LVRJ in support of its Motion for Attorney's Fees and Costs, the Court finds the LVRJ is entitled to all its attorney's fees and costs through November 9, 2017 in the sum of \$32,377.52.

III.

ORDER

60. Based on the foregoing findings of fact and conclusions of law, the Court hereby **ORDERS** that the Coroner's Office must pay the LVRJ \$32,377.50 to compensate it for the costs and reasonable attorney's fees it expended through November 9, 2017 in litigating this matter. Costs of \$825.02 Attorney's Fees of \$31,522.50

61. Nothing in this Order precludes the LVRJ from seeking compensation for fees and costs incurred after November 9, 2017 if appropriate upon conclusion of the appeal in this matter.

ORDER

It is so **ORDERED** this 30 day of January, 2018.

<<signature>>

DISTRICT COURT JUDGE

Prepared and submitted by:

<<signature>>

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Footnotes

- 1 This total reflected voluntary reductions for some time entries, made by counsel for the LVRJ in her billing discretion.
- 2 See *supra* n. 1.
- 3 The LVRJ attached the complete legislative history of AB 365 as Exhibit 6 to its Reply to Respondent's Opposition to Motion for Attorney's Fees and Costs, and the page references in this Order correspond to the numbering therein.

EXHIBIT 2

2018 WL 1896249 (Nev. Dist. Ct.) (Trial Order)

District Court of Nevada.

Eighth Judicial District

Clark County

LAS VEGAS REVIEW-JOURNAL, Petitioner,

v.

CLARK COUNTY SCHOOL DISTRICT, Respondent.

No. 17A750151.

March 22, 2018.

Findings of Facts and Conclusions of Law and Order

Margaret A. McLetchie, Nevada State Bar No. 10931, Alina M. Shell, Nevada State Bar No. 11711, McLetchie Shell, LLC, 701 E. Bridger Avenue, Suite 520, Las Vegas, NV 89101, Telephone: (702) 728-5300, Fax: (702) 425-8220, Email: maggie@nvlitigation.com, Counsel for Petitioner, Las Vegas Review-Journal.

Carlos McDade, Nevada State Bar No. 11205, Adam Honey, Nevada State Bar No. 9588, Clark County School District, Office of General Counsel, 5100 W. Sahara Avenue, Las Vegas, NV 89146, Counsel for Respondent, Clark County School District.

Timothy C. Williams, Judge.

*1 The Las Vegas Review-Journal's Motion for Attorney's fees and Costs and Request for Order Finding CCSD Acted in Bad Faith, having come on for hearing on November 11, 2017 and January 4, 2018, the Honorable Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorney, MARGARET A. MCLECHIE, and Respondent CLARK COUNTY SCHOOL DISTRICT ("CCSD"), appearing by and through its attorney, CARLOS M. MCDADE, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Original Requests; Filing of Action

1. On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the "Reporter") sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPR") seeking certain documents pertaining to CCSD Trustee Kevin Child; the Reporter supplemented the Request on December 9, 2016 (the "December Requests").

2. After CCSD failed to provide documents or assert any claim of confidentiality pursuant to Nev. Rev. Stat. § 239.0107, the Review-Journal initiated this action on January 26, 2017, requesting expedited consideration pursuant to Nev. Rev. Stat. § 239.011.

Initial Proceedings and February 22, 2017 Order

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing. CCSD did not produce all records in unredacted form. Instead, Starting on February 8, 2017 it began producing some records in redacted form and withheld others. CCSD did not disclose that it had limited the sources it searched for records responsive to the Request or the Supplemental Request.

4. The Court conducted an *in camera* review of the unredacted version of the redacted records provided and then, on February 14, 2017, the Court heard oral argument on the Review-Journal's Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal's Petition. (See February 22, 2017 Order (the "February Order"); see also February 23, 2017 Notice of Entry of Order).

5. The Court ordered CCSD to provide the Review-Journal with new versions of records it had produced with only "the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff redacted. (*Id.* at ¶ 34.) The Court further specified that "CCSD may not make any other redactions" and must unredact the names of schools, teachers, and all administrative-level employees that were not direct victims. (*Id.* at ¶ 35.)

6. CCSD did not appeal this order, or seek other relief pertaining to the February Order. To date, CCSD has disclosed 174 pages of documents to the Review-Journal, redacting consistently with the February Order. CCSD has also withheld 102 pages.

February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search Information

*2 7. On February 10, 2017, the Review-Journal submitted a new records request to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-Journal also offered to work with CCSD to develop searches.

8. On February 17, 2017, CCSD notified the Review-Journal via email that it was unable to provide the records listed in the February Request within the five days mandated by Nev. Rev. Stat. § 239.0107. On March 1, 2017, Review-Journal filed its Amended Petition. On March 3, 2017, CCSD provided some documents in response to the February Request. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted information pertaining to the names of individuals who reported a complaint or concern about Trustee Child, information including potentially identifying information about students, and personal phone numbers. That same day, the Review-Journal requested CCSD provide a log of withheld documents that were responsive to the February Request and also asked CCSD to provide it with search information. CCSD responded to these requests via letter on March 13, 2017. Despite previous requests from the Review-Journal, that was the first time CCSD provided any search term information.

9. In response to the Review-Journal's inquiry regarding which documents were being withheld, CCSD asserted that "the only information that has not been provided is internal information received or gathered by the District in the court of its investigation of an alleged practice of unlawful practice of discrimination, harassment, or hostile work environment which is confidential and not required to be disclosed under the public records law." By email on March 13, 2017, CCSD also stated it was withholding one document—a report prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report"). The Review-Journal responded to CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested CCSD conduct additional email searches for responsive records from additional custodians. The Review-Journal requested that CCSD search those records for documents pertaining to the topics outlined in the December and February Requests. The Review-Journal also requested CCSD produce hard copy

records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any other hard copy files CCSD maintains on Trustee Child that were responsive to the December and February Requests.

10. CCSD declined to produce the Cole Report and other documents created by the Office of Diversity and Affirmative Action Programs; on March 24, 2017, CCSD supplemented its privilege log to reflect that it was withholding records in addition to the records it had previously identified ("3/24/2017 Log"). This 3/24/2017 Log reflected that, in total, CCSD withheld only the following from documents produced in response to the December Requests and the February Request:

Investigative memoranda prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report") and Mr. Cole's investigative notes.

*3 (See Exhibit E to March 29, 2017 Opening Brief in support of Amended Petition for Writ of Mandamus.)

Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters

11. On May 9, 2017, the Court heard oral arguments on the Review-Journal's Amended Petition for Writ of Mandamus. On June 6, 2017, the Court entered an Order granting the Review-Journal's Amended Petition as to the request that CCSD complete additional searches. (June 6, 2017 Order at ¶ 45, ¶ 46.)

12. Further, the Court ordered that, with regard to any documents CCSD had withheld and/or redacted to date and any additional responsive documents it identified in response to the additional email and hard copy searches it was required to perform but contended are confidential and/or privileged, CCSD was to create a single log numbering and identifying each document withheld or redacted (in response to either the December Requests or the February Request) by providing a factual description of each record withheld (by listing to, from, date, and general subject) as well as a specific explanation for non-disclosure for each document withheld or redacted (including confidentiality being claimed, and basis for claim). The Court further ordered that the log provide sufficient information to the Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted. The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017, along with all redacted documents and documents being withheld for an *in camera* review. The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas Review-Journal. (June 6, 2017 Order at ¶ 47.)

July 12 Order

13. On May 30, 2017, CCSD submitted the redacted and documents it was withholding (the "Withheld Records") to the Court for *in camera* review. It additionally provided the Court with two certifications and a privilege log. ("Final Log")

14. Despite its representation to the undersigned, CCSD counsel did not provide a copy of either of these documents to the Review-Journal at that time. At a hearing held on June 6, 2017 the Court made clear it has expected CCSD to engage in the routine practice of providing privilege logs and certifications to opposing counsel in conjunction with *in camera* submissions. At the hearing, CCSD counsel did finally provide a copy of the Final Log and, later that day, provided copies of the certifications it had provided to the Court a week earlier.

15. In the Final Log, CCSD stated it is withholding the following documents in their entirety on the basis of the privileges it describes as "Office of Diversity and Affirmative Action Privileges:"

- CCSD 034-060; and
- CCSD 0159-0233.

In the Final Log, CCSD has summarized these documents as follows:

provided to Petitioner is internal information received or gathered by Cedric Cole, Executive Director, Office of Diversity and Affirmative Action, in the course of his investigation regarding Trustee Child
...

(Exh. GG to June 13, 2017 Review-Journal Memorandum at Review-Journal007.)

16. The Final Log also cites CCSD Regulation 4110(X) to justify non-disclosure of the 102 pages of documents it is withholding. That Regulation states that

*4 All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law.

(*Id.* at Review-Journal022.)

17. CCSD also claims that the NPRA does not require the release of confidential employee personnel information. (*Id.* at Review-Journal023.) In addition, CCSD claims in its Final Log that the records of its investigation of Trustee Child should be kept confidential pursuant to Title VII and guidance from the Equal Opportunity Employment Commission (“EEOC”). (*Id.* at Review-Journal019-Review-Journal021.) CCSD also claims that withheld internal information it obtained during its investigation of allegations of discrimination or harassment by Trustee Child is subject to the deliberative process privilege because the information “was used as part of the deliberative and decision-making process of District executives” in crafting the Cole Memorandum. (*Id.* at Review-Journal023.) CCSD asserts that any withheld information which might constitute “worksheets, drafts, informal notes, or ad hoc reports,” it qualifies as “nonrecord material” under NAC 239.051. (*Id.*)

18. The Review-Journal submitted a Memorandum responding to CCSD’s Final Log on June 13, 2017.

19. This Court held a hearing on CCSD’s Final Log and May 30, 2017 *in camera* submission on June 27, 2017.

20. At that hearing, CCSD asserted for the first time that in addition to the privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which provides for the creation and regulation of the Nevada Equal Rights Commission—applied to investigations conducted by CCSD’s Office of Diversity and Affirmative Action. Specifically, CCSD asserted at the hearing that information pertaining to investigation of allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. § 233.190.

21. On July 12, 2017 an Order was entered ordering CCSD to produce the Withheld Records, but allowing CCSD to make redaction consistent with the February Order. CCSD is explicitly permitted to redact the “names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff.” (See February 23, 2017 Order at ¶ 34; see also July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with the February 23, 2017 Order).) The Court further specified that “CCSD may not make any other redactions” and must unredact the names of schools, teachers, and all administrative-level employees that were not direct victims. (See February 23, 2017 Order at ¶ 35; see also July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with the February 23, 2017 Order).)

Appeal and Motion to Stay

22. On July 12, 2017, CCSD filed a Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

23. On July 12, 2017, CCSD also filed a Notice of Appeal to the Nevada Supreme Court.

24. On July 19, 2017, Review-Journal filed its Opposition to Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

*5 25. On July 21, 2017, CCSD filed its Reply in Support of Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

26. Only July, 27, 2017, this Court heard arguments on the Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time, and ultimately denied CCSD's Motion to Stay.

27. On July 27, 2017, CCSD filed an Emergency Motion For Stay Pending Appeal with the Nevada Supreme Court; that same day, the Supreme Court assigned CCSD's Emergency Motion to the Court of Appeals.

28. On August 28, 2017, the Court of Appeals granted CCSD's Emergency Motion For Stay Pending Appeal.

The Review-Journal's Motion for Attorney's Fees and Costs

29. On October 3, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith pursuant to Nev. Rev. Stat. § 239.011(2).

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

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	138.2	\$450.00	\$62,190.00 ¹
Alina M. Shell	88.2	\$350.00	\$30,065.00 ²
Leo Wolpert	24.0	\$175.00	\$4,200.00
Pharan Burchfield	29.6	\$150.00	\$4,440.00
Administrative Support	18.9	\$25.00	\$472.50
Total Fees Requested			\$101,367.50

31. The Review-Journal also requested \$4,330.87 in costs associated with the litigation, for a combined total request for \$105,698.37 in fees and costs.

32. The Review-Journal provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

33. CCSD filed an Opposition to the Review-Journal's Motion on October 31, 2017, and the Review-Journal filed a Reply on November 13, 2017.

34. In its Opposition, CCSD asserted that pursuant to Nev. Rev. Stat. § 239.012, a provision of the NPRA which provides immunity from damages for public officers who act in good faith in disclosing or refusing to disclose records, the Review-Journal had to establish CCSD acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

35. Alternatively, CCSD argued the fees and costs sought by counsel for the Review-Journal should be apportioned and reduced, largely relying on case law regarding prevailing market rates from federal cases (including Prison Litigation Reform Act case law).

36. This Court conducted a hearing on the Review-Journal's Motion on November 16, 2017.

37. At the November 16, 2017 hearing, the Court directed the parties to submit supplemental briefing regarding whether it retained jurisdiction to rule on Review-Journal's Motion while CCSD's appeal was pending before the Nevada Supreme Court.

38. The Review-Journal filed a Supplement to its Motion for Attorney's Fees and Costs on December 7, 2017.

39. On December 18, 2017 CCSD's filed an Opposition to Review-Journal's Supplement to Motion for Attorney's Fees and Costs, as well as a Motion to Strike Improper Argument in Review-Journal's Supplemental Motions. CCSD filed an Errata to that Opposition on December 19, 2017.

*6 40. On December 28, 2017, the Review-Journal filed a Reply to CCSD's Opposition to the Supplement, and also filed an Opposition to CCSD's Motion to Strike.

41. The Court conducted a hearing on these motions on January 4, 2018.

42. At the January 4, 2018 hearing, the Court found that it retained jurisdiction over the Review-Journal's Motion for Attorney's Fees and Costs and Request for Order Finding CCSD Acted in Bad Faith. The Court then granted the Review-Journal's Motion for Attorney's Fees and Costs, and denied the Review-Journal's Request for Order Finding CCSD Acted in Bad Faith. The Court further ordered the Review-Journal to submit a supplement regarding additional attorney's fees it accrued after submitting its Motion for Attorney's Fees and Costs.

43. On January 11, 2018, the Review-Journal submitted a Supplement to Motion for Attorney's Fees and Costs. In that Supplement, the Review-Journal provided documentation that it accrued an additional \$19,542.50 in attorney's fees and \$508.13 in costs after the submission of its October 3, 2017 Motion for Attorney's Fees and Costs. The Supplement also included a declaration from counsel addressing the *Brunzell* factors.

44. Combined with the \$101,367.50 in attorney's fees and \$4,330.87 in costs, Review-Journal's combined total fees and costs amount to \$125,749.00.

45. On January 18, 2018, CCSD filed a Response to Review-Journal's Supplement to Motion for Attorney's Fees and Costs Filed January 11, 2018.

II.

CONCLUSIONS OF LAW

Legal Standard for the Recovery of Attorney's Fees in NPRA Cases

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

47. In this case, recovery of attorney's fees is authorized by the NPRA, which provides in pertinent part that “[i]f the requester prevails [on a petition for public records], the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.” Nev. Rev. Stat. §239.011(2).

48. Thus, pursuant to Nev. Rev. Stat. § 239.011(2) (the “Fees Statute”), a prevailing party (in this case, the Review-Journal) is entitled to its reasonable fees and costs.

49. The Fees Statute is explicit and plain. There is no limitation on the entitlement to fees it contains other than the fact that the fees and costs be “reasonable.” The Fees Statute does not have any language requiring a prevailing requester to demonstrate that a public officer or employee acted in bad faith in refusing to disclose public records.

50. The fact that a separate statute, § 239.012 (the “Damages Immunity Statute”), provides for immunity for good faith actions of public officers or employees in responding to NPRA requests does not change the interpretation of the Fees Statute for multiple reasons.

51. First, as set forth above, the language of the Fees Statute is plain: if a requester prevails in an action to obtain public records, “the requester is entitled to recover his or her reasonable costs and attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.” Nev. Rev. Stat. § 239.011(2). The Fees Statute does not require a requester to demonstrate a governmental entity acted in bad faith; it only requires that the requester prevail.

*7 52. Because the Fees Statute is clear on its face, this court “cannot go beyond the statute in determining legislative intent.” *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (citation and internal quotation marks omitted); *see also Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (same); *see also State v. Catano*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (“We must attribute the plain meaning to a statute that is not ambiguous.”); *see also Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) (“When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.”)

53. Second, the separate Damages Immunity Statute only provides for immunity from *damages*—not immunity from fees. *See* Nev. Rev. Stat. § 239.012 (specifying that a public officer or his or her employer are “immune from liability for damages, either to the requester or to the person whom the information concerns”). Damages and fees are different. *See, e.g., Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956 35 P.3d 964, 968 (2001) (comparing procedure for seeking attorney's fees as a cost of litigation with fees sought as special damages pursuant to Nev. R. Civ. P. 9(g)); *see also Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617 (7th Cir. 2013) (noting that “an award of attorneys' fees differs from ‘damages’”); *see also United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993) (noting that attorney fees may be awarded for unfair practice, while punitive damages are awarded for tort based on same conduct).

54. Third, the Damages Immunity Statute specifically only refers to immunity for actions of “[a] public officer or employee,” (i.e., an individual), whereas the Fees Statute makes “governmental entit[ies]” liable for fees for failing to disclose records. Nev. Rev. Stat. §239.011(2).

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Assemblyman Arberry moved that the bill be referred to the Committee on Ways and Means.
Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 365.

Bill read third time.
Remarks by Assemblyman Bennett.
Roll call on Assembly Bill No. 365:
YEAS—41.
NAYS—None.
Absent—Toomin.

Assembly Bill No. 365 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 368.
Bill read third time.
Remarks by Assemblyman Bennett.
Roll call on Assembly Bill No. 368:
YEAS—38.
NAYS—Carpenter, Collins, Haller—3.
Absent—Toomin.

Assembly Bill No. 368 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 655.
Bill read third time.
Remarks by Assemblyman Gibbons.
Roll call on Assembly Bill No. 655:
YEAS—41.
NAYS—None.
Absent—Toomin.

Assembly Bill No. 655 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 210.
Bill read third time.
The following amendment was proposed by the Committee on Labor and Management:

Amendment No. 730.
Amend sec. 2, page 2, lines 1 and 2, by deleting: "of Nevada System; and" and inserting: "and Community College System of Nevada;".
Amend sec. 2, page 2, line 5, by deleting the period and inserting "and".

Assemblyman Porter moved the adoption of the amendment.
Remarks by Assemblyman Porter.

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erection of a structure within the national recreation area with the exception, or other than a structure developed at the request of the Nevada Division of Wildlife."

Mr. Sukimoto stated that would be acceptable to his division.

Doug Busselman, Executive Director, Nevada Farm Bureau, testified on S.B. 544. He stated his division has a problem with the generic identification of a national conservation area. He explained some of the trends his division is seeing coming out of Washington, D.C. from a federal policy perspective leaves them worrying with regard to establishing this wording in state law. He further explained as future conservation areas come upon them, they will be put under this bill although the intention now is not to do that. He told the committee he has shared with Senator Callister their concerns on this bill and hope they can make a language change. He suggests they specifically mention in the bill the intended area right now so there is not a problem in the future when additional conservation areas are created with more restrictions than they are seeing now. He urged the committee to add the specific designation of Red Rock National Conservation Area into the language of the bill with the amendment and then they will be in agreement with this bill.

Senator Callister stated he spoke earlier with Mr. Busselman and he agrees the amendment should be specific as to the Red Rock National Conservation Area. He told the committee he feels this is appropriate.

Stephanie Lyte, Lobbyist, Nevada Wool Grower's Association, testified on S.B. 544. She told the committee her concerns are the same as Mr. Busselman's regarding the specific designation. She explained they would not have any objection to the bill if they had it designated as the Red Rock Conservation Area.

Joe Johnson, Sierra Club, told the committee his organization supports S.B. 544 with the amendments proposed.

Chairman O'Connell closed the hearing on S.B. 544 and opened the hearing on Assembly Bill (A.B.) 365, Assembly Bill (A.B.) 366 and Assembly Bill (A.B.) 368.

ASSEMBLY BILL 365: Substitutes civil enforcement of access to public records for criminal penalty.

ASSEMBLY BILL 366: Establishes procedures for public inspection of public records.

ASSEMBLY BILL 368: Requires charges for copies of public records not to exceed cost.

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Dennis Nielander, Senior Research Analyst, Legislative Counsel Bureau, spoke to the committee on these bills. He told the committee these bills were the result of the study of laws governing public books and records. He started by explaining A.B. 365. He told the committee this bill addresses enforcement. He 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 record 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. Mr. Nielander stated in section 3 it grants immunity for good faith disclosure or nondisclosure and as long as it is done in good faith the public employee is then immune from civil liability.

Chairman O'Connell asked in which one of these bills they should incorporate the definition of a public record.

Mr. Nielander stated the definition is in another bill which has not left the assembly, but they could amend that into A.B. 366 because this bill amends Nevada Revised Statutes (NRS) Chapter 239 which is where the definition has to go and A.B. 366 establishes a procedure for access and currently the law is void of any procedure for getting access. He stated in addition it is void of having a definition.

Mr. Nielander stated A.B. 366 is the bill which establishes procedures for either granting or denying access to records. He explained the law is currently void of any procedural mechanisms to either allow a person to make a record public or to keep it closed. He pointed out this is based in part on the Federal Freedom of Information Act, at least the fundamental concepts are based on that law and also a study which was done 10 years ago on this issue. He explained at that time the subcommittee recommended a procedure similar to this and that bill did not surface from the legislature in 1982. He told the committee this bill says an individual may request a public record in person, by telephone or by FAX machine. He further explained this bill sets forth the duties of the person who is the custodian of the record and what they must do once they have received a request. He stated subsection 2 of section 3 makes it clear that a custodian of a public record cannot release the confidential information with the public information. He explained subsection 3 of that section states they do not have to compile a summary unless it is readily available. Mr. Nielander stated subsection 4 is something that is put in because of first amendment concerns and the fact that the argument is the government should not have a right to know why an individual is requesting that information unless it is to clarify what the

information is they are after. He stated section 5 begins to specify what the custodians must do once they receive a request. He told the committee the procedural mechanism is addressed in lines 17 through 25 and they are the four things that the custodian has to do within a reasonable amount of time, but no later than 3 days after receiving the written appeal. He mentioned they could inform the individuals that unusual circumstances have delayed the request, in which case they have 15 days to comply and inform the requester they do not have the record or deny the appeal. He stated the next section defines what is unusual circumstances which will trigger that 15-day window. He pointed out subsection 3 of section 7 which is another immunity clause for the employee who permits inspection unless they have actual knowledge that the record is not a public record.

Senator Hickey interrupted the testimony by Mr. Nielander to ask the chairman for a bill draft request. He told the committee he wanted to draft a bill which would limit terms in office including federal offices down through county offices.

SENATOR HICKEY MOVED FOR COMMITTEE INTRODUCTION FOR A
BILL DRAFT REQUEST REGARDING TERM LIMITATIONS.

SENATOR LOWDEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CALLISTER VOTED NO.
SENATOR RAGGIO AND SENATOR NEVIN WERE ABSENT FOR THE
VOTE.)

* * * * *

Mr. Nielander explained A.B. 368 to the committee. He stated this bill addresses cost. He pointed out subsection 1 of section 1 provides that the fees shall not exceed the cost to the agency and that takes into account the cost of supplies and material, but not time spent by personnel. He explained this is adopted from an Idaho law which essentially reads the same as A.B. 368. He pointed out there is a formula they use to come to the right amount to charge for photocopying and he added the bottom line is they arrive at a total cost per copy. He told the committee each agency in Idaho is required to use this formula to arrive at a per copy cost.

Chairman O'Connell asked if this formula would apply to every agency and an individual could ask for a cost from any division or agency and the cost would not exceed the actual cost.

Mr. Nielander stated that is correct and the provision provides that unless free copies are required by statute. He explained if there is not some other statute that establishes a cost then it must not exceed the actual cost. He continued to explain A.B. 368 to the committee. He stated subsection 2 of the bill provides that an agency may search

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Mr. Wright stated if they lose that \$62,000 of revenue they will have to ask for more money from the county. He explained the money will have to come from somewhere and if not from copy fees it will be from the taxpayers.

Joe Melcher, Recorder, Washoe County, testified against these bills. He told the committee they should be paying for the service they get and uniformity and standardization of fees is vital to these organizations. He gave the committee some written testimony and statistics on copy fees (Exhibit K).

Ms. Beaudreau stated the Storey County Recorder, Margaret Lowther, had to leave, but wanted it on the record that she opposes these bills.

Melanie Meehan Crossley, Deputy Attorney General, Attorney General's Office, spoke in opposition of these bills. She stated she served on the interim study committee and had not planned to speak today, but felt she must make a few comments regarding adopting an amendment into these bills with the definition of public records. She told the committee what they are trying to do here is a piece of legislation that addresses a vast range of records that are both confidential and not confidential. She gave the committee some suggestions on the language for the amendment.

Mary Henderson, Lobbyist, Washoe County, stated for the record that in Washoe County for their agenda items and backup materials, if people go to the county manager's office they are provided a copy free. If they go to the clerk's office the standard procedure is to send them to the county manager's office so they are not caught up with the fees that the clerk charges for court proceedings. She stated they feel it is essential and it is the public's right to have access to this. She told the committee the only thing they would request is if they do put this into statute in terms of agendas, ordinances, backup materials that it be restricted to one free copy and some nominal fee. She explained her office is not staffed to be a copy service for attorneys and the court system within Washoe County. She feels no county in the state can absorb that type of burden. She stated it is very important to take into consideration the fact that recorder fees have not been increased for over 10 years.

Michell Bero, Lobbyist, Nevada Association of Counties (NACO), stated the previous testimony pretty well explains their position.

Nancy Howard, Lobbyist, Nevada League of Cities, spoke in opposition to these bills. She stated one of their concerns is in A.B. 366 it requires them to provide facilities for making copies and she stated many of her cities do not have these facilities. She explained some of them have a copy room which is also the mailroom and it would be expensive for them to create these facilities.

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Sam McMullen, Lobbyist, Nevada Broadcaster's Association, stated they are very strongly in favor of these bills. He told the committee the policy decision clearly put forth by this bill is should the individuals pay a fair approximation of the actual search time related to copying a particular document or should they pay a flat fee.

Ms. Engleman told the committee these bills attempt to address a myriad of problems both bringing Nevada into the 20th Century and trying to prepare Nevada for the 21st Century. She explained some of the problems heard during the interim study were from agencies who had put all of their information on a computer. She further explained if an individual came into this agency requesting some information they were told the information they needed was on the computer and it could not be accessed at that time so the individual wanting the information would have to return the next day. She emphasized individuals need to have access to information and the ability to make copies or even write down notes. She reiterated the proponents of these bills are simply trying to get the cost of copies down to actual costs, not just a simple across-the-board charge since some of the agencies may have a higher charge than others.

Ms. Henderson stated she feels the system in her agency is very simple and straight forward. She explained if they are in a situation where they must identify documents which are simple to pull and copy versus documents which are sitting in a bound volume or sitting in a computer or microfiche she feels they will get into a very difficult and cumbersome bill. She emphasized to the committee they cannot imagine the types of documents county government offices handle. She explained some of the documents are readily accessible and some are not. She told the committee the system they use now is very effective and has worked for several decades. Ms. Henderson pointed out to the committee many of the individuals who request documents do not pay taxes in the state of Nevada. She explained they are individuals who got married in Nevada or individuals in real estate transactions who live out-of-state and therefore do not pay state taxes. She stated these are user fees which have been in place for at least 20 years which help offset some of those costs, so she feels it is wrong to state the taxpayers have also paid for this service, because she feels it is also a service being used by individuals who are not taxpayers.

Senator Hickey asked if part of the storage and copying problem is due to lack of space.

Ms. Henderson stated there is an issue of the lack of space and also an issue of how the documents are stored. She explained some of the documents are stored electronically, some in filing cabinets and other documents are stored in bound volumes.

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Chairman O'Connell closed the hearing on Assembly Bill (A.B.) 365, Assembly Bill (A.B.) 366 and Assembly Bill (A.B.) 368 and opened the hearing on Senate Bill (S.B.) 536.

SENATE BILL 536: Requires certain licenses to engage in business to be granted in certain circumstances.

SENATOR NEVIN MOVED TO DO PASS S.B. 536.

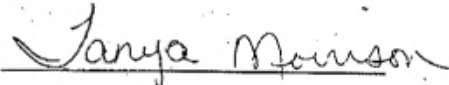
SENATOR HICKEY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO AND SENATOR CALLISTER WERE ABSENT FOR THE VOTE.)

* * * * *


There being no further business, Chairman O'Connell adjourned the hearing at 5:30 p.m.

RESPECTFULLY SUBMITTED:



Tanya Morrison,
Committee Secretary

APPROVED BY:


Senator Ann O'Connell, Chairman

DATE: _____

THE MOTION CARRIED. (SENATORS RAGGIO, HICKEY AND CALLISTER WERE ABSENT FOR THE VOTE.)

* * * * *

The next measure brought for discussion was A.B. 365.

ASSEMBLY BILL 365: Substitutes civil enforcement of access to public records for criminal penalty.
(BDR 19-393)

Ande Engleman, Lobbyist, Nevada Press Association, testified the purpose of A.B. 365 is to remove the criminal penalty for violation of the public records law and provides that court costs and attorney fees can be collected. Ms. Engleman reminded the committee there was no opposition to the measure.

SENATOR RHOADS MOVED TO DO PASS A.B. 365.

SENATOR NEVIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS RAGGIO, HICKEY AND CALLISTER WERE ABSENT FOR THE VOTE.)

* * * * *

ASSEMBLY BILL 366: Establishes procedures for public inspection of public records. (BDR 19-397)

Ms. Engleman explained there was no opposition to A.B. 366; however, there was concern with the other two public records bills. She indicated she was proposing the definition of a public record taken from A.B. 364, and an additional new section be amended into A.B. 366. The proposed new section requested by Ms. Engleman is referenced as Exhibit G.

ASSEMBLY BILL 364: Makes various changes regarding access to public books and records. (BDR 19-399)

Chairman O'Connell requested Ms. Engleman to read the proposed definition of a public record. Ms. Engleman read the definition from section 2, paragraphs (a) and (b), lines 3-14 of A.B. 364. It was explained that A.B. 364 was not likely to be passed out of the assembly.

Senator Nevin questioned if that language would open the personnel records of city, county or state employees. He expressed concern since those records were not considered confidential in what was outlined by Ms. Engleman.

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Senator Rawson moved that Assembly Bills Nos. 578, 584 be taken from the General File and placed on the General File for the next legislative day.
Remarks by Senator Rawson.
Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 103.

Bill read third time.

The following amendment was proposed by Senator Townsend:
Amendment No. 1137.

Amend section 1, page 1, line 11, by deleting "primary or".

Amend section 1, page 1, line 15, by deleting "primary or".

Amend the title of the bill, sixth line, by deleting "primary or".

Senator Townsend moved the adoption of the amendment.

Remarks by Senator Townsend.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 66.

Bill read third time.

Roll call on Assembly Bill No. 66:

YEAS—21.

NAYS—None.

Assembly Bill No. 66 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 211.

Bill read third time.

Roll call on Assembly Bill No. 211:

YEAS—21.

NAYS—None.

Assembly Bill No. 211 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 244.

Bill read third time.

Remarks by Senator James.

Roll call on Assembly Bill No. 244:

YEAS—21.

NAYS—None.

Assembly Bill No. 244 having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 365.

Bill read third time.

Remarks by Senators Brown and O'Connell.

Roll call on Assembly Bill No. 365:

YEAS—21.

NAYS—None.

Assembly Bill No. 365 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 435.

Bill read third time.

Remarks by Senator Glomb.

Senator Glomb moved that Assembly Bill No. 435 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senators Glomb and Neal.

Motion carried.

Assembly Bill No. 535.

Bill read third time.

Remarks by Senators Coffin, Rhoads and Adler.

Roll call on Assembly Bill No. 535:

YEAS—20.

NAYS—Coffin.

Assembly Bill No. 535 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 589.

Bill read third time.

Roll call on Assembly Bill No. 589:

YEAS—21.

NAYS—None.

Assembly Bill No. 589 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 643.

Bill read third time.

Remarks by Senators Raggio, O'Donnell and Rawson.

Roll call on Assembly Bill No. 643:

YEAS—19.

NAYS—McGinness, O'Connell—2.

Assembly Bill No. 643 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 644.

Bill read third time.

Roll call on Assembly Bill No. 644:

YEAS—21.

NAYS—None.

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Assembly Bill No. 365—Committee on Commerce

CHAPTER 393

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.

[Approved July 2, 1993]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 239 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

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 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.*

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.*

Sec. 4. NRS 239.010 is hereby amended to read as follows:

239.010 [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] *must* be open at all times during office hours to inspection by any person, and the [same] *books and records* 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] *books and records* 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.]

Sec. 5. NRS 122.040 is hereby amended to read as follows:

122.040 1. Before persons may be joined in marriage, a license must be obtained for that purpose from the county clerk of any county in the state. Except as otherwise provided in this subsection, the license must be issued at the county seat of that county. The board of county commissioners may, at the request of the county clerk, designate one branch office of the county clerk at which marriage licenses may be issued, if the designated branch

office is established in a county office building which is located outside of the county seat.

2. Before issuing a marriage license, the county clerk may require evidence that the applicant for the license is of age. The county clerk shall accept a statement under oath by the applicant and the applicant's parent, if available, that the applicant is of age.

3. The county clerk issuing the license shall require the applicant to answer under oath each of the questions contained in the form of license, and, if the applicant cannot answer positively any questions with reference to the other person named in the license, the clerk shall require both persons named in the license to appear before him and to answer, under oath, the questions contained in the form of license. If any of the information required is unknown to the person responding to the question, he must state that the answer is unknown.

4. If any of the persons intending to marry is under age and has not been previously married, and if the authorization of a district court is not required, the clerk shall issue the license if the consent of the parent or guardian is:

- (a) Personally given before the clerk;
- (b) Certified under the hand of the parent or guardian, attested by two witnesses, one of whom must appear before the clerk and make oath that he saw the parent or guardian subscribe his name to the annexed certificate, or heard him or her acknowledge it; or
- (c) In writing, subscribed to and acknowledged before a person authorized by law to administer oaths. A facsimile of the acknowledged writing must be accepted if the original is not available.

5. If the authorization of a district court is required, the county clerk shall issue the license if that authorization is given to him in writing.

6. All records pertaining to marriage licenses are public records and open to inspection pursuant to the provisions of NRS 239.010. [Any county clerk who refuses to permit an inspection is guilty of a misdemeanor.]

7. A marriage license issued on or after July 1, 1987, expires 1 year after its date of issuance.

Sec. 6. Section 5 of this act becomes effective at 12:01 a.m. on October 1, 1993.

EXHIBIT C

LVMPD's PRIVILEGE LOG

RE: The Center for Investigative Reporting/Tupac Case File

BINDER 1/Case No. A773883

Privilege Key:

1. Confidential Medical/Personal Information
2. Criminal History Information pursuant to NRS 179A, *et seq.*
3. Law Enforcement Investigative Information
4. Law Enforcement Techniques/Tactics
5. Evidence
6. Executive Privilege
7. Confidential Informant
8. Order of the Court
9. Other Agency Records

Document Type	Information Contained	Information Redacted	Privilege Asserted
TAB 1 – Crime Reports			
Incident Report (000002-000005)	Summary of Incident	Personal information of Victims Redacted	1
TAB 2 – Crime Scene Investigation and all officer's reports			
Case Summary Event 960907-2063 (000008-000010)	Summary of Case as of 10/2000	Details of evidence at the crime scene; individual names and identities	1;3
Officer's report (Hospital Response) (000016-000018)	Description of observations/investigative acts re bullet fragments	Personal information and details of evidence obtained	1;3
Officer's report by B. Becker (2838)(000019-000030)	Investigation Summary Update	Personal information and details of evidence obtained	1; 3;
Officer's report by B. Becker (2838)(000031-000036)	Investigation Summary Update	Personal information; details of investigative information; information provided by other governmental agency; information provided by confidential	1; 3; 7; 9

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		informants	
Officer's Report (Siefker 3057) (000037-000041)	Incident regarding individual at UMC	Personal information	1
Plate Log (000044-000096)	Plates and names of visitors to Knight's residence	Names and plates	1
Unit Log (000097-000105)	List of officers on duty working special events on 9/7/96	Social Security Numbers	1
TAB 3 – Deputy Coroner's Report			
Autopsy Report(000106-000114)	Postmortem examination	Confidential Medical/Personal Information	1; 9
Coroner Investigator Report(000115)	Summary of information obtained during investigation	Confidential Medical/Personal Information	1; 9
Consultation Report (UMC) (000116)	Summary of medical examination	Confidential Medical/Personal Information	1; 9
History and Physical Examination (UMC)(000117-000118)	Summary of patient history and physical examination	Confidential Medical/Personal Information	1; 9
Progress Notes(000119)	Physician Notes	Confidential Medical/Personal Information	1; 9
History and Physical Examination(000120-000121)	Summary of medical examination	Confidential Medical/Personal Information	1; 9
TAB 4 – Victim Information			
Lesane Crooks (000122-000142)	Criminal History Information and Photograph	Personal information/ Criminal History information	1; 2;
(Crooks) UMC Patient Information Form (000143)	Patient Information	Personal Information	1;9
Marion Knight(000158-000166)	Criminal History/Record Information and Photograph	Personal information/ Criminal History information	1; 2; 3
Records regarding 1987 Crime (000167-000205)	Documents related to 1987 charges against Knight for attempted murder with a deadly weapon and grand larceny auto	Personal information	1

Records regarding 1990 crime (000206-000248)	Documents related to 1990 charges against Knight for batter with use of a deadly weapon	Personal Information	1
Incident Report (000249-000253)	Incident Summary of Tupac Murder	Personal Information	1
Incident Report (000254-000255)	Incident Report regarding Marion Knight in 2006	Personal Information	1
Transcript of Knight's Voluntary Statement (000256-000286)	Criminal Investigation interview	Personal Information and Investigative Information	1; 3
Criminal History Record (000287-000288)	Criminal history	Personal Information and Criminal History	1;2
Custodian of Records Certificate (UMC) (000289)	Information regarding Knight	Personal Information provided by UMC	1;9
Grand Jury Subpoena (000290)	Grand Jury Subpoena to UMC re Knight	Personal information	1; 9
UMC Medical Records(000291-000339)	Patient records for Knight	Personal information	1;9
Property Ownership Record (000340-000341)	Property database report re Knight	Personal Information	1;9

TAB 5 – Suspect Information/Photographs

Criminal History information (000342-000428)	Criminal History Database Records	Personal Information and Criminal history	1;2
Transcript of interview of Dwayne Davis on 09/09/09 (000429-000571)	Testimony by Dwayne Davis		3

TAB 8 – Voluntary Statements

Voluntary Statement of Angel Zavala (000572-000573)	Zavala's statement regarding incident	Personal information	1
Voluntary Statement of Azikiwo Burns (000574-000575)	Burns' statement regarding incident	Personal information	1
Voluntary Statement of Brian Beard (000576-000577)	Written Statement of Brian Beard	Personal information	1
Criminal History Record (000578-000592; 000594-000610)	Criminal history information	Criminal History and personal information	1;2

Voluntary Statement of Davion Brooks (000611-000641)	Transcript of Davion Brooks' voluntary statement regarding incident	Personal information and names of witnesses/suspects in relation to the investigation	1;3
Voluntary Statement of David Wietersen(000642-000643)	Statement of David Wietersen regarding incident	Personal information	1
Voluntary Statement of Barbara Davis (000644-000653)	Transcript of Davis' verbal statement regarding incident	Personal information	1
Criminal History Records (000654-000655; 000670)	Criminal History information	Criminal History and personal information	1;2
Voluntary Statement of Frank Alexander (000656-000668)	Transcript of Alexander's verbal statement regarding incident	Personal information and investigation information	1; 3
Voluntary Statement of Frank Alexander (000669)	Alexander's written statement regarding incident	Personal information	1
Voluntary Statement of Frederick Etor (000671-000672)	Etor's written statement regarding incident	Personal information	1
Voluntary Statement of George Valkenbury (000673-000674)	Written statement by Valkenbury regarding incident	Personal information	1
Voluntary Statement of Gregory Johnson (000675-000703)	Transcript of Johnson's statement regarding information he obtained in jail	Personal information and investigative information	1; 3
Voluntary Statement of Katari Cox (000704-000715)	Transcript of Katari Cox's statement regarding incident	Personal information	1
Voluntary Statement of Kevin Jackson (000716-000717)	Written statement of Jackson regarding incident	Personal information	1
Voluntary Statement of Kevyn Woods (000718-000719)	Woods written statement regarding incident	Personal information	1
Criminal History Record (000720-000736)	Criminal History information	Criminal history and personal information	2
Voluntary Statement of Leonard Jefferson	Jefferson's written statement regarding incident	Personal information	1

(000737-000738)			
Voluntary Statement of Malcolm Greenridge (000739-000749; 000764-000773)	Transcript of Greenridge's statement regarding incident	Personal information	1
Voluntary Statement of Malcolm Greenridge (000750)	Written statement by Greenridge regarding incident	Personal information	1
Criminal History Record (000751-000763)	Criminal History information	Criminal History and personal information	1;3
Voluntary Statement of investigative lead (000774-000818)	Transcript of interview	Investigative information on lead	3
Voluntary Statement of Mike Finnell (000819-000820)	Written statement by Finnell regarding incident	Personal information	1
Voluntary Statement of Stanley Hughey (000821-000822)			
Voluntary Statement of Thomas Dennison (000823-000824)	Written statement by Dennison regarding incident	Personal information	1
Voluntary Statement of Trevon Lane (000825-000826)	Written statement by Lane regarding incident	Personal information	1
Criminal History Record (000827-000829)	Criminal History Information	Criminal History and personal information	1; 2
Letter (000830-000831)	Letter to Tray from Keith	Identification of individuals and phone numbers	1
Voluntary Statement of Tzegai Hinson (000832-000833)	Written statement by Hinson regarding incident	Personal information	1
Criminal History Record (000834-000842)	Criminal History Information	Criminal History and personal information	1; 2
Voluntary Statement of William Heidmeyer (000843-000844)	Written statement of Heidmeyer regarding incident	Personal information	1
Voluntary Statement of Yafeu Fula (000845-000853)	Transcript of statement of Yafeu Fula	Personal Information	1
Voluntary Statement of	Written statement of Yafeu	Personal	1

Yafeu Fula (000854)	Fula regarding incident	information	
TAB 9 – Property Reports			
Property Report regarding MGM video (000855-000859)	Property Return Receipt of MGM Video	MGM video is evidence and maintained in the evidence fault	5
Property Reports (000860-000863)	Property Reports re Tupac from UMC	Personal Information	1
Property Reports (000864-000867)	Property Reports re Tupac and crime scene at Flamingo/Koval	Information of evidence obtained from the scene	3; 5
Property Reports (000868-000874)	Property Reports re Tupac and crime scene at Flamingo/Arville	Information of evidence obtained regarding the investigation	3; 5
LAPD Contacts (000875)	LAPD contact information	Information regarding other agency	9
Property Report and ATF Details(000876-000880)	Property report regarding gun found in Compton and associated ATF details	Information provided by other agency	9
TAB 10 – Crime Scene Reports			
Crime Scene Report (000881-000882)	Information regarding property obtained at the crime scene	Evidence related to the investigation	3;5
Evidence Impound Report (000883-000886)	Summary of evidence obtained at the crime scene	Evidence related to the investigation	3; 5
Crime Scene Report (000887)	Information regarding recovered stolen vehicle	Evidence related to the investigation; personal information	3; 5
Evidence Impound Report (000888-000890)	Summary of evidence obtained regarding recovered stolen motor vehicle and insurance claim	Evidence related to the investigation; personal information	1; 3; 5
Autopsy Evidence form (000891-000892)	Summary of marks on Tupac's deceased body	Personal information	3; 5
List Report (000894-000897)	List of evidence obtained in relation to investigation	Evidence related to the investigation	3; 5
TAB 11 – Forensic Lab Requests			
Forensics Lab request (000901)	Lab request to put 911 calls, radio traffic and secret	Personal information	1

	witness calls on discs		
Forensic Lab Examination Report (000908-000909)	Lab Report regarding bullet fragments and gun used in shooting	Evidence related to the investigation	3; 5
Forensic Lab Examination Report (000910-000911)	Lab Report regarding bullet fragments	Evidence related to the investigation	3; 5
Supplemental Forensic Lab Examination Report (000912-000913)	Lab Report regarding bullets and firearms relative to shooting	Evidence related to the investigation	3; 5
Forensic Lab Examination Report (000914-000915)	Lab Report regarding bullets and firearms relative to shooting	Evidence related to the investigation	3; 5
Forensic Lab Request (000916)	Lab request to test gun against evidence	Evidence related to the investigation	3; 5
Disposition Orders (000917-000918)	Return of evidence	Evidence related to investigation	3; 5
TAB 12 – Grand Jury Subpoenas			
Grand Jury Subpoena for MGM video (000920)	Grand Jury Subpoena for MGM video	Grand Jury Supoena is not an LVMPD record	9

LVMPD's PRIVILEGE LOG

RE: The Center for Investigative Reporting/Tupac Case File

BINDER 2/Case No. A773883

Privilege Key:

1. Confidential Medical/Personal Information
2. Criminal History Information pursuant to NRS 179A, *et seq.*
3. Law Enforcement Investigative Information
4. Law Enforcement Techniques/Tactics
5. Evidence
6. Executive Privilege
7. Confidential Informant
8. Order of the Court
9. Other Agency Records

Document Type	Information Contained	Information Withheld	Privilege Asserted
TAB 14 – Memos/Correspondence			
Memorandum (000923-000931)	Reports and Memorandum from U.S. Dept. of Justice regarding investigation	Investigative information provided by another agency	3;9
Memorandum (000933-000935)	Memorandum from LA Police Department regarding investigation marked Confidential	Investigative information provided by another agency	3;9
Memorandum(000939-000941)	Memorandum from LA Sheriff's Department regarding Tupac investigation (requested to remain confidential)	Investigative information provided by another agency	3;9
Correspondence (000942-000958)	Letter regarding additional evidence and potential interview	Information of additional evidence and identity of suspects	3
TAB 15 – Vehicle Impounds			
Vehicle Impound Report (000959-000962)	Information regarding impounded BMW	VIN number; personal information; and DMV reports	1; 9
Fax from DMV (000964-1015)	Miscellaneous License Plate and Registration information	Personal Information and DMV reports	1; 9

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TAB 19 – Secret Witness Information			
America's Most Wanted (001333-001492)	Information from confidential/anonymous sources	Investigative/ personal information provided by informants; criminal history information	1; 3; 7
Unsolved Mysteries Reports (001493-001726)	Information from confidential/anonymous sources	Investigative/ personal information provided by informants; criminal history information	1; 3; 7
WeTip Crime Reports (001727-001736)	Information from confidential/anonymous sources	Investigative/ personal information provided by informants	1;3;7

LVMPD's PRIVILEGE LOG

RE: The Center for Investigative Reporting/Tupac Case File

BINDER 3/Case No. A773883

Privilege Key:

1. Confidential Medical/Personal Information
2. Criminal History Information pursuant to NRS 179A, *et seq.*
3. Law Enforcement Investigative Information
4. Law Enforcement Techniques/Tactics
5. Evidence
6. Executive Privilege
7. Confidential Informant
8. Order of the Court
9. Other Agency Records

Document Type	Information Contained	Information Withheld	Privilege Asserted
TAB 19 – Secret Witness Information			
Misc. Letters (001737-001829; 001833-001859; 001871-001884)	Letters from individuals to LVMPD regarding investigation	Personal information	1
Secret Witness Intake Sheet (001831-001832)	Information obtained from secret witness	Personal information	1
Email to LVMPD (001860-001870)	Email from Russell Poole regarding Tupac investigation.	Personal information; investigative information	1;3
LVMPD Memos regarding secret witnesses (001895-001913)	Information obtained by secret witnesses	Personal information; investigative information	1;3
TAB 20 – Related Crimes			
Fax from California DOC (001916-001918)	Information related to Tupac investigation provided by California Dept. of Corrections	Investigative information provided by another agency	3;9
Fax from County of Contra Costa Office of the Sheriff (1921-001924)	Police report regarding information on Tupac investigation	Investigative information provided by another agency	3;9
Fax from EAU Claire Police (001927-001935)	Police report regarding information on Tupac	Investigative information	3;9

	investigation	provided by another agency	
Fax from Hercules Police Department (001938-001940)	Memorandum regarding phone call related to Tupac investigation	Investigative information provided by another agency	9
Fax from Memphis Police Department (001943)	Memorandum regarding confession to Tupac murder	Investigative information provided by another agency	9
Fax from Michigan Department of Corrections(001944-001954)	Major misconduct hearing report regarding information on Tupac murder	Investigative information provided by another agency	9
Fax from Orange Police Department (001957-001959)	Incident Report regarding Yafeu Fula	Investigative information provided by another agency	9
Letter from Compton Police Department (001962-002175)	Various information including copies of reports and documentation regarding Tupac investigation; Confidential Operations Plan	Investigative information provided by another agency	3; 9
Corona Police Department Incident report (002176-002181)	Incident report regarding residential burglary	Investigative information provided by another agency	9
Fax from FBI (002184-002248)	Information provided by source regarding Tupac murder	Investigative information provided by another agency	9
Memorandum from LA county Metropolitan Transit (002251-002252)	Incident report involving confession of Tupac murder	Investigative information provided by another agency	9
Records from LAPD (002253-002360)	Various incident reports and police reports involving Tupac investigation	Investigative information provided by another agency	9
Records from Long Beach PD (002361-002370)	Incident report regarding suspect related to Tupac investigation	Investigative information provided by another agency	9
Records from NYPD (002371-002404)	Criminal History Information	Investigative information provided by another	2; 9

		agency; Criminal History information	
Communications with the South Yorkshire, UK Police Department (002405-002408)	Letters regarding harassment issues re black American musicians	Personal information	1
Records from St. Louis Co. PD (002409-002410)	Weapons report re Glcok 40 caliber gun	Investigative information provided by another agency	9
Fax from Teaneck, NJ PD (002411-002433)	Case Report	Investigative information provided by another agency	9
Record from U.S. Postal Inspection (002434-002436)	Letter admitting to killing Tupac	Investigative information provided by another agency	9

LVMPD's PRIVILEGE LOG

RE: The Center for Investigative Reporting/Tupac Case File

BINDER 4/Case No. A773883

Privilege Key:

1. Confidential Medical/Personal Information
2. Criminal History Information pursuant to NRS 179A, *et seq.*
3. Law Enforcement Investigative Information
4. Law Enforcement Techniques/Tactics
5. Evidence
6. Executive Privilege
7. Confidential Informant
8. Order of the Court
9. Other Agency Records

Document Type	Information Contained	Information Withheld	Privilege Asserted
TAB 21 – Telephone information			
Excalibur Room Telephone Calls (002437-002439)	Telephone logs from hotel room provided by Excalibur	Telephone logs	1; 3; 5
Luxor Room telephone calls (002440-002591)	Telephone logs of various rooms provided by Luxor	Telephone logs	1; 3; 5
Monte Carlo Invoice (002597-002603)	Invoice regarding stay provided by Monte Carlo	Hotel invoice	1;3; 5
Sprint Telephone Record Applications (002604-002622)	Letter, Subpoena, and Application for telephone records	Telephone numbers; personal information of suspects; applications ; and subpoena for order for trap and trace device and pen register	1;8
TAB 23 – Crime Scene and Autopsy Photographs			
CDs (002623-002624)	Photographs of the crime scene and autopsy of Tupac Shakur	Photos of crime and scene and autopsy by Coroner's Officer	1; 3; 5; 9
Crime Scene Photos (002625-002631)	Photographs of the crime scene	Photos of crime and scene	3; 5
TAB 24 – Photos/Physical line-ups			
Fax from LA Sheriff's	Sketches of suspects	Sketches	9

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Department (002632-002634)			
Photo line-ups (002635-002662)	Photographs of individuals and line up records with names	Photographs and names of individuals	1; 3

LVMPD's PRIVILEGE LOG

RE: The Center for Investigative Reporting/Tupac Case File

BINDER 5/Case No. A773883

Privilege Key:

1. Confidential Medical/Personal Information
2. Criminal History Information pursuant to NRS 179A, *et seq.*
3. Law Enforcement Investigative Information
4. Law Enforcement Techniques/Tactics
5. Evidence
6. Executive Privilege
7. Confidential Informant
8. Order of the Court
9. Other Agency Records

Document Type	Information Contained	Information Withheld	Privilege Asserted
TAB 25 – Audio Tapes¹			
Interview with Marion Knight			
Interview with Frank Alexander			
Interview with K. Cox			
Interview with Malcolm Greenridge			
Interview with Yafeu Fula			
Interview with Barbara Davis			
Interview with Gregory Johnson			
Interview with Davion Brooks			
TAB 26 – Medical Documents			
Fax between LVMPD and Sunrise Hospital (002663-002665)	Correspondence between LVMPD and Sunrise hospital for Orlando Anderson's medical records	Personal information	1

¹ The interviews are recorded on mini cassettes and have not been transferred to another medium. However, the interviews have been transcribed and located in Binder 1.



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NEVADA ASSOCIATION OF COUNTIES

308 N. CURRY ST., SUITE 205
CARSON CITY, NV 89703
(702) 883-7863

April 12, 1993

To: Val Garner, Chairman
Assembly Government Affairs
and Members of the Committee

Re: Assembly Bills 364 - 368

Dear Chairman Garner,

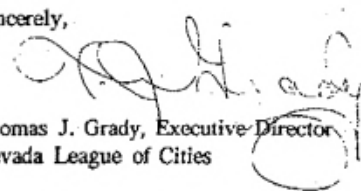
During the interim both the Nevada League of Cities and the Nevada Association of Counties participated in the discussions of the ACR 90 study of public records. Both memberships agreed for the need to clarify certain issues regarding public records. Following the introduction of Assembly Bills 364 - 368, our respective memberships reviewed these proposals and would like to provide you with our comments and suggested amendments to clarify our areas of concern.

Some of our major concerns regard proposed changes to confidential records which could be in conflict with existing federal statutes without further clarification. Many documents including sexual discrimination, disabilities and affirmative action records need to remain confidential to assure that we do not conflict with prior court decisions and state regulations.

We ask that you also consider the fiscal impact of implementing certain aspects of these proposals. It is imperative that local governments retain the right to recover costs associated with providing these services to the public. Keeping in mind that some of the searches and compilation of public records can be extremely time consuming, we are concerned that unrealistic time frames could add significantly to the cost of providing this service as staffing levels may have to be increased or additional overtime accrued to ensure that the agencies will be in compliance with any new statutes.

Attached is a copy of these and other areas of concern for which we would like to offer amended language for your consideration.

Sincerely,


Thomas J. Grady, Executive Director
Nevada League of Cities

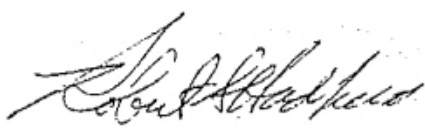

Robert S. Hadfield, Executive Director
Nevada Association of Counties

EXHIBIT F

1028

25

PROPOSED AMENDMENTS
Rev 4/9/93

A.B. 365

Section 2 (pg. 1 line 7)

Replace sentence beginning with "if the requester prevails,..." with the sentence "The court may allow the prevailing party to recover court fees and reasonable attorney fees from the losing party."

This section (1) clarifies costs, (2) gives the court discretion in the awarding of costs and (3) allows the prevailing party, whether governmental or private, the opportunity to recover fees.

Section 3 (pg. 1 line 10)

Replace Section 3 with "A public agency, public officer, or employee is immune from liability for damages, either to the requester or the person whom the information concerns, if the public officer or employee acts in good faith in disclosing or refusing to disclose information."

This clause extends to the public agency the immunity to liability if the employee acts in good faith.

TESTIMONY BEFORE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS
AB 364, AB 365, AB 366

OFFICE OF THE ATTORNEY GENERAL

BROOKE NIELSEN, ASSISTANT ATTORNEY GENERAL

APRIL 13, 1993, 8:00 A.M.

A clear definition of what is a public record and clear guidance regarding access to records is welcomed by everyone who must deal with public records and the public who is entitled to have access.

While generally in support of this monumental effort to reform our public records law, I have concerns regarding eight areas in these bills and I have recommendations to amend or delete them.

Six items of concern are in today's three bills and two are in AB 368 to be heard tomorrow.

AB 364

FIRST: AB 364 Section 3, provides that records that are confidential by law are still subject to being opened if a judge can be convinced that public policy justifies opening the particular record. It is a novel approach for a legislature to make all confidential records potentially open by letting a judge decide if there is justification to do so. The legislature determined the public policy when it made the record confidential and the public has a right to rely on that.

This section will generate unnecessary litigation costs because the government will have to defend every attempt to open a confidential record, unless appropriate waivers of confidentiality can be obtained. Inmates with nothing else to do will have a field day with this section.

SECOND: It is of great concern that the words "state regulations" are omitted in Section 4(2)(a). This section restricts access to records that are presently made confidential by federal statute, federal regulation and state statute, but opens information that is currently made confidential by state regulation.

There is a companion resolution, ACR 29, to be considered in the Assembly Committee on Elections and Procedures April 20, which will authorize an interim study regarding exemptions to disclosure in public records to determine if they should be repealed, amended or added. You should not toss away regulations that restrict access until you have the benefit of ACR 29.

I recommend that Section 4(2)(a) be amended by adding "state regulations of this state or political subdivision" to the list.

THIRD: Section 4(2)(b), while appearing to restrict access to medical records, does so only to the extent that the information would reveal the person's identity. All other information in the record is public. Since AB 366 Section 3 requires that the presence of confidential information in a record is not a reason to withhold the public information, the medical record would have to be edited to eliminate identity information, a very labor intensive task. These are records that should be confidential, I urged you to delete the words at the end of the paragraph which state "but only to the extent that the information would reveal a persons's identity."

FOURTH: Section 4(2)(c) addresses records customarily in the personnel files. This section makes very personal information including home addresses, medical information and evaluations in a personnel file open to anyone if it is related to hiring, retention, promotion, demotion or termination of employment. Opening personnel records may subject employees to harassment or threats, and undermine the rehabilitative purpose of progressive discipline.

There are others in attendance today who will express in detail the concerns that we all share about having personnel files open to the world.

FIFTH: Section 4(2)(g) restricts access to an open investigation file but does not restrict access to that file once the investigation is closed. There are very strong reasons to keep an investigation file confidential even after the matter is closed. An investigation file contains a wide variety of information

which may be rumor, innuendo, untrue or unverified. In some cases release of information garnered in an investigation will risk lives or ruin reputations.

In addition, making an investigation file public once the investigation is closed will have a very detrimental effect on the ability of law enforcement or regulatory bodies to gather information. The Chief investigator for the Attorney General's office advised me that people talk freely to investigators only if they are assured that what they say will remain confidential. You must consider that governmental investigations include complaints against licensees and investigations preparatory to licensure in addition to criminal investigation. It is sobering to think that every inmate in our system will have access to investigation files simply because the investigation is closed.

Though the identity of a confidential informant and investigation techniques are protected elsewhere, there is cause for concern if any information in an investigation file becomes public information.

Subsection (g) must be amended to delete "unless the investigation has been closed."

SIXTH: Section 4(2)(i) & (j) of AB 364 appears to protect information prepared in anticipation of and during lawsuit to the extent it is privileged or not discoverable under the discovery rules. However, in order for the protection for information prepared in anticipation of a lawsuit to be applicable, the lawsuit must be filed. Prior to the lawsuit, access to information prepared in anticipation is not restricted by this language. This gives a great unfair advantage to a plaintiff who is anticipating suing the state or local government. While attorney-client privilege may protect some information, that privilege does not apply to all materials.

I recommend that Section 4(2)(i) be amended by deleting lines 40 and 41, and making line 42 be subsection (i).

Subsection (i) would then read: "It has been filed with a court and contains material which was prepared in anticipation of or during litigation."

Subsection (j) would remain the same.

Next, I would direct your attention to AB 365.

This bill sets forth procedures for appeal of the denial of access to a public record directly to district court. The attorney general opposes the provision which entitles the prevailing requester, but not the prevailing party, to recover attorney fees and costs. It does not permit the agency to recover fees if the agency was correct in the denial of access. Rather than mandatory fees for the requester, it is recommended that AB 365 be amended to provide that "the prevailing party may recover his court costs and reasonable attorney fees in the proceeding at the discretion of the court. The judge can decide on the facts of the case whether attorney fees and costs are appropriate.

AB 366

AB 366 Section 6 sets out procedure for requesting public records and statutory time limits to either deny the request or to fulfill it. While three working days may be sufficient time to produce the requested information or determine whether it is restricted, 13 working days may not be enough time to copy a large volume of records for an agency that does not have adequate copy equipment and enough staff to fill the request and still carry on the tasks of the agency. This is especially problematic if the large volume contains commingled confidential and public information. Sufficient time must be given to do the job with the resources available.

I recommend that, under unusual circumstance at least thirty working days be allowed.

One other correction is needed related to "unusual circumstances." Section 6(4) should be amended to state "unusual circumstances includes but is not limited to"

Section 6(3).

This section is redundant. Section 6(1) already provides that the book or record may be inspected unless the request has been denied.

This concludes my testimony. I am happy to answer any questions.

Press Association; William Isaef, Chief Deputy City Attorney, City of Reno; Carole Vilardo, Nevada Taxpayers Association; Nancy Carr, Lyon County Recorder; Joe Melcher, Washoe County Recorder; Margi Grein, Director of Finance, Nevada State Contractors Board; Melanie Crossley, Deputy Attorney General, Office of the Attorney General; Arlene Rablovsky, Director, Police Records Section, Las Vegas Metropolitan Police Department; Wally Lauzan, Assistant Chief of Administrative Services, Department of Motor Vehicles; Darcy Coss, Deputy Attorney General, Department of Motor Vehicles; Lucille Lusk, Nevada Coalition of Conservative Citizens; Anita LaRuy, City of North Las Vegas; and Eric Dabney, Director of Library, Parks & Recreation, City of North Las Vegas.

ASSEMBLY BILL 364 - Makes various changes regarding access to public books and records.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

Chairman Garner opened the hearings on AB 364, AB 365 and AB 366 as there were those who had not had the opportunity to testify on April 13, 1993. Mr. Garner called the testifiers in order as they appeared on Exhibit B.

Jerry Zadny, Administrator, Division of Mental Health and Mental Retardation, was unable to appear but, for the record, submitted prepared testimony (Exhibit C) in opposition to AB 364.

Guy Rocha, Administrator, State Archives and Records, in opposition to AB 364, AB 365 and AB 366, read his opposing testimony (Exhibit D) into the record.

Pat Coward, Economic Development Authority of Western Nevada (EDAWN) and Nevada Development Authority (NDA), explained the purpose and mission of the development authorities, how competitive it had become with other states to draw new business, and how crucial it was to keep the confidentiality of information when dealing with potential businesses moving into the area. He said, "This is something that has a lot of the people concerned, maintaining that confidentiality....A business looking at making a move requires as much as two years work

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before anything materializes and a firm decision is made." He gave the committee an example of a business which ultimately did not choose the Reno area due to information which had been leaked. He recognized the need to maintain open records for the public in many areas but not necessarily when dealing with potential clients coming into the area. Mr. Coward then proposed an amendment to AB 364 which would provide client confidentiality (Exhibit E).

Mrs. Lambert asked if the boards of EDAWN and NDA were covered by the open meeting law, the answer was no.

Mr. Garner again asked the audience to provide written amendments to the chair.

O.C. Lee, Nevada Conference of Police and Sheriffs, and representing Mark Balin, Professional Fire Fighters of Nevada, said, "We are opposed to the personnel section of the records in AB 364. That does not mean that we have any opinion of any other portion of the bills before you." Mr. Lee referenced the yearly physical examinations, required by law of all police officers and fire fighters, which went into the personnel records. He suggested health records would immediately become public information, therefore, he strongly opposed that section of the bill.

Mrs. Augustine asked if it was true police officers did not have home addresses and telephone numbers published for their own protection, Mr. Lee agreed.

Mike Johaneson, Service Employees International Union, said he too was speaking against the personnel section of AB 364. He continued, "Presently there is quite a body of law regarding the differences, the arguments between privacy and public record, and access to public files, personnel files, that have come about through the Freedom of Information Act. What this bill does is it goes far beyond the existing law and what is accessible by the media and the public record. There is a lot of stuff in personnel files that are very private and would create significant problems for a number of employees. We've gone through this with other bills and if the committee would like, I will provide some court background, some case law on this thing from the Freedom of Information Act. But I don't see anything this bill does but replace existing federal law and go beyond the Freedom of Information Act to allow media access to personnel files. Accordingly, we strongly oppose that section of the law. The other thing I would like to suggest, is if you are going to entertain amendments excluding certain employees

from this bill as was discussed yesterday, I would hope you would also add county and state employees."

Donald Klasic, General Counsel, University of Nevada, testified he too had served on the advisory committee. Additionally, he said the Board of Regents had authorized him to inform the committee the Board supported all five bills with two exceptions, both in AB 364. He identified one objection as being on Page 3, lines 24-29 saying the committee had heard enough testimony, specifically Mr. Dyer's, stating why the records ought to be closed and presented the committee with the document which had been generated out of the deliberations of the advisory committee (Exhibit F). He then pointed out the language which the University proposed as amendments and also the original language the advisory committee had recommended. The second objection was Section 3 of AB 364, the reverse balancing test. Again, he referenced previous testimony, specifically that of Mr. Isaef, and detailed how it would work. In further testimony, Mr. Klasic explained his understanding of the Bradshaw case, the correct rendering of the reverse balancing test, his desire to avoid litigation over what constituted public records, how criminal investigations worked, and mentioned a possible fiscal note.

Mrs. Augustine queried the date shown on the bill versus the date shown on the proposed amendment. Mr. Klasic explained the intent had not been to postpone the legislation to 1995, but to retain the 1994 date. The error had occurred in the drafting process.

Mr. Hettrick commented, "You just said files could be open on an investigation if it wasn't going to harm anyone." He then asked, "Is that the actual language? The question which was raised yesterday, as I recall, is we could have an investigative file with all kinds of allegations, and etc., and that releasing that file could harm people. If in fact the judge's ruling in Bradshaw says you can't release information that would be harmful, is that going to protect those kinds of files."

Mr. Klasic responded, "It might not. I agree that is going to be a problem." He described how the Bradshaw case applied and said, "The courts don't get down to the nitty gritty about the raw data which may actually contain defamatory and false information, and there is a true problem there."

Exhibit G was submitted to the committee secretary on behalf of James Penrose. It contained the amendments as suggested in the testimony of Mike Dyer on April 13, 1993.

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Evan Wallach, General Counsel, Nevada Press Association, was given the opportunity to respond to the testimony of those in opposition to AB 364, AB 365 and AB 366.

Mrs. Lambert, in an effort to understand the balancing test, stated an example. Mr. Wallach replied the employee, as stated in the example, was exempt if the information was released in good faith. Mr. Wallach then gave his own examples of safety valves.

Mrs. Augustine wanted clarification on the statement "request for documents were always denied." Mr. Wallach clarified, "When it comes to me as counsel for the Press Association, and I get into it, my uniform experience has been when dealing with government officials applying the balancing test, they have always applied the balancing test against my clients. And that is true, every single time."

Ande Engleman, Nevada Press Association, added, "Mr. Wallach is not called in on an instance where the press has no problem obtaining documents. He is only called when a problem has evolved."

The hearings on AB 364, AB 365 and AB 366, were closed with no action taken.

ASSEMBLY BILL 367 - Defines "public record" to accommodate various forms in which records are maintained.

ASSEMBLY BILL 368 - Requires charges for copies of public records not to exceed cost.

Mr. Wallach explained the purpose of AB 367 and AB 368. He agreed with Mr. Isaef's testimony of April 13, 1993, saying there definitely was a conflict with the definition of "governmental entity" in AB 367 which would have to be resolved. He said he preferred the broader of the two definitions. As for AB 368, he said it was the intent of the subcommittee to balance the cost of providing the service with the need to make the cost reasonable to the public, detailing the compromise which was reached.

Ande Engleman added she believed AB 368 set up reasonable costs for copies and hoped the copies would not run more than 25 cents per copy. She pointed out the Secretary of State's budget was largely supported by copying fees and, therefore, urged deleting

APRIL 14, 1993

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD, MY NAME IS GUY ROCHA, THE STATE ARCHIVES AND RECORDS ADMINISTRATOR. I AM REPRESENTING THE STATE LIBRARY AND ARCHIVES AND SERVED AS A MEMBER OF THE EXECUTIVE ADVISORY COMMITTEE. I WAS ALSO CLOSELY ASSOCIATED WITH THE INTERIM LEGISLATIVE STUDY IN 1982 STUDYING PUBLIC BOOKS AND RECORDS, WHICH AS ANDE ENGLEMAN POINTED OUT YESTERDAY, DID NOT RESULT IN UPDATING OUR BADLY OUTDATED PUBLIC RECORDS LAW.

NEVADA IS AMONG THE LAST STATES IN THE NATION TO TRY AND COMPREHENSIVELY ADDRESS THIS COMPLEX AND CONTROVERSIAL PUBLIC POLICY ISSUE WITH ALL ITS MYRIAD FISCAL AND TECHNOLOGICAL RAMIFICATIONS. I HOPE THE EXTENSIVE TESTIMONY WE HEARD YESTERDAY, AND I AM SURE WE WILL HERE AGAIN TODAY, WILL NOT RESULT IN THE TYPE OF PUBLIC POLICY PARALYSIS WE ENCOUNTERED SOME TEN YEARS AGO. LACK OF ACTION THEN HAS ONLY EXACERBATED PUBLIC DISCLOSURE ISSUES WHICH ARE NOW HEIGHTENED BY THE PROLIFERATION OF THE MICROCOMPUTER, ELECTRONIC MAIL, AND OPTICAL IMAGING SYSTEMS. OUR FAST-PACED TECHNOLOGICAL ADVANCEMENTS IN RECORD CREATING AND KEEPING ARE OUTSTRIPPING OUR ABILITY TO LEGISLATE ACCESS TO, AND CONFIDENTIALITY FOR, THESE GOVERNMENTAL RECORDS.

AND WE HAVE CERTAINLY LEARNED THERE ARE INHERENT AND SIZEABLE COSTS TO OPEN GOVERNMENT AND PUBLIC ACCESS IN THE ONGOING DEMOCRATIZATION OF OUR POLITICAL SYSTEM. THE ALARMING IRONY IN THIS ISSUE WE CONFRONT TODAY IN BALANCING RIGHTS OF PRIVACY VERSUS PUBLIC DISCLOSURE IS THE ONGOING REALITY OF CENSORSHIP THROUGH BUDGET

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EXHIBIT D 35

CONSTRAINTS.

JOAN KERSCHNER, STATE LIBRARIAN, AND ALSO A MEMBER OF THE EXECUTIVE ADVISORY COMMITTEE COULD NOT BE HERE. THE STATE LIBRARY AND ARCHIVES HAVE NO PROPOSED AMENDMENTS, BUT I AM HERE TODAY TO ADDRESS ANY SPECIFIC QUESTIONS REGARDING THE PUBLIC RECORDS BILLS BEFORE YOU NOW, OR AT A LATER DAY.

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Chairman Garner named the subcommittee to hear AB 364, AB 365, AB 366, AB 367 and AB 368. It consisted of Mr. Bennett as chairman, Mr. Ernaut and Mrs. Freeman.

Chairman Garner requested committee introduction of the following Bill Draft Request 23-1960.

BILL DRAFT REQUEST 23-1960 - Allow employee to be represented at certain hearings before personnel commission by person of his own choosing.

ASSEMBLYMAN BENNETT MOVED FOR A COMMITTEE INTRODUCTION ON BDR 23-1960.

ASSEMBLYMAN BACHE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL NO. 445 - Provides for creation of earthquake safety council.

Assemblyman Rick Bennett, District 16, testified he, along with Assemblyman Bernie Anderson, had represented the State Assembly on an advisory group looking at earthquake safety. He gave the various reasons why he supported the proposed legislation, more so since he had personally experienced the Lander earthquake which had convinced him earthquake safety was indeed needed. He then proceeded to give an in-depth explanation of AB 445.

Assemblyman Bernie Anderson, District 31, stated the bill was noteworthy as Nevada was the third most active earthquake state in the United States, but the state was without legislation regarding earthquake safety. He felt AB 445 would clearly send a message to the public the legislature was concerned about public safety in the state.

Chairman Garner referenced section 8, and asked if retrofitting was being discussed by the word "mitigating." Mr. Bennett replied there were many older buildings, particularly in northern Nevada, which needed to be looked at but it was not the purpose of the council to authorize changes, only to suggest to local government they review ordinances regarding earthquakes and buildings in the area. More discussion followed with Mr. Anderson joining in.

Mr. Garner then pointed to the membership of the council and said, "Under (i), you've included the Division of Emergency

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ASSEMBLY BILL 357 - Directs librarian to establish pilot project to provide grants to certain public libraries for purchase of books and library materials.

Mrs. Augustine indicated an amendment had been proposed at the subcommittee meeting (Exhibit M) and stated everyone was satisfied with AB 357 with the amendment.

ASSEMBLYMAN ERNAUT MOVED TO AMEND AND DO PASS
A.B. 357.

ASSEMBLYMAN AUGUSTINE SECONDED THE MOTION.

THE MOTION CARRIED. Assemblymen McGaughey and Bennett were not present.

Chairman Garner indicated the bill would go to Ways and Means Committee.

ASSEMBLY BILL 359 - Makes various changes regarding administration of program of deferred compensation for public employees.

Mr. Bache introduced a proposed amendment to AB 359 and a letter from Mr. Will Keating (Exhibit N).

ASSEMBLYMAN BACHE MOVED TO AMEND AND DO PASS A.B. 359.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. Assemblymen McGaughey and Bennett were not present.

Chairman Garner requested Mr. Bache handle AB 359 on the floor.

ASSEMBLY BILL 364 - 368 - Public Records Bills.

Chairman Garner indicated these bills were being handled in subcommittee and no action would be taken until they came out of subcommittee.

Chairman Garner announced the subcommittee would be expanded to include Mrs. Segerblom and Mrs. de Braga.

ASSEMBLY BILL 415 - Raises threshold for requiring advertisement of competitive bids for purchases by local government.

MINUTES OF THE
ASSEMBLY SUBCOMMITTEE ON GOVERNMENT AFFAIRS

Sixty-seventh Session
May 3, 1993

The Assembly Subcommittee on Government Affairs was called to order by Subcommittee Chairman Rick Bennett, at 9:07 a.m., on Monday, May 3, 1993, in Room 330 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

SUBCOMMITTEE MEMBERS PRESENT:

Mr. Rick C. Bennett, Subcommittee Chairman
Ms. Marcia de Braga
Mr. Pete Ernaut
Ms. Vivian L. Freeman
Ms. Gene W. Segerblom

OTHERS PRESENT:

George Cotton, Clark County Affirmative Action Manager
David Reese, Nevada State Contractors' Board
Lucille Lusk, Nevada Coalition of Concerned Citizens
David Edwards, Clark County Geographic Information System
Ande Engleman, Nevada Press Association
Joe Melcher, Washoe County Recorder
Melanie Mehan-Crossley, Deputy Attorney General
Margaret Lowther, Storey County Recorder
Nile Carson, Reno Police Department
Suzanne Beaudreau, Douglas County Recorder

GUEST LEGISLATORS PRESENT:

Assemblyman Gene Porter, Clark County District 8

Following opening remarks, Subcommittee Chairman Rick Bennett opened the hearing on AB 365.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

Ande Engleman, Nevada Press Association, observed except for one suggested amendment regarding public payment of court costs, AB

365 had probably gained the most support from public employees. She said the present law stated denial of access to a public record was a misdemeanor and a crime. Without a statutory definition of what constituted a "public record," it was sometimes difficult for public employees to make a decision as to what was public and what was not. She said her organization supported removing the misdemeanor charge for refusing access to public records for a public employee. She also supported language on page 1, lines 3-9 as a compromise since they could not agree on an administrative procedure for appeal on denial of public records. The favored procedure, Ms. Engleman stated, would have carried a large fiscal note, and this did not appear to be an opportune time to bring forward anything of that nature.

Ms. Engleman said some Legislators had come to her saying they would favor an out-of-pocket, personal civil penalty as usual in most other states. This would apply in instances where an individual had purposely denied access to public records because the information would have proven embarrassing. She said they opposed having the public pay for court costs and attorneys' fees if a case was lost. The taxpayer had already paid for the other side's attorneys and court costs, through tax dollars.

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. Therefore, she did not think there would be frivolous lawsuits.

Mr. Bennett questioned the aspect of the judge's discretion in determining who should be awarded costs. Ms. Engleman opined the courts were generally very conservative. If an agency had truly withheld a record which should have been public, Mr. Bennett said he hoped the court would penalize the agency in some way by making them pay the costs.

Drawing attention to Section 3, Mr. Bennett said he had received communication suggesting the possibility of including a public "agency" in the language on page 1, line 10. Ms. Engleman said they had tried to look at the issue from everyone's point of view, but she did not think there would be a problem adding "agency."

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Referring to Section 2, Mr. Ernaut asked if the language should specify "a reasonable request." In response, Ms. Engleman said she thought this was addressed in another bill and she did not see the need for additional language.

Representing the Attorney General's Office, Deputy Melanie Mehan-Crossley came forward to respond to Ms. Engleman's testimony. Ms. Crossley reported the Attorney General had asked that the court be given the discretion of granting attorneys' fees and costs when faced with this kind of lawsuit. She said she thought Ms. Engleman's testimony went to giving the court that discretion.

Mrs. Freeman questioned whether they preferred more flexible language than the language on page 1, line 8, "he is entitled to recover his costs. . .". Ms. Engleman said, "Yes," and they had submitted suggested language in earlier testimony.

Representing the State Contractors' Board and the City of Lovelock, David Reese asked the committee to consider loosening the language regarding attorneys' fees and costs to be awarded to the requester. He said there were many situations in which an existing confidentiality statute put the burden on the agency, commission or board, to make certain confidential records remained confidential. He felt there were good reasons why fees or costs awarded to the requester should be discretionary with the judge.

Addressing Mr. Reese's remarks, Ms. Engleman said where there was an exemption stating something was confidential, it should not be called into question as the material was clearly confidential. She said she thought the attitude of government, particularly over the past 10 years was, "when in doubt, keep it closed." She said they were trying to change this attitude to one of "where there is no exemption saying information is confidential, when in doubt it should be released."

Although Mr. Bennett acknowledged Ms. Engleman's remarks, he said he thought even though there had been a great deal of work done on AB 364 in trying to more clearly indicate what was open and what was closed, there would still be gray areas at least until people became more familiar with the new statutes.

Lucille Lusk, Nevada Coalition of Concerned Citizens, remarked from the individual citizen's point of view, the process for using the courts to resolve questions of confidentiality was extremely difficult, if not impossible. She asked if there

would be an internal agency appeal process. Ms. Lusk believed there should be a way for an individual (as opposed to an agency) to appeal to a higher authority if there was disagreement as to confidentiality. Mr. Bennett suggested Ms. Lusk should address this further when AB 366 was discussed.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

Both Ande Engleman and Dennis Neilander, Legislative Research Analyst, came forward. Ms. Engleman noted this bill was a compromise. In Section 2, the words, "other electronic means," was intended to mean FAX machines and public electronic data bases such as NELIS -- information the courts had ruled should be equally accessible by the public. Ms. Engleman said they had no intention or thought of trying to tap into confidential data bases in state government. She said the Press Association would have no problem with clarifying this section.

Also clarifying, Dennis Neilander explained there was a provision in AB 364 which provided security systems (or hardware system) would be confidential. Referring to AB 366, Mr. Neilander said the bill was largely based on the federal Freedom of Information Act and a study done 10 years ago, which made a similar recommendation regarding procedures for access. He said the law was currently void of any procedures for access and did not provide any procedural mechanisms for someone to either request a record or for the custodian of a record to respond. Thus, in subsection (2) of Section 3, page 1, if a public record contained both confidential and nonconfidential information it would redact out the confidential information.

Referring to language on page 1, line 26 speaking of an exemption provided in NRS 481.063, Mr. Neilander said this dealt with existing law requiring the Department of Motor Vehicles (DMV) to make an inquiry when someone asked for information regarding motor vehicle registration. If the Department determined the information would be used for illegal purposes, it could not release the information. Therefore, except as it applied to the DMV, the language of AB 366 stipulated the agency could not ask why the information was required.

Speaking to the subject, Ms. Engleman noted there had been an earlier bill in the Senate in which a public agency wanted the same permission to determine whether information was going to be used illegally. The DMV statute was clearly unconstitutional,

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Acknowledging his support of public/private enterprise, Mr. Ernaut said nevertheless, as a contest between a list and the amendment on Exhibit D, he would be more comfortable with a list. Ms. Morgan said she would work with the Attorney General's Office to tighten the language.

Chairman Bennett invited Brooke Nielsen, Assistant Attorney General, to come forward to address the language of the amendment. Assistant Attorney General Nielsen agreed the language could and should probably be tightened up. The words "substantially" and "directly" were common legal terms which were generally understood and in this instance would refer to a direct connection to the public business. Obviously, she said, someone could not reach into the records of a private company on things that company was doing in another part of the world which had nothing to do with what was going on in Nevada. Assistant Attorney General Nielsen said she would be happy to work with Ms. Morgan in adopting tighter language.

Assistant Attorney General Nielsen said by the language in Exhibit D they were trying to say there was a right to privacy for the business interest; yet at the same time, the public had a right to access those things which directly affected what the company was doing for the public.

Chairman Bennett supported Mrs. Freeman's request for Assistant Attorney General Nielsen and Ms. Morgan to work together to develop more appropriate language.

Another amendment to page 3, lines 37 and 38, proposed by the Attorney General's Office, would delete the words, "unless the investigation had been closed."

Chairman Bennett indicated he had read and considered the case presented by the Attorney General's Office and Mr. Porter (who chaired the interim study committee), and he was not swayed to the extent he was prepared to support changing the language relating to investigation, court cases, etc.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.

Two sections had received comments, Chairman Bennett noted. In Section 2 there had been considerable discussion regarding the recovery of costs and attorneys' fees. As currently written, if the requester prevailed, he was entitled to recover his costs

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and attorneys' fees in the proceeding, from the agency whose officer had custody of the record.

Chairman Bennett also recalled there had been discussion regarding whether the agency should also be able to recover the costs and attorneys' fees associated with the action, if the agency prevailed. The primary argument against the agency recovery, was this would restrict people from going to court to try to gain access to certain closed records. As AB 364 was written, Chairman Bennett stated there was a large gray area presented which would lead to increased litigation. Limiting some of the gray areas in AB 364 would somewhat alleviate the number of suits which might be brought regarding access to records.

Chairman Bennett said he was of a mind to leave the language as it was written except to add the word "reasonable" before the words "attorney's fees."

ASSEMBLYMAN FREEMAN MOVED TO INSERT THE WORD REASONABLE ON PAGE 1, SECTION 2, LINE 8, MAKING THE LANGUAGE READ "... COSTS AND REASONABLE ATTORNEY'S FEES."

ASSEMBLYMAN ERNAUT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Discussing Section 3, Chairman Bennett reminded the subcommittee there had been some testimony having to do with expanding the "public officer or employee" to also state, "governmental entity." After discussing this with the bill drafters, they believed the words "And his employer" could be inserted making the language read, "A public officer or employee and his employer who act in good faith in disclosing or refusing to disclose information is immune from liability for damages either to the requester or to the person whom the information concerns."

ASSEMBLYMAN SEGERBLOM MOVED TO INCLUDE THE WORDS "AND HIS EMPLOYER" ON PAGE 1, SECTION 3, LINE 11.

ASSEMBLYMAN FREEMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Mrs. Freeman asked to have the word "malfeasance" defined. She said earlier testimony had suggested when a person was unable to

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get information, there needed to be some definition given to the word "malfeasance." Dennis Neilander, Legislative Counsel Bureau Research Analyst, came forward to clarify. Mr. Neilander said a number of options had been put forward and one was related to the notion of malfeasance. This was for a civil penalty to be imposed on a public employee who acted in bad faith. Although some states had taken this approach, Mr. Neilander said the Nevada subcommittee had rejected the approach, deciding a civil penalty would not be appropriate. Additionally, the misdemeanor penalty would possibly prove unconstitutional because there was no definition of public record. The subcommittee had finally approved the allowance for expedited process.

Mr. Neilander told the committee the operative language in Section 3 was a "good faith" standard. If, indeed, there was a lack of good faith shown on the part of a public employee, NRS 41, which addressed discretionary acts, would take force.

Recapping, Chairman Bennett indicated the rest of AB 365 would remain as written.

ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.

Chairman Bennett drew attention to Section 2. Concerns had been expressed regarding the language on line 5 regarding the words, "or other electronic means." Primarily, the interim study had assumed this to mean a FAX machine. If this, indeed, was the intent, Chairman Bennett suggested deleting the words, "other electronic means," and stating, "facsimile machine, if available." (See Exhibit E.)

Mr. Ernaut thought the Chairman's language was too narrow and the present language of the bill was too broad. Discussion followed.

ASSEMBLYMAN SEGERBLOM MOVED TO ADOPT THE AMENDMENT PROPOSED IN EXHIBIT E.

ASSEMBLYMAN FREEMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Following a short break, Chairman Bennett resumed discussion on AB 366, Section 3. Reviewing, the Chairman said he had heard concerns regarding the problems for state or local offices in

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ASSEMBLY BILL 314 - Makes various changes to application process for permit for appropriation of public waters and to fees assessed by state engineer.

Mr. Bennett indicated proposed amendments for AB 314 had been taken down to be drafted but had not been received back. Mr. Bennett and Mrs. Lambert reviewed the proposed changes (Exhibit H).

Discussion among committee members ensued.

Chairman Garner indicated there would be no action taken until the amendments had been returned.

ASSEMBLY BILL 352 - Authorizes unincorporated towns to impose impact fees.

Mr. McGaughey briefly reviewed AB 352 stating it had to do with Fernley water impact fees and indicated he had attended a meeting with the city attorney and representatives of the town board and the district trying to find a better way to solve the problem other than using impact fees.

ASSEMBLY BILL 364 - 368 - Public records.

Mr. Bennett indicated several subcommittee meetings and a work session had been held which considered all five bills. He stated there were several proposed amendments approved by the subcommittee being drafted and as soon as the amendments were received back he would give a full report to the committee. Mr. Bennett noted there had been some amendments put forth which had not been accepted by the subcommittee and those would be presented with the report.

ASSEMBLY BILL 378 - Imposes temporary moratorium on adoption of state regulations and creates advisory committee to study such regulations.

Chairman Garner stated he had not heard back from Mr. Humke and it seemed the only viable solution was to look at a study of the subject. He indicated he would not be taking action on AB 378 unless Mr. Humke came forward with a proposal to move the bill.

ASSEMBLY BILL 397 - Provides procedure to verify preference claimed by bidders on public contracts on account of taxes paid.

Mr. Hettrick stated he held a meeting with the north and south AGCs and it appeared to him those at the meeting did not think

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Mr. Bennett asked if her amendment dealt with page 2, line 38 regarding the amount of annual and sick leave. Mrs. Segerblom agreed.

Mr. Bennett stated that had been discussed as well as various other information which would be included in subsection 2, defining employment information. He said many concerns had been voiced that this would somehow provide access to reasons for taking sick leave and otherwise open medical information. Mr. Bennett remarked it was his feeling the information regarding annual and sick leave accumulated and number of hours or days taken would be easily handled through payroll records and would in no way divulge reasons for taking leave or medical information. He was not supportive of the amendment.

Mrs. Segerblom stressed she felt a public employee had a right to the sick leave accrued, and if an employee used an excessive amount at any given time, it should be up to the supervisor to handle. She did not feel anyone else should have the right to the knowledge of how much time was taken.

Discussion ensued.

ASSEMBLYMAN SEGERBLOM MADE A MOTION TO AMEND A.B. 364
TO DELETE LINE 38 ON PAGE 2, SECTION 2.

ASSEMBLYMAN WILLIAMS SECONDED THE MOTION.

THE MOTION FAILED.

Chairman Garner stated all amendments to AB 364 had been considered and he would accept a motion to amend and do pass AB 364.

ASSEMBLYMAN BENNETT MOVED TO AMEND AND DO PASS
A.B. 364.

ASSEMBLYMAN MCGAUGHEY SECONDED THE MOTION.

THE MOTION CARRIED. Assemblymen Lambert, Ernaut and
Williams opposed.

Chairman Garner requested Mr. Bennett handle AB 364 on the floor.

ASSEMBLY BILL 365 - Substitutes civil enforcement of access to
public records for criminal penalty.

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Mr. Bennett reviewed minor amendments to AB 365 (Exhibit H).

Discussion ensued.

ASSEMBLYMAN BENNETT MOVED TO AMEND AND DO PASS
A.B. 365.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL 366 - Establishes procedures for public
inspection of public records.

Mr. Bennett reviewed minor amendments to AB 366 (Exhibit I)
including the language, "other electronic means."

Mr. Ernaut referenced Section 5 and asked if there had been
discussion about the word "custody" in line 3, as there was a
problem with archives actually having custody of records. Mr.
Bennett indicated he recalled the discussion but did not think
any action was taken in subcommittee to amend.

Further discussion ensued.

Mrs. Augustine indicated she had a notation regarding Section 3,
line 3 to allow facilities for making paper copies, abstracts or
memoranda as there was a concern that microfiche copies could
not be duplicated.

Mr. Bennett stated the subcommittee held extensive discussion on
Section 3, both relating to paper copies and defining "readily
available" and the subcommittee chose to leave the language as
written.

ASSEMBLYMAN BENNETT MOVED TO AMEND AND DO PASS
A.B. 366.

ASSEMBLYMAN DE BRAGA SECONDED THE MOTION.

Mrs. Augustine proposed to amend the motion to add facilities
for making paper copies, abstracts or memorandum of the book or
record.

ASSEMBLYMAN AUGUSTINE MOVED TO AMEND THE AMENDMENT TO
A.B. 366 TO ADD THE WORD "PAPER" IN SECTION 3,
LINE 10.

1736
48

1993 REGULAR SESSION (67th)

ASSEMBLY ACTION		SENATE ACTION		Assembly Amendment to Assembly Bill No. 365 BDR 19-393 Proposed by Committee on Government Affairs
Adopted	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	
Lost	<input type="checkbox"/>	Lost	<input type="checkbox"/>	
Date:		Date:		
Initial:		Initial:		
Concurred in	<input type="checkbox"/>	Concurred in	<input type="checkbox"/>	
Not Concurred in	<input type="checkbox"/>	Not Concurred in	<input type="checkbox"/>	
Date:		Date:		
Initial:		Initial:		
Amendment No. 510		Replaces Amendment No. 497. Resolves conflict in section 5 with A.B. No. 146. Makes substantive changes.		

Amend sec. 2, page 1, line 8, after "costs and" by inserting "reasonable".

Amend sec. 3, page 1, line 11, by deleting "is" and inserting:

"and his employer are".

Amend sec. 5, page 2, by deleting lines 7 and 8 and inserting:

"obtained for that purpose from the county clerk of any county in the state. Except as otherwise provided in this subsection, the license must be issued at the county seat of that county. The board of county commissioners may, at the request of the county clerk, designate one branch office of the county clerk at which marriage licenses may be issued, if the designated branch office is established in a county office building which is located outside of the county seat."

Amend the bill as a whole by adding a new section designated sec. 6, following sec. 5, to read as follows:

"Sec. 6. Section 5 of this act becomes effective at 12:01 a.m. on October 1, 1993."

Drafted by: DC:cm

Date: 5/12/93

A.B. No. 365--Substitutes civil enforcement of access to public records for criminal penalty.

EXHIBIT H 180:
49

ASSEMBLY DAILY JOURNAL

6-2-93

— 5 —

upon the completion of the project; and providing other matters properly relating thereto.

Assemblyman Porter moved that the bill be referred to the Committee on Commerce.

Motion carried.

By the Committee on Commerce:

Assembly Bill No. 716—An Act relating to architects; requiring a person who claims any of certain exemptions from the provisions relating to architects to file an affidavit asserting the basis for the exemption when obtaining a building permit; providing a penalty; and providing other matters properly relating thereto.

Assemblyman Porter moved that the bill be referred to the Committee on Commerce.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 365

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 510.

Amend sec. 2, page 1, line 8, after "*costs and*" by inserting "*reasonable*".

Amend sec. 3, page 1, line 11, by deleting "*is*" and inserting: "*and his employer are*".

Amend sec. 5, page 2, by deleting lines 7 and 8 and inserting: "obtained for that purpose from the county clerk of any county in the state. Except as otherwise provided in this subsection, the license must be issued at the county seat of that county. The board of county commissioners may, at the request of the county clerk, designate one branch office of the county clerk at which marriage licenses may be issued, if the designated branch office is established in a county office building which is located outside of the county seat."

Amend the bill as a whole by adding a new section designated sec. 6, following sec. 5, to read as follows:

"Sec. 6. Section 5 of this act becomes effective at 12:01 a.m. on October 1, 1993."

Assemblyman Bennett moved the adoption of the amendment.

Remarks by Assemblyman Bennett.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 368.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 626.

Amend the bill as a whole by deleting sections 5 through 7 and renumbering sec. 8 as sec. 5.

6-2

50

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A.B. 365

ASSEMBLY BILL NO. 365—COMMITTEE ON COMMERCE

MARCH 16, 1993

Referred to Committee on Government Affairs

SUMMARY—Substitutes civil enforcement of access to public records for criminal penalty.
(BDR 19-393)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

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.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Chapter 239 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2 and 3 of this act.
3 Sec. 2. *If a request for inspection or copying of a public book or record*
4 *open to inspection and copying is denied, the requester may apply to the*
5 *district court in the county in which the book or record is located for an order*
6 *permitting him to inspect or copy it. The court shall give this matter priority*
7 *over other civil matters to which priority is not given by other statutes. If the*
8 *requester prevails, he is entitled to recover his costs and reasonable attorney's*
9 *fees in the proceeding from the agency whose officer has custody of the*
10 *book or record.*
11 Sec. 3. *A public officer or employee who acts in good faith in disclosing or*
12 *refusing to disclose information and his employer are immune from liability*
13 *for damages, either to the requester or to the person whom the information*
14 *concerns.*
15 Sec. 4. NRS 239.010 is hereby amended to read as follows:
16 239.010 [1.] All public books and public records of state, county, city,
17 district, governmental subdivision and quasi-municipal corporation officers
18 and offices of this state (and all departments thereof), the contents of which
19 are not otherwise declared by law to be confidential, [shall] *must* be open at
20 all times during office hours to inspection by any person; and the [same]
21 *books and records* may be fully copied or an abstract or memorandum
22 prepared therefrom, and any copies, abstracts or memoranda taken therefrom
23 may be utilized to supply the general public with copies, abstracts or memo-
24 *randa* of the records or in any other way in which the [same] *books and*

1 records may be used to the advantage of the owner thereof or of the general
2 public.

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

7 Sec. 5. NRS 122.040 is hereby amended to read as follows:

8 122.040 1. Before persons may be joined in marriage, a license must be
9 obtained for that purpose from the county clerk of any county in the state.
10 Except as otherwise provided in this subsection, the license must be issued at
11 the county seat of that county. The board of county commissioners may, at
12 the request of the county clerk, designate one branch office of the county
13 clerk at which marriage licenses may be issued, if the designated branch
14 office is established in a county office building which is located outside of the
15 county seat.

16 2. Before issuing a marriage license, the county clerk may require evi-
17 dence that the applicant for the license is of age. The county clerk shall accept
18 a statement under oath by the applicant and the applicant's parent, if availa-
19 ble, that the applicant is of age.

20 3. The county clerk issuing the license shall require the applicant to
21 answer under oath each of the questions contained in the form of license, and,
22 if the applicant cannot answer positively any questions with reference to the
23 other person named in the license, the clerk shall require both persons named
24 in the license to appear before him and to answer, under oath, the questions
25 contained in the form of license. If any of the information required is
26 unknown to the person responding to the question, he must state that the
27 answer is unknown.

28 4. If any of the persons intending to marry is under age and has not been
29 previously married, and if the authorization of a district court is not required,
30 the clerk shall issue the license if the consent of the parent or guardian is:

31 (a) Personally given before the clerk;

32 (b) Certified under the hand of the parent or guardian, attested by two
33 witnesses, one of whom must appear before the clerk and make oath that he
34 saw the parent or guardian subscribe his name to the annexed certificate, or
35 heard him or her acknowledge it; or

36 (c) In writing, subscribed to and acknowledged before a person authorized
37 by law to administer oaths. A facsimile of the acknowledged writing must be
38 accepted if the original is not available.

39 5. If the authorization of a district court is required, the county clerk shall
40 issue the license if that authorization is given to him in writing.

41 6. All records pertaining to marriage licenses are public records and open
42 to inspection pursuant to the provisions of NRS 239.010. [Any county clerk
43 who refuses to permit an inspection is guilty of a misdemeanor.]

44 7. A marriage license issued on or after July 1, 1987, expires 1 year after
45 its date of issuance.

— 3 —

1 Sec. 6. Section 5 of this act becomes effective at 12:01 a.m. on October 1,
2 1993.

⊗



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.

Electronically Filed
May 10 2019 04:01 p.m.
Nos. 77617/77965
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable Elizabeth
Gonzalez Presiding

JOINT APPENDIX
(Volume 4, Bates Nos. 689–905)

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Attorneys for Appellant,

Las Vegas Metropolitan Police Department

MAC:14687-141 3721464_1.docx

INDEX TO JOINT APPENDIX

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 (filed 05/02/18)		Vol. 1, Bates Nos. 1–13
Exhibits to Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011		
Exhibit	Document Description	
1	Application for Order Shortening Time	Vol. 1, Bates Nos. 14–17
2	Emails from December 2017 to March 2018 Regarding Records Request	Vol. 1, Bates Nos. 18–23
3	March 28, 2018 Letter from Philip Erwin to LVMPD	Vol. 1, Bates Nos. 24–31
4	Case Report No. LLV960907002063	Vol. 1, Bates Nos. 32–34
5	Emails from March 2018 to April 2018 Regarding Records Request Production	Vol. 1, Bates Nos. 35–37
6	April 12, 2018 Letter from LVMPD to Philip Erwin	Vol. 1, Bates Nos. 38–40
7	April 23, 2018 Letter from Philip Erwin to LVMPD	Vol. 1, Bates Nos. 41–44
8	April 27, 2018 Letter from LVMPD to Philip Erwin	Vol. 1, Bates Nos. 45–46
9	Las Vegas Sun Article “The Death of Tupac Shakur One Year Later (dated 09/06/97)	Vol. 1, Bates Nos. 47–50
10	Billboard Article “Weapon Used in Tupac’s Murder Suddenly Disappears” (dated 12/17/17)	Vol. 1, Bates Nos. 51–53

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 (cont.)		
Exhibit	Document Description	
11	Los Angeles Times Article “Possible Suspect in Tupac Shakur Death Killed in Shootout” (dated 05/30/98)	Vol. 1, Bates Nos. 54–55
Respondent Las Vegas Metropolitan Police Department’s Response to Verified Petition for Writ of Mandamus (filed 05/07/18)		Vol. 1, Bates Nos. 56–67
Exhibits to Respondent Las Vegas Metropolitan Police Department’s Response to Verified Petition for Writ of Mandamus		
Exhibit	Document Description	
A	Declaration of Clifford H. Mogg (dated 05/08/18)	Vol. 1, Bates Nos. 68–70
B	Las Vegas Now Article “I-Team: Police Solve 1991 Cold Case Murder” (dated 07/15/16)	Vol. 1, Bates Nos. 71–73
C	Las Vegas Now Article “I-Team: DNA Evidence Links Man to Las Vegas Cold Case Murder” (dated 10/12/16)	Vol. 1, Bates Nos. 74–76
D	KSNV 3 News Article “Las Vegas’ Oldest Cold Case Gets a New Lead” (dated 08/17/16)	Vol. 1, Bates Nos. 77–80
E	FBI Investigatory File Disclosures	Vol. 1, Bates Nos. 81–183
Reply in Support of Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 (filed 05/14/18)		Vol. 1, Bates Nos. 184–194

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Notice of Errata to Reply in Support of Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 (filed 05/14/18)		Vol. 1, Bates Nos. 195–208
Exhibit to Notice of Errata to Reply in Support of Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011		
Exhibit	Document Description	
1	Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus in Consolidated Case Nos. A764030/A764169	Vol. 1, Bates Nos. 209–216
Minutes of May 15, 2018 Hearing on Writ		Vol. 1, Bates No. 217
Transcript of May 15, 2018 Hearing on Writ (filed 10/05/18)		Vol. 1, Bates Nos. 218–250
Minutes of September 13, 2018 Hearing on Writ		Vol. 2, Bates No. 251
Minutes of September 25, 2018 Hearing on Writ		Vol. 2, Bates No. 252
Minutes of September 28, 2018 Status Check		Vol. 2, Bates No. 253
Petitioner The Center for Investigative Reporting Inc.’s Supplemental Brief Its Prevailing Status Under NRS 239.011 (filed 10/12/18)		Vol. 2, Bates Nos. 254–270

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Petitioner The Center for Investigative Reporting Inc.'s Supplemental Brief Its Prevailing Status Under NRS 239.011		
Exhibit	Document Description	
1	Emails from December 2017 to March 2018 Regarding Records Request	Vol. 2, Bates Nos. 271–276
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of October 30, 2018 Hearing on Supplemental Briefing		Vol. 2, Bates Nos. 347–348
Transcript of October 30, 2018 Hearing on Supplemental Briefing (filed 01/30/19)		Vol. 2, Bates Nos. 349–357
Notice of Entry with Order Regarding Writ of Mandamus (filed 11/06/18)		Vol. 2, Bates Nos. 358–363
The Center for Investigative Reporting Inc.’s Motion for Attorneys’ Fees and Costs (filed 12/21/18)		Vol. 2, Bates Nos. 364–368
Exhibits to The Center for Investigative Reporting Inc.’s Motion for Attorneys’ Fees and Costs		
Exhibit	Document Description	
1	Declaration of Philip R. Erwin (dated 11/14/18)	Vol. 2, Bates Nos. 369–372
2	Campbell & Williams Invoices	Vol. 2, Bates Nos. 373–380
Respondent Las Vegas Metropolitan Police Department’s Response to Motion for Attorneys’ Fees and Costs (filed 12/04/18)		Vol. 2, Bates Nos. 381–396
Exhibits to Respondent Las Vegas Metropolitan Police Department’s Response to Motion for Attorneys’ Fees and Costs		
Exhibit	Document Description	
A	Legislative Counsel Bureau Bulletin No. 93-9	Vol. 2, Bates Nos. 397–500 through Vol. 3, Bates Nos. 501–688
B	Legislative Summary for AB 365	Vol. 4, Bates Nos. 689–755

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Respondent Las Vegas Metropolitan Police Department's Response to Motion for Attorneys' Fees and Costs (cont.)		
Exhibit	Document Description	
C	LVMPD's Privilege Log	Vol. 4, Bates Nos. 756–772
Respondent Las Vegas Metropolitan Police Department's Notice of Appeal (filed 12/04/18)		Vol. 4, Bates Nos. 773–775
Respondent Las Vegas Metropolitan Police Department's Case Appeal Statement (filed 12/04/18)		Vol. 4, Bates Nos. 786–789
The Center for Investigative Reporting Inc.'s Reply in Support of Motion for Attorneys' Fees and Costs (filed 12/12/18)		Vol. 4, Bates Nos. 790–800
Exhibits to The Center for Investigative Reporting Inc.'s Reply in Support of Motion for Attorneys' Fees and Costs		
Exhibit	Document Description	
1	Order, <i>Las Vegas Review-Journal v. Clark Cty. Office of the Coroner/Med. Exam'r</i> , 2018 WL 1896250 (Nev. Dist. Ct. Feb. 1, 2018)	Vol. 4, Bates Nos. 801–809
2	Order, <i>Las Vegas Review-Journal v. Clark Cty. School Dist.</i> , 2018 WL 1896249 (Nev. Dist. Ct. Mar. 22, 2018)	Vol. 4, Bates Nos. 810–821
3	Order Granting, in Part, Petitioners' Motion for Attorneys' Fees and Costs in Carson City District Court Case No. 14OC000031B (filed 04/11/14)	Vol. 4, Bates Nos. 822–831

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to The Center for Investigative Reporting Inc.'s Reply in Support of Motion for Attorneys' Fees and Costs (cont.)		
Exhibit	Document Description	
4	Defendant Stephens Media, LLC's Motion for Attorney's Fees in Clark County District Court Case No. A669057 (filed 03/30/15)	Vol. 4, Bates Nos. 832–862
5	Order in Clark County District Court Case No. A669057 (filed 06/22/15)	Vol. 4, Bates Nos. 863–873
6	Discovery Commissioner's Report and Recommendation in Clark County District Court Case No. A722259 (filed 01/18/17)	Vol. 4, Bates Nos. 874–879
December 21, 2018 Minute Order Granting Motion for Fees and Costs		Vol. 4, Bates No. 880
Notice of Entry with Order Granting Fees and Costs (filed 01/08/19)		Vol. 4, Bates Nos. 881–889
Respondent Las Vegas Metropolitan Police Department's Notice of Appeal (filed 01/16/19)		Vol. 4, Bates Nos. 890–899
Respondent Las Vegas Metropolitan Police Department's Case Appeal Statement (filed 01/16/19)		Vol. 4, Bates Nos. 900–903
Docket of District Court Case No. A773883		Vol. 4, Bates Nos. 904–905

EXHIBIT B

N. L. I. S.

DETAIL LISTING
FROM FIRST TO LAST STEP

TODAY'S DATE: Oct. 14, 1993
TIME : 11:12 am
LEG. DAY: 93 Regular
PAGE : 1 OF 1

1993

AB 365 By Commerce PUBLIC RECORDS

Substitutes civil enforcement of access to public records
for criminal penalty. (BDR 19-393)

Fiscal Note: Effect on Local Government: No. Effect on the
State or on Industrial Insurance: No.

03/16 30 Read first time. Referred to Committee on
Government Affairs. To printer.
03/17 31 From printer. To committee.
03/17 31 Dates discussed in committee: 4/13, 4/14, 4/20, 4/23, 5/3, 5/7,
5/11, 5/25 (A&DP)
06/01 84 From committee: Amend, and do pass as amended.
06/01 84 (Amendment number 510.)
06/02✓ 85 Read second time. Amended. To printer.
06/03 86 From printer. To engrossment.
06/03 86 Engrossed. First reprint✓
06/04✓ 87 Read third time. Passed, as amended. Title approved.
(41 Yeas, 0 Nays, 1 Absent, 0 Excused, 0 Not Voting.) To
Senate.
06/05 87 In Senate.
06/05 87 Read first time. Referred to Committee on
Govt Affairs. To committee.
06/05 87 Dates discussed in Committee: 6/18, 6/25 (DP)
06/26 104 From committee: Do pass.
06/26 104 Declared an emergency measure under the Constitution and
placed on General File for next legislative day.
06/26 104 Placed on General File.
06/26✓ 104 Read third time. Passed. Title approved. (21 Yeas, 0 Nays,
0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
06/27 106 In Assembly.
06/27 106 To enrollment.
06/29 108 Enrolled and delivered to Governor.
07/02 111 Approved by the Governor.
07/06 0 Chapter 393.
Section 5 of this act effective 12:01 a.m. October 1, 1993.
Remainder of this act effective October 1, 1993.
(* = instrument from prior session)

NEVADA LEGISLATURE
SIXTY-SEVENTH SESSION
1993

SUMMARY OF LEGISLATION

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU

A.B. 365 (Chapter 393)

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

Referred to Assembly Committee on Government Affairs

ASSEMBLY VOTE: 41-0-1

Referred to Senate Committee on Government Affairs

SENATE VOTE: 21-0-0

Effective October 1, 1993

ASSEMBLY BILL NO. 365—COMMITTEE ON COMMERCE

MARCH 16, 1993

Referred to Committee on Government Affairs

SUMMARY—Substitutes civil enforcement of access to public records for criminal penalty.
(BDR 19-393)FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

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AND ASSEMBLY, DO ENACT AS FOLLOWS:

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8 *requester prevails, he is entitled to recover his costs and attorney's fees in the*
9 *proceeding from the agency whose officer has custody of the book or record.*
- 10 Sec. 3. *A public officer or employee who acts in good faith in disclosing or*
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18 all times during office hours to inspection by any person, and the [same]
19 *books and records* may be fully copied or an abstract or memorandum
20 prepared therefrom, and any copies, abstracts or memoranda taken therefrom
21 may be utilized to supply the general public with copies, abstracts or memo-
22 randa of the records or in any other way in which the [same] *books and*
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4 misdemeanor.]

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13 3. The county clerk issuing the license shall require the applicant to
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21 4. If any of the persons intending to marry is under age and has not been
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23 the clerk shall issue the license if the consent of the parent or guardian is:

24 (a) Personally given before the clerk;

25 (b) Certified under the hand of the parent or guardian, attested by two
26 witnesses, one of whom must appear before the clerk and make oath that he
27 saw the parent or guardian subscribe his name to the annexed certificate, or
28 heard him or her acknowledge it; or

29 (c) In writing, subscribed to and acknowledged before a person authorized
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37 7. A marriage license issued on or after July 1, 1987, expires 1 year after
38 its date of issuance.

Executive Director, Nevada Association of Counties; William Isaef, Chief Deputy City Attorney, City of Reno; Michael Pitlock, Member, Nevada Public Service Commission; Myla Florence, Administrator, Welfare Division; Brooke Nielsen, Assistant Attorney General, Office of Attorney General; Debbie Cahill, Nevada State Education Association; Mike Dyer, General Counsel, Nevada State Education Association; Jim Weller, Director, Department of Motor Vehicles and Public Safety; Darcy Coss, Deputy Attorney General, Department of Motor Vehicles and Public Safety; Orland Outland, Self; Robert Gagnier, Executive Director, State of Nevada Employees Association; Frank Barker, Captain, Las Vegas Metropolitan Police Department; Arlene Ralbovsky, Director, Police Records Section, Las Vegas Metropolitan Police Department; Joe Melcher, Washoe County Recorder; James Wright, Chief Deputy Recorder, Washoe County, Robert Cox, Nevada State School Board Association and Washoe County School District; and Jim Richardson, Nevada Faculty Alliance.

- ASSEMBLY BILL 364 - Makes various changes regarding access to public books and records.
- ASSEMBLY BILL 365 - Substitutes civil enforcement of access to public records for criminal penalty.
- ASSEMBLY BILL 366 - Establishes procedures for public inspection of public records.
- ASSEMBLY BILL 367 - Defines "public record" to accommodate various forms in which records are maintained.
- ASSEMBLY BILL 368 - Requires charges for copies of public records not to exceed cost.

Assemblyman Gene Porter, District 8, testified AB 364, AB 365 and AB 366, as well as AB 367 and AB 368 scheduled to be heard on Wednesday, April 14, resulted from an interim subcommittee which he had chaired, to study Nevada's laws governing public books and records. Committee members, a twelve member advisory group appointed by the Governor to assist in deliberations, and the results of the study can be found in Bulletin No. 93-9, Research Library, Legislative Counsel Bureau. Mr. Porter then described how the study was carried out with the results leading to the adoption of 22 recommendations. It was those 22

recommendations which now made up the aforementioned five bills. Continuing, Mr. Porter said, "The issues involved with public records are difficult ones. There are few areas of public policy that have as many competing interests. The government's need for information, the people's right to have access to that information and the fundamental right to privacy must be delicately balanced. The task before the subcommittee and advisory group was enormous. Our public record's law has not been significantly amended since 1911. What you have before you is our attempt to balance those significant competing interests." Mr. Porter then gave the committee a brief overview of all the bills. In closing, Mr. Porter urged the committee to read the study and said, "The deliberations that you will undergo for the next two days, and subsequent work sessions, force you to balance the information contained, and which is now available in the technology age, with the public's right to know what its government is doing. Government has a lot of information on each of us, private industry has a lot of information on each of us....what the ACR subcommittee tried to do was formulate a broad, general policy that anything done on taxpayer time or expense within the public arena was accessible to the public." He explained the only exception dealt with medical records within a public facility, those records would be kept confidential. He then advised the committee to not try and craft exemptions to accommodate those in the audience who would testify to their own respected interest, as several hundred already existed in Nevada law and a subsequent interim study had been recommended to study those exemptions.

Mrs. Lambert questioned the meaning of the definition "governmental entity." She gave an example utilizing Chapter 624. Mr. Porter replied the subcommittee's definition was contained in Section 2 of AB 364. Mrs. Lambert then asked, "You think having 'funded by public money' will preclude any exemptions, like the example I gave you for the general improvement districts?" Mr. Porter answered he did not see any conflict in the two definitions. Further discussion followed.

Mr. Neighbors asked if a fiscal impact had been determined on any of the bills, specifically AB 366. Mr. Porter responded AB 366 merely outlined how to acquire a record, explaining the process.

Ande Engleman, Nevada Press Association (NPA) introduced Laura Wingard, City Editor, Las Vegas Review-Journal and President, Society of Professional Journalists.

Assembly Committee on Government Affairs
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Ms. Wingard presented prepared testimony (EXHIBIT C) to the committee.

Ms. Engleman then introduced Evan Wallach, General Counsel, Nevada Press Association, citing his background.

Mr. Wallach stated the public not only had the right to know, but the need to know, in order to make intelligent decisions and to give informed consent. He then proceeded to elaborate on his statement, addressed Mrs. Lambert's concern regarding the definition of "governmental entity, and explained the objectives of each bill.

Mrs. Lambert queried Mr. Wallach regarding Section 3, page 2 of AB 364. She asked, "Who is going to determine this and will they need guidelines?" Mr. Wallach answered, "This section arises because some years ago the Nevada Supreme Court decided a case called Bradshaw." He then gave his interpretation of the Bradshaw case and its interpretation across the state by governmental entities. He added, "I have yet to hear of a situation where somebody has asked for governmental records which are open by law, and the AG's office or District Attorney has said, 'We balanced it and you won, you get these records.' That's wrong, that's dead flat wrong. That's what this is in here to correct." Further discussion ensued regarding balancing.

Ms. Engleman testified this was not the first attempt to bring Nevada's public record's law into the twentieth century. She referenced the interim study performed in 1982 and the access the public presently had under Nevada Revised Statute 239. In addition, she presented the committee with Exhibit D and said, "You see an article there before you where a Clark County Commissioner could not even access public information as to the financial status of his own County from the County Treasurer who was another elected official....We are not set up to help the public, other than to give them some non-legal advice on things they might ask for when they go in....There really is no one to help the public at all at the present time." She then described the various problems encountered when attempting to acquire public records, the NPA's reluctance to participate in the interim study, the results of a private study she herself had conducted via telephone with each school district in an attempt to find out how much the County Superintendent of Education was paid, and pointed out the bills were a result of compromise. In conclusion, she directed the committee's attention to Exhibit E, a survey commissioned by NPA, and the removal of punitive

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affects on a public employee for refusing access to public records.

Mr. Williams asked for more clarification on Section 3. He suggested balancing dealt with a specific situation at a specific time but did not take into consideration future potentialities of abuse to the public. Mr. Wallach replied records closed by law were the only ones being dealt with. He said, "We are not asking that you mandate that somebody provide the information, because if we did and you did it, you would be saying it was open. We are not saying this laundry list of things which should be closed is something which should be opened. All we are saying in here is stop and consider. The situation that you pose is one factor to consider. But there are so many varieties in human experience, that all you can do is ask somebody in the law to apply it on a situation-by-situation basis. It's not perfect but it is the most workable thing we could create and it, at least, addresses your concern."

Mrs. Augustine commented on the survey saying, although statewide, it was such a small sample. A discussion ensued regarding statistical sampling.

In one last comment, Ms. Engleman clarified why it was important to open personnel files.

Karen Kavanau, Director, State Department of Data Processing, stated she had served on the advisory committee adding, "AB 367 which you will hear tomorrow declares electronic or computer records as a public record. AB 366 describes the procedure for accessing a public record. The Department of Data Processing is neutral as to what records should be accessible. This is clearly a legislative decision. I am here today to request two minor modifications to AB 366 and to emphasize a third point. If you would refer to Section 2 of AB 366 it reads,....I would ask that you would strike the words 'or other electronic means.' The reason I say that is because, if you don't, this could be interpreted to permit direct on-line access to government's databases and data communication networks. I don't believe that's your intent and I can tell you that state government simply isn't prepared for it. In Section 3, subsection a, subsection 2, if you would insert the word paper in the sentence that reads,....if you would amend that to say facilities for making 'paper' copies. The reason I ask that is, if you don't, it could be interpreted that government would have to provide facilities to make diskettes and tapes which could be very expensive. And finally, in Section 5, it reads,....I would like you to clarify....that we are talking about the government

entity that actually does gather and use that data, not the data keeper. The word custody is somewhat vague." She then gave an example, adding, "I just need some clarification in that section to make that perfectly clear that the department of data processing or its equivalent in other government organizations is not required to provide information that it does not have authority over."

Chairman Garner asked Ms. Kavanau to provide him with a list of proposed amendments as well as a copy for Mr. Wallach.

Mr. Porter pointed to Section 2 of AB 366 and said what the committee had envisioned was simply a fax machine, therefore, he did not object to the proposed amendment in that area.

Mr. Garner explained he was going to hear all testimony regarding all the bills pertaining to public records, but no action would be taken until a thorough study had been performed.

Tom Grady, Executive Director, Nevada League of Cities (NLC), stated after joint meetings with Nevada Association of Counties (NACO) and the cities and counties, he was pleased to submit the joint statement of the two organizations (Exhibit F) which supported most of the legislation with amendments.

Robert Hadfield, Executive Director, NACO, testified he had been a member of the advisory committee. He agreed with Mr. Porter the proposed legislation affected everyone; and with NPA that there was a spirit of cooperation in the effort to come up with recommendations for the committee. However, he said he thought it was necessary to present the dialogue which had taken place during the study but was not contained in the recommendations. When Mr. Hadfield asked Mr. Garner if he should step through Exhibit F, item by item, or if the committee would prefer to read it at its leisure, Chairman Garner replied he preferred the latter choice. Mr. Hadfield then summarized the concerns of NLC and NACO.

William Isaef, Chief Deputy City Attorney, City of Reno, stated he had served on the advisory committee and generally was in favor of AB 364, AB 365 and AB 366 with proposed amendments. Regarding AB 364, Mr. Isaef discussed the definition of "governmental entity," suggesting two definitions were being offered, both differing among the five bills and needing resolution; the reverse balancing test and the results it could render; violations of the supremacy laws of the United States by district or state judges; and open personnel records. Expressing his concerns regarding AB 365, Mr. Isaef said they

pertained to criminal proceedings against public employees for not providing public records and attorney's fees and costs. He next referenced AB 366 and supported Ms. Kavanau's suggestions, stating his reasons why; expressed his concern regarding Page 1, lines 20-22, which he felt would be creating new records from old records; and said he would appear to testify further on AB 367 and AB 368 at the scheduled hearing. In closing, Mr. Isaeff said, "We think that a good effort has been made here. We obviously don't agree with everything that's in the report. As a member of that advisory committee, I strongly argued for things that did not make it into the report. But this is the legislation before you and we're prepared to support this as much as we can, with amendments we feel will improve the effort."

Mr. Garner asked for written copies of Mr. Isaeff's comments and amendments.

Mrs. Segerblom asked Mr. Isaeff, "Are you suggesting that a government contract with a private company should not be public?" Mr. Isaeff replied absolutely not, with comment.

Michael Pitlock, Member, Nevada Public Service Commission, supported the concept of the legislation but intimated clarification was necessary. He said he would provide the chair with proposed, written amendments.

Myla Florence, Administrator, State Welfare Division, supported concepts but stated concerns. Written testimony, including proposed amendments, was provided to the committee. Exhibit G pertained to AB 364, Exhibit H to AB 366.

Brooke Nielsen, Assistant Attorney General, Office of Attorney General, introduced Melanie Crossley, Deputy Attorney General, Office of Attorney General, who had participated on the advisory committee. Ms. Nielsen testified she should have signed up in support of the legislation but with amendments. She then provided the committee with Exhibit I, written testimony, and proceeded to summarize it.

Debbie Cahill, Nevada State Education Association, introduced Mike Dyer and Jim Penrose, Attorneys, Nevada State Education Association. She then turned the floor over to Mr. Dyer who spoke as general counsel for the organization. Mr. Dyer explained his comments were directed to personnel files of educational employees only and did not support or oppose any other part of AB 364 or the other bills. He said educational

employees were unlike other employees, stressing teachers were subject to questioning by parents and other members of the public on a constant basis. Therefore, he did not think teachers should have their personnel records open to anyone and everyone who could pay the \$2.00, \$5.00 or \$10.00, especially students who could circulate the files around campus and faculty. Mr. Dyer then gave reasons and examples why it would not be good to open personnel records of teachers. In conclusion, Mr. Dyer asked for an amendment to AB 364 to exempt the records of educational employees unless there was a pending civil or criminal action requiring a disclosure of those records.

Mrs. Segerblom asked what information was available on teachers, Mr. Dyer replied under AB 364, everything; under current law, the balancing test and Bradshaw applied. He then gave an example of a legitimate request. When asked how long employee records were kept, Mr. Dyer answered it varied from district to district.

Jim Weller, Director, Department of Motor Vehicles and Public Safety, introduced Darcy Coss, Deputy Attorney General, Department of Motor Vehicles and Public Safety, and said the department's position on the legislation was neutral, but he wanted to express the department's concerns to the committee, which he did.

Darcy Coss concurred with the statements which had been made by previous testifiers and added her own reasons why records should not be opened. In conclusion, Ms. Coss said she would provide her statements in writing to the chair and Mr. Wallach.

Mrs. Kenny questioned the release of names and addresses. Ms. Coss explained those names were released under current law for legitimate purposes such as law enforcement, insurance or accident reports. When asked if a form containing the reason why the request was being made was prepared in these instances, the reply was yes.

Mrs. Freeman asked for clarification regarding the DMV providing lists to catalogs. Mr. Weller responded DMV did sell mailing lists to catalogs, stating the department had realized \$21,916 in 1992 and, to date, \$21,067. The lists contained name, address and the information requested. Mr. Weller said it would be good if each assemblyman checked with their constituents to see if they would like to have their names sold, as currently, there was no law saying a person could remove their name from the mailing list.

Mrs. de Braga queried if the request to not give out that information was honored. Mr. Weller replied there was nothing to preclude the department from doing that now.

Mr. Hettrick requested clarification on AB 366, lines 4 and 5, suggesting language should be tightened to exclude telephone modems as well.

A discussion ensued between Mr. Ernaut, Mr. Weller and Ms. Coss regarding the denial of access to records by a private citizen versus the selling of name and address lists to catalog businesses.

Mr. McGaughey said, from past legislative sessions, he remembered the reason for selling records had been budgetary, therefore he asked Mr. Weller to enlighten the committee in that regard.

Mr. Weller responded, "As I mentioned, the commercial sale accounts for around \$21,000 to \$22,000. That is just a small part of the \$3.9 million the department's record section brings in for giving out those records. So, you are right, it would have a financial impact. If we did not give out as much as we did, it would reduce staff."

Mr. McGaughey then said, "There is the issue. Do we want to fund \$3.9 million someplace else and retain privacy, or do you want to compromise the privacy?"

Orland Outland, speaking for himself, commented against the legislation. In addition, he gave the definition of "malfeasance," and said the legislation was blatantly an act of malfeasance, and the essence of malfeasance needed to be written into the statute with a three-step type penalty. In conclusion, he said he was highly supportive of openness in records, except for those he had spoken against, which he said would compound the problem for the individual constituent.

Mrs. Freeman asked Mr. Outland for his ideas regarding public and private partnerships in access of information. Mr. Outland replied, "I would hate to see it develop as a sham, as a mechanism to avoid accountability. If you are going to have advisory boards or commissions that will fall under this purview, then I feel that those types of activity should fall in the same type of oversight. I would hate to see it developed as an escape clause, as a mechanism to get around accountability. There is a little too much of that now."

Robert Gagnier, Executive Director, State of Nevada Employees Association, addressed AB 364. He cited Page 2, subsection 2, starting on line 27 and said, "All the information you see there, except J on line 38, is currently public record as far as state employees are concerned. We have a law which specifies what is open, public record for classified state employees and it includes almost all of this information. We do have some problem, however, with adding J when you start talking about sick leave." Mr. Gagnier continued by saying he endorsed many of Mr. Isaef's comments, but he was in opposition to some of the language which he then cited and proposed amendments to. In conclusion, Mr. Gagnier told Mr. Garner he would provide written copies of his amendments to the chair.

Frank Barker, Captain, Las Vegas Metropolitan Police Department, spoke in opposition to the legislation, providing Exhibit J to support his testimony.

Arlene Ralbovsky, Director, Police Records Section, Las Vegas Metropolitan Police Department, presented opposing testimony as outlined in Exhibit K.

Mrs. de Braga asked if a great number of requests for information was being turned down due to a lack of staff. Ms. Ralbovsky said the department was not turning down requests, only delaying them due to staffing. Mr. Barker added the staff limitations in the records department was overflowing into his department and he explained why.

Joe Melcher, Washoe County Recorder, speaking against the legislation, expressed his concerns to the committee and suggested adding language designating what kind of control the County Recorder would have of the records as there were many abuses which currently existed.

Mrs. Lambert queried issuing a subpoena to enforce a real estate transfer tax and asked if the tax statute specifically kept the information confidential. Mr. Melcher said he was not sure because no one had ever asked for that information although the information was available to the public. Further discussion followed.

James Wright, Chief Deputy Recorder, Washoe County, testified his concern was at what point a document became a public record; his department's ability to make a copy of the record before releasing it to the public; and the ability of the public to utilize equipment to make copies. Mr. Melcher agreed the last concern posed several problems for the department.

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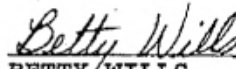
Robert Cox, Nevada State School Board Association and Washoe County School District, echoed the reservations of Mr. Isaef, Ms. Nielsen and Mr. Dyer, and requested amendments in those areas. In addition, Mr. Cox addressed the litigation section of AB 364 and stated his argument; AB 365, the balancing test, costs, and attorney fees. In conclusion, Mr. Cox said he would address a letter to the chair and Mr. Wallach stating his concerns and containing proposed amendments.

Chairman Garner explained the committee was running out of time, therefore, he would allow those who did not have the opportunity to testify to sign the attendance roster for the hearing on April 14, 1993, and he would permit them to speak prior to hearing the other bills on the agenda.

Jim Richardson, Nevada Faculty Alliance, expressed his concerns regarding AB 364, especially personnel records of educators. He asked that Section 3, the balancing test, be dropped, and suggested a notification procedure be included. He then cited what he believed to be other problems with the legislation.

There being no further business to come before committee, the meeting was adjourned at 10:56 a.m.

RESPECTFULLY SUBMITTED:



BETTY WILLS
Committee Secretary



Society of
Professional Journalists
Las Vegas Professional Chapter

ASSEMBLY GOVERNMENT AFFAIRS
Testimony on Open Records Bills
Assembly Bills 364, 365, 366, 367, 368

Good morning. Chairman Garner, members of the committee, my name is Laura Wingard. I'm the city editor for the Las Vegas Review-Journal and am here today in my capacity as president of the Las Vegas chapter of the Society of Professional Journalists, which includes members from newspapers, TV and radio.

My purpose today is not to go line by line through the public records bills before you but to stress to you why they are important and needed.

First, Nevada has more than 165 statutory exemptions to its so-called Open Records Act. The number of exemptions more than doubles when exclusions made through administrative regulations are included. This should disturb anyone committed to making sure that the business of government is done in the open.

Because there are so many exemptions, it is important that these bills pass so a signal is sent to the public employees who hold public records that it is their job to ensure the public has easy access to those documents which indeed are open for review by taxpayers. Journalists, in the course of trying to inform the public about the business of government, frequently encounter roadblocks in gathering open records. Too often, government agencies try to discourage reporters by first refusing access, then delaying access and finally releasing the record.

For example, a Review-Journal reporter told me on Friday the trouble she had obtaining a sexual assault report filed with the Metropolitan Police Department. First, she stood in line in the records department for the report. The records clerk went to pull the report and then refused, saying she could release no sexual assault reports. The reporter knew this was wrong, so she went and tracked down Metro's public information officer, who then intervened on the reporter's behalf. The reporter then returned to the records department and patiently waited for the records clerk to black out information that would identify the victim's name or address. She then paid the \$5 Metro requires for

1018 EXHIBIT C 15

any police report -- whether it's one page or 100 pages. If Metro's public information officer had not been available on Friday, the reporter would have left empty handed when there was no reason to withhold the public report.

This is not an isolated incident. Not a week goes by at the Review-Journal that a reporter does not complain to me about problems in obtaining public records. Some government agencies don't want to provide contracts they've made for lobbying services. Others don't want to reveal details of contracts with consultants and others. Some won't release the individual salaries of public employees. I would argue that all of these records should be open and available for public review.

Some have said the news media should stop whining about lack of access to public records and instead take government agencies to court every time a public record is refused. This would be a costly and unworkable solution. As I've said, my newspaper alone is refused public records every week. Add up all the other news organizations in the state -- not to mention citizens -- who are refused public documents, and the courts would face a glut of such cases. More importantly, lawsuits are public documents. A news organization does not want all of its competitors knowing it is suing for certain records, which -- if the courts ruled they were public -- then would be made available to everyone but with only one news organization having paid for the costly litigation.

So, in an effort to make it easier for the public to access the very records they paid to create through taxes, I urge you to pass these open records bills. By so doing, you would send a powerful message that you believe government's business should be done in the open and without fear of public scrutiny.

Thank you for listening to me. I'd be happy to try to answer any questions you may have.

COUNTY GOVERNMENT

Treasurer spars with Schlesinger

Aston, commissioner argue over banks

By Mary Manning
LAS VEGAS SUN

County Commissioner Don Schlesinger threatened to take legal action against county Treasurer Mark Aston after Aston refused to provide a list of banks doing business with county funds.

Aston turned down Schlesinger's month-old request for further financial details Tuesday. "I don't feel by providing it that that information would be of any value to you," he said.

Schlesinger is seeking more information on the banks that handle county investments in an attempt to determine if the banks have good records in dealing with minorities.

But Aston said the information, in the hands of an untrained person, could be misconstrued or misused to the county's detriment.

"I will do whatever it takes to make this information public," Schlesinger said. That includes requesting the Nevada State Press Association to become involved, he said.

"I share with Commissioner (Karen) Hayes my outrage that the public discussion was cut off by the treasurer and any other member on the board," Schlesinger said.

Aston said business with Valley Bank and brokerage reports available to commissioners, County Manager Pat Shalmy and Comptroller Guy Hobbs. Schlesinger pressed the treasurer for information on other funds connected to McCarran Airport, the Sanitation District or the Water District.

"On what basis do you need that information?" Aston asked. A startled Schlesinger — his voice rising — responded: "We



PAUL CHRISTENSEN calls for an end to the argument.

have the right to find out this information."

"I want to know all the banks. It is clear I do not have the information. It is clear the press does not have the information. It is clear the public does not have this information."

"Actually, Don, I don't have to give you the time of day," Aston responded.

"I'm not asking for the time of day," Schlesinger said. "I'm asking for the documents."



DON SCHLESINGER demands county banking records.

"For the benefit of the commissioner who does not understand his job ... and for the benefit of the chair, who is old enough to know better," Christensen said he would ask Deputy District Attorney Mahlon Edwards to explain tabling.

The motion to table was approved 3-2 with Commissioners William Pearson, Thalia Dondero and Christensen in the majority. Hayes and Schlesinger

voted against it. Commissioners Bruce Woodbury and Bingham were absent.

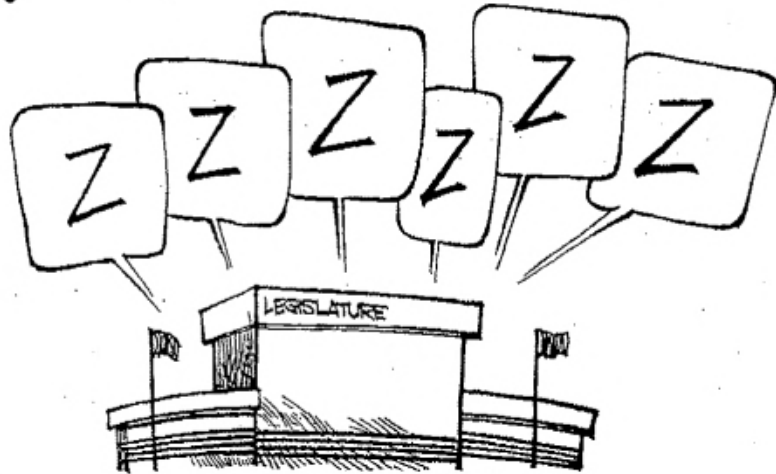
Schlesinger said the issue might wind up in court. He also asked County Manager Pat Shalmy to draft a disclosure law applying to county records.

Hayes said that the county's investment policy should be reviewed. The board examined it in October.

EXHIBIT D

1020

And if we had more open government, we might really find out what our government does...



Legislature should open the doors on government

The media have long been pushing for it. Now, the public agrees: State government must be open.

Legislators should pay attention to a survey released earlier this week, showing Nevadans strongly support an end to secrecy in government.

The survey, conducted by the Nevada Press Association, indicated 92 percent of Nevadans want their government agencies to provide their meeting agendas free of charge to the public.

The 500 residents in the survey believe the public's right to know outweighs a public servant's desire for privacy as it relates to job performance, qualifications or possible illegal actions.

Interestingly, even the majority of government workers polled favor open personnel records. That makes us wonder if most of the objections are coming from management positions in government.

Those polled prefer open government by wide margins. Ninety-five percent want records on government spending open, and more than 60 percent want public birth and death certificates. Support was strong for continuing the public notice requirements which newspapers regularly publish.

The association's survey shows what we've long suspected. People don't trust government agencies that operate behind closed doors or hide documents relating to their activities. Voters

know open government is more responsive.

A legislative subcommittee has recommended opening more public records and limiting government power to keep its affairs secret. If the Legislature approves, the recommendations would be the first major changes in a law that has survived basically intact since 1911.

The association survey adds ammunition to the subcommittee's recommendations. Government should be more open. Documents should be subject to public review. Agencies should not be permitted to operate in secret.

Historically, government secrecy has been advocated by special-interest groups or well-meaning bureaucrats who think the public should only know what others think it needs to be told.

There are undoubtedly those who will tell the Legislature they need secrecy to conduct business effectively. But, that's like telling your boss you work better when he isn't aware of what you're doing. Neither he, nor the public, will believe you.

The public must be able to review its government's workings. Without open government, the public cannot ascertain what it is doing. And if the public does not know what the government is doing, it can't make intelligent decisions at the ballot box.

Open government is the essential ingredient for democracies to work.

Research Report

Nevada Press Association, Inc.

1992-93 Statewide Survey
of Registered Voters



EXHIBIT E

1022
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BARRY NEWTON
DIRECTOR

DR. ERNEST F. LARKIN
RESEARCH CONSULTANT

Consumer Data Service

3601 North Lincoln Blvd. • Oklahoma City, OK 73105 • 405/524-0021

TO WHOM IT MAY CONCERN:

The data in this report was generated through an extensive market research study conducted jointly by Consumer Data Service (CDS), a market research firm, and the Journalism Research Center at the University of Oklahoma.

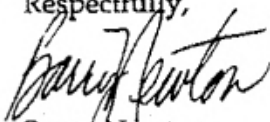
The study was commissioned by the Nevada Press Association, Inc. The purpose of the study was to determine attitudes towards government records and the publication of legal notices by registered voters in the state of Nevada.

In order to gain valid insights into citizen preferences and tendencies, a structured questionnaire was developed and tested.

The questionnaire, constructed by Dr. Ernest F. Larkin, director of the Journalism Research Center at OU, was designed to be administered via telephone interviews with a random sample of registered voters in the state of Nevada.

Consumer Data Service and the Journalism Research Center are responsible for the design and execution of the study. All data were processed by CDS and the Journalism Research Center, and the report was prepared by us. I can certify that the data in this report are, to the best of my knowledge, valid and correct.

Respectfully,


Barry Newton
CDS Director

A Market Research Firm Serving The Newspaper And Retailing Industries

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Nevada Press Association, Inc.

1992-93 Statewide Survey of Registered Voters

Executive Summary

Nevada's registered voters are sensitive and alert to issues affecting them personally and to issues and records under the control of their state and local governments. By a substantial majority Nevada's registered voters believe most, if not all, records obtained by government agencies should be accessible by private citizens. Registered voters believe the public's right to know outweighs a public servant's or public employee's contention to privacy with matters relating to job performance, qualifications and illegal actions. Even a majority of government employees are in favor of openness with respect to personnel records.

While Nevada's voters are strongly in favor of open records, they are not insensitive to the cost to provide such records. A majority of Nevada's citizens believe individuals should pay for public records they request, however they do not believe the government should make a profit on public records provided.

A desire for openness in government was expressed by each public sector examined. No significant differences were demonstrated by respondent age group, income category, gender, or rural or metropolitan residence. The basic message received from the survey was that citizens deserve to know what actions their government takes and have a right to access records and information a government may keep and maintain.

The following summary highlights the results of questions asked to 500 registered voters in Nevada regarding their attitudes toward state government records and their usage and feelings toward the publication of legal and public notices. Comparisons by the respondents' residence or by having a government employee in the household are indicated in the text headings accompanying the specific questions asked.

Voter Access to Government Information

Registered voters to the statewide survey were asked if Nevada citizens should have access to specific types of information that were part of present day public records or information collected by public agencies. Of the 500 interviews, respondents were divided by metro and non-metro locations and by government and non-government employment status. By every measure examined, respondents were strongly in favor of openness to the following categories.

Q. Should private citizens have access to information on . . .			
Response (N=500)	% of total sample	Metro respondents	Non-Metro respondents
Expenditure of taxpayer dollars			
by gov't agencies	95.8	95.6	96.0
Birth and death certificates	63.0	64.4	61.6
Work experience of public employees	76.2	73.2	79.2
Illegal actions by public employees	88.8	86.8	90.8
Job performance data on			
Dept of Welfare employees	75.2	74.8	75.6
Court information on			
hazardous products	93.4	91.6	95.2
Payment of settlements in suits against			
the government by private citizens	75.2	74.8	75.6
Job performance and job qualifications information on			
Gov't agency heads	90.0	90.0	90.0
Gov't department heads	90.8	89.6	92.0
Government or public			
agency administrators	90.4	89.6	91.2
All public employees	70.6	66.8	74.4
Teachers in public schools			
and colleges	77.0	78.4	75.6

	Households with public employee	Household without public employee
Expenditure of taxpayer dollars		
by gov't agencies	96.2	95.7
Birth and death certificates	63.2	62.4
Work experience of public employees	74.4	77.2
Illegal actions by public employees	86.5	89.9
Job performance data on		
Dept of Welfare employees	66.9	78.9
Court information on		
hazardous products	97.0	92.8
Payment of settlements in suits against		
the government by private citizens	73.7	76.6
Job performance and job qualifications information on		
Gov't agency heads	87.2	91.6
Gov't department heads	88.7	92.2
Government or public		
agency administrators	87.2	92.5
All public employees	64.7	73.1
Teachers in public schools and colleges	69.9	79.8

Other results from questions relating to government records and meetings revealed that...

- 94.2% believe government agencies should continue to provide agendas of open meetings free of charge to the public.
- 86.0% believe private citizens should have access to all information which government agencies may have about them.
- 58.2% believe private citizens should pay for copies of records they request from government agencies, but...
- 78.7% do not believe government should make a profit on public records they sell or provide to citizens.
- 80.2% do not believe government agencies should arbitrarily close records which presently are open to the public.

Q. Should government agencies continue to provide agendas of open meetings free of charge to the public?

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	94.2	94.0	94.4	96.2	93.1
No	3.2	3.6	2.8	2.3	3.8
DK/NR	2.6	2.4	2.8	1.5	3.2

Q. Should private citizens have access to all information which government agencies may have about them?

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	86.0	85.2	86.8	85.7	86.7
No	10.8	10.8	10.8	12.0	10.1
DK/NR	3.2	4.0	2.4	2.3	3.2

Q. Should private citizens have to pay for copies of public records they request from government agencies?

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	58.2	55.2	61.2	69.2	52.6
No	38.6	40.4	36.8	27.1	44.2
DK/NR	3.2	4.4	2.0	3.8	3.2

Q. Should the government charge enough to make a profit on public records they sell to private citizens?

Response (N=291)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	20.3	23.2	17.6	17.4	20.3
No	78.7	75.4	81.7	82.6	78.0
DK/NR	1.0	1.4	.7	0.0	1.6

Q. Should government agencies be able to close records to the public which are now open?

Response (N=500)

	% of total sample	Metro respondents	Non-Metro respondents	Households with gov't employee	Households without gov't employee
Yes	12.2	10.0	14.4	9.8	11.8
No	80.2	81.2	79.2	82.0	80.9
DK/NR	7.6	8.8	6.4	8.3	7.2