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### Summary of LVMPD v. Blackjack Bonding, 131 Nev. Adv. Op. 10

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*Nevada Law Journal*

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NEVADA PUBLIC RECORDS ACT

**Summary**

The Court determined that (1) the records of CCDC inmate calls were public records within LVMPD's legal custody or control under the NPRA;<sup>2</sup> and (2) that Blackjack Bonding was the prevailing party and was therefore entitled to a statutorily mandated award attorney fees and costs,<sup>3</sup> regardless of their court-ordered responsibility to pay costs associated with production.

**Background**

In 2011, Clark County and CenturyLink entered into a contract for the provision of inmate telephone services for the Clark County Detention Center (CCDC). The telephone system could generate records including, but not limited to, the number dialed, the call duration, the station originating the call, the call's cost, and the method of call termination. The system also provides CCDC with access to other data, including calls to specified destination numbers, calls from specific inmates, completed and incomplete calls, and calls from specific inmate telephones. Reports can be generated and printed based on this data.

The Las Vegas Metropolitan Police Department (LVMPD) is the governmental entity that runs the CCDC. In 2012, Blackjack Bonding made a public records request to LVMPD for all call detail records from telephones used by CCDC inmates for 2011 and 2012, a call log that details the description of the phone used along with other data including inmate identification information, and a list of all phones used by inmates and phone description, including whether the phone is used to place free or collect calls, or both. Blackjack conveyed that it understood that inmate identifying information may need to be redacted. LVMPD denied the request, claiming it did not possess the records.

Blackjack petitioned the district court for a writ of mandamus to compel LVMPD to provide the records. Blackjack submitted an affidavit in support of its petition from its president, which stated that prior to making the public records request, Blackjack asked CenturyLink to provide call detail records regarding CCDC inmate calls to Blackjack's number and received this data on the day it made the request. The district court granted in part Blackjack's request for mandamus relief, stating that (1) the requested records were public records that LVMPD had a duty to produce, (2) the inmates' identifying information must be redacted before production, and (3) Blackjack would pay costs associated with production.

The district court denied Blackjack's motion for attorney fees and costs because it found that (1) the order granting relief in part required Blackjack to pay costs associated with production, including its own attorney fees and costs, and (2) Blackjack was not a prevailing party.

LVMPD appealed the order granting partial relief to Blackjack, and Blackjack appealed the district court's denial of its motion for attorney fees and costs.

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<sup>1</sup> By Sydney Gambee.

<sup>2</sup> See NEV. REV. STAT. § 239.010 (2011).

<sup>3</sup> See NEV. REV. STAT. § 239.011 (2011).

## Discussion

*The district court did not err or abuse its discretion in granting in part Blackjack's petition for a writ of mandamus*

The Nevada Public Records Act (NPRa) makes nonconfidential public records and books of a governmental entity available to the public for inspection.<sup>4</sup> If the requested record contains confidential information which can be redacted, the governmental entity with legal custody or control of the record cannot refuse to disclose solely based on confidentiality.<sup>5</sup>

LVMPD argued that the requested records are not subject to disclosure because they (1) do not concern an issue of public interest, (2) involve communications between private entities, and (3) are not in LVMPD's legal custody or control.<sup>6</sup> LVMPD further argued that a recent case (*PERS*)<sup>7</sup> prevents it from having to create a new document to satisfy a public records request, and that even if the records are public records, a balancing-of-competing-interests test weighs in favor of nondisclosure.

Blackjack argued that because LVMPD can obtain the records from CenturyLink at no cost, the records are within LVMPD's control. Blackjack also argued the balancing-of-competing-interests test does not preclude production because LVMPD failed to offer legitimate interest for denying the request, and Blackjack agreed to redaction of inmates' identifying information.

### *Standard of review*

The Court reviews a district court's grant or denial of a write petition for abuse of discretion, but reviews the district court's interpretation of case law and statutory language de novo.

*LVMPD has a duty to provide nonconfidential public records over which it has legal custody or control*<sup>8</sup>

### *The requested information is a public record*

NRS 239.001(4) mandates public access to records relating to the provision of those public services that are provided by private entities on behalf of a governmental entity. Public service has been broadly defined as a service rendered in the public interest.

The use of the telephone is not only essential for a pretrial detainee to exercise his constitutional rights, including the ability to call a lawyer or other person to prepare his/her case,

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<sup>4</sup> NEV. REV. STAT. § 239.010(1) (2011). The Court applied the version of the NPRa that was in effect at the time of Blackjack's request.

<sup>5</sup> NEV. REV. STAT. § 239.010(3) (2011).

<sup>6</sup> The Court found unpersuasive LVMPD's further argument that it did not need to fulfill the request because of Blackjack's business interest. LVMPD did not provide evidence of Blackjack's motive and motive is not relevant to the government's duty to disclose under the NPRa. *See* NEV. REV. STAT. § 239.010 (2011).

<sup>7</sup> *Pub. Emp.'s Ret. Sys. v. Reno Newspapers*, 129 Nev. Adv. Op. 88, 313 P.3d 221 (2013).

<sup>8</sup> Neither party disputed that LVMPD is a governmental entity subject to the NPRa.

but Nevada law also protects a detainee's right to use a telephone while detained.<sup>9</sup> This right is not limited when a private entity provides the telephone services for use by the detainee.<sup>10</sup>

Here, the CenturyLink telephone services assist LVMPD's facilitation of detainees' statutory rights. That some call records may be between private individuals does not alter the public service at issue because the NRS contemplates detainees making calls to private parties.<sup>11</sup> The public has an interest in having governmental entities honor inmate's statutory rights,<sup>12</sup> so the information requested by Blackjack is a public record because it relates to the provision of a public service.

*The requested information was within LVMPD's legal control*

The contract with CenturyLink provided that the telephone system could generate call records for use in administrative and investigative purposes. Thus, the contract indicates that CenturyLink could generate the requested information and provide it to LVMPD, placing the information within LVMPD's legal control.

*The recent PERS opinion does not preclude the duty to produce the requested information*

The holding in *PERS* considered the applicability of the NPRA to information stored in the individual files of retired employees that are maintained by an agency. While the Court determined that such information must be disclosed, the Court limited that holding by finding that where an agency has to create new documents or customized reports by searching for and compiling information from individuals' files or other records, the NPRA did not require their production and disclosure.<sup>13</sup> However, where an agency has a computer program that can readily compile the requested information, the agency is not excused from its duty to produce and disclose that information.

Here, Blackjack's request did not require LVMPD to search through individual files and compile information. The inmate services contract with CenturyLink and CenturyLink's previous fulfillment of a similar records request demonstrate that CenturyLink had the capacity to produce the requested records. LVMPD also admitted that CenturyLink could produce the requested records. Therefore, *PERS* does not prevent disclosure because the requested records are readily accessible.

*The balancing-of-competing interests test does not preclude disclosure*

A balancing-of-competing-interests test is appropriate when the statute does not explicitly make certain information confidential but the governmental entity nonetheless resists disclosure of such information. The test weighs the fundamental right of a citizen to have access to public records against the incidental right of the agency to be free from unreasonable interference. The

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<sup>9</sup> "Any person arrested has the right to make a reasonable number of completed telephone calls from the police station or other place at which the person is booked." NEV. REV. STAT. § 171.153(1). "A reasonable number of calls must include one completed call to a friend or bail agent." NEV. REV. STAT. § 171.153(2).

<sup>10</sup> NEV. REV. STAT. § 171.153.

<sup>11</sup> NEV. REV. STAT. § 171.153(2).

<sup>12</sup> See NEV. REV. STAT. § 228.308.

<sup>13</sup> Pub. Emp.'s Ret. Sys. v. Reno Newspapers, 129 Nev. Adv. Op. 88, 313 P.3d 221, 225 (2013).

government bears the burden of showing its interest outweighs the public's interest.

The Court determined LVMPD failed to satisfy its burden under the test because it could not support its contentions that the request compromises the private interests of inmates and is burdensome. LVMPD cannot refuse to disclose on the basis of confidentiality if it can redact the information, and Blackjack agreed to the redaction of inmate identifying information. Further, the district court mitigated any financial burdens to LVMPD by requiring Blackjack to pay costs associated with production. Thus, LVMPD failed to meet its burdens under the test.

*The district court abused its discretion by refusing to award reasonable attorney fees and costs to Blackjack*

Blackjack disputes the district court's findings that it is not a prevailing party and that the prior order precluded LVMPD from having to pay Blackjack's attorney fees and costs.

#### *Standard of review*

The Court reviews a district court's decision regarding an award of attorney fees or costs for abuse of discretion. Abuse of discretion can occur if the district court bases its decision on a clearly erroneous factual determination or disregards controlling law.

#### *NRS 239.011 entitles a prevailing requester to recover attorney fees and costs*

By its plain meaning, NRS 239.011 entitles a requester who prevails in NPRA litigation to the right to recover attorney fees and costs, regardless of whether the requester must pay the agency for expenses associated with production.

*The district court abused its discretion in failing to find that Blackjack was a prevailing party*

A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.<sup>14</sup> To be a prevailing party, a party need not succeed on every issue.

Here, the district court ordered LVMPD to produce nearly all the information requested by Blackjack. The record demonstrates that Blackjack obtained the writ it sought, so it succeeded on a significant issue and achieved at least some of the benefit that it sought. Thus, the district court abused its discretion by relying on the clearly erroneous finding that Blackjack was not a prevailing party. That Blackjack was ordered to pay costs of production is of no consequence.

### **Conclusion**

The Court determined that the requested records were public records within the control of LVMPD. The Court reversed the district court's order denying Blackjack's motion for attorney fees and costs and remanded back to the district court to enter an award for reasonable attorney fees and costs.

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<sup>14</sup> Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005).