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8-2-2017

### City of Sparks vs. Reno Newspapers, Inc., 133 Nev. Adv. Op. 56 (August 3, 2017)

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#### Recommended Citation

Griffith, Brittini, "City of Sparks vs. Reno Newspapers, Inc., 133 Nev. Adv. Op. 56 (August 3, 2017)" (2017).  
*Nevada Supreme Court Summaries*. 1072.  
<https://scholars.law.unlv.edu/nvscs/1072>

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CIVIL PROCEDURE: WRIT OF MANDAMUS, PUBLIC RECORDS RELEASE

**Summary**

The Court reviewed an appeal to determine whether an appellant: (1) “properly sought the disclosure of public records by a writ of mandamus,” and (2) whether medical marijuana establishments (“MMEs”) business license identifying information must be disclosed pursuant to the Nevada Public Records Act. The Court held that NRS 239.011 provides the specific means by which to challenge the disclosure of public records, and thus Respondent properly filed a petition for a writ of mandamus. Additionally, pursuant to NRS 453A.370(5), the Department of Health and Human Services’ Division of Public and Behavior Health (“Division”) has the proper authority to adopt regulations related to confidentiality of MME information. As a result, NAC 453A.714 was properly enacted and MME business license information is “exempt from disclosure.”

**Background**

Pursuant to NRS 453A.322(1) and NRS 453A.326(3), all individuals who “operate medical marijuana establishments . . . must register with the Department of Health and Human Services’ Division of Public and Behavioral Health . . . and if located in a jurisdiction so requiring, obtain a business license.” Reno Newspapers, Inc. (“RGJ”) requested City of Sparks (“City”) to produce copies of such business licenses for those “operating MMEs in the City.” The City gave RGJ copies of the requested MME licenses, but with the licensee’s identification information “redacted.” RGJ clarified its’ request asking for the redacted identification information to which the City declined to follow the request.

RGJ then “filed a petition for a writ of mandamus” to require the City to produce the redacted identification information. The district court ruled in favor of RGJ holding that this was a proper petition, NAC 453A.714 did not exempt the City from releasing this information, and that The City was required to turn over the licensee identification information pursuant to the Nevada Public Records Act.

**Discussion**

The City disagreed with the district court’s decision. Specifically, the City argued: (1) that “a petition for a writ of mandamus is not the appropriate means of seeking judicial relief when challenging an administrative code” and instead the City should have filed an action under the Nevada Administrative Procedure Act, and (2) the City did not have to disclose the MME licensee’s identification information because that information is confidential under NAC 453A.714.

As to the City’s first argument, the Court has held that a writ of mandamus is the proper way to get public records disclosed. Further, relying on the rule of statutory construction that prefers specific regulations over general ones, the Court finds that while NRS 233B.110 may instruct the way to challenge *any regulation*, NRS 239.011 provides the specific avenue for relief

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<sup>1</sup> By Brittini Griffith.

as it relates to public records disclosure. The City's refusal to disclose public records was the issue in the instant case. Thus, RGJ used the proper method when it filed a writ of mandamus.

*The identifying information contained in MME business licenses is confidential and not subject to disclosure under the Public Records Act.*

*Generally, the Nevada Public Records Act requires disclosure*

The Court has held that "all public records are open to disclosure unless [the government proves by a preponderance of the evidence that]

(1) the Legislature has expressly and unequivocally created an exemption or exception by statute; or (2) balancing the private or law enforcement interests for nondisclosure against the general policy in favor of an open and accessible government requires restricting public access to government records.<sup>2</sup>

The City argued that the Legislature "has expressly and unequivocally created an exemption or exception" by enacting NRS 453A.370(5) and NAC 453A.714 which provide exceptions for disclosure of MME licensee's identification information.

*NRS 453A.370(5) and NAC 453A.714 make confidential the identifying information of persons engaged in facilitating or delivering medical marijuana services*

NRS 453A.370 gives the Division the authority to "adopt [necessary] regulations" as it relates to medical marijuana services, and, more specifically, NRS 453A.370(5) states that the Division "must . . . [a]s far as possible . . . protect the identity and personal identifying information of each person who receives, facilitates or delivers services." RGJ argued that the "as far as possible" language is ambiguous, but it is clear that the Legislature intended to make some exceptions for disclosure to particular individuals, such as law enforcement agencies. Further, the Court agreed that the Division was within its duty when it adopted NAC 453A.714, which "expressly and unequivocally makes confidential the identifying information of MME business license holders."

*NRS 453A.370(5) grants the Division power to make confidential the identifying information of certain persons*

NRS 453A.370(5) clearly gives the Division the authority to adopt rules regarding confidentiality. However, RGJ argued that NRS 453A.370(5) cannot be used as an exception to the public disclosure laws, and only exceptions listed under NRS 239.010 should apply. However, "[t]his court has held that regulations need not be expressly mentioned in NRS 239.010 to grant confidentiality and exemption from" disclosure. Thus, the Division has the proper authority to prevent disclosure.

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<sup>2</sup> Reno v. Newspapers, Inc. v. Haley, 126 Nev. 211, 214–15, 234 P.3d 922, 924–25 (2010).

*NAC 453A.714 expressly and unequivocally prohibits disclosure of the identity and identifying information of MME business license holders*

The City argued that NAC 453A.714 prevents disclosure of the MME licensee's information "because (1) the license holders are persons who 'deliver' services under NRS Chapter 453A, as that term is statutorily defined; and (2) when NRS 453A.370 was enacted . . . the Nevada Legislature intended to expand the grant of confidentiality beyond the existing medical-marijuana-related confidentiality statutes."

As to the first point, NAC 453A.714 prohibits the disclosure of identification information for anyone who delivers a service. "Delivers" is defined as "the actual, constructive or attempted transfer from one person to another of a controlled substance. . ." All MME business licensees deliver services because they "engage in the act of delivering marijuana." The RGJ argues that the phrase "delivers services" is vague because it is not defined. Nevertheless, if one were to employ his or her "common sense" the phrase is clear in that it "refers to the act of producing and distributing medical marijuana" in the context of this statute.

As to the second point, being that there were already two statutes related to confidentiality in existence at the time that NRS 453A.370 was enacted, the Legislature intended to expand confidentiality to MME licensees by enacting a third provision. Therefore, the Legislature intended to prevent disclosure for MME licensees specifically.

**Conclusion**

The Court reversed the district court's order requiring the City to disclose MME business licensee's identification information. Specifically, RGJ's petition for a writ of mandamus was proper, pursuant to NRS 453A.370(5) the Division has the authority to prevent disclosure of certain identification information, and pursuant to NAC 453A.714 MME business license information is "exempt from disclosure."