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### Republican Attorneys General Association v. Las Vegas Metropolitan Police Department, 136 Nev. Adv. Op. 3 (Feb. 20, 2020)

Nicholas Hagenkord

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NEVADA PUBLIC RECORDS ACT: DISCLOSURE OF CONFIDENTIAL JUVENILE JUSTICE INFORMATION

**Summary**

The Court determined that (1) the district court did not err in denying appellant Republican Attorneys General Association's (RAGA) petition for a writ of mandamus under the Nevada Public Records Act (NPRa) seeking bodycam footage regarding juveniles and former State Senator Aaron Ford's interactions with police; and (2) the district court abused its discretion in denying RAGA's request for other requested records by not assessing whether these records contain any nonconfidential material.

**Background**

Las Vegas Metropolitan Police Department (LVMPD) officers responded to an incident at a property that prompted the arrest of numerous juvenile suspects. Senator Aaron Ford, along with other parents, showed up at the scene after officers arrived. Ford's child was one of the suspects at the scene.

After the incident, RAGA requested records related to the incident pursuant to the NPRa. RAGA's initial request was denied without any information as to why. RAGA sent a second letter to LVMPD specifying their request for records, including: bodycam footage, the police report, witness and victim statements, computer-aided dispatch, and any other statements by officers related to the incident concerning Ford and the juveniles. LVMPD denied RAGA's second request, stating the records were part of an active criminal investigation. LVMPD failed to cite any specific legal authority, as required by NRS 239.0107(1)(d)(2). RAGA sent a third request and it was denied again by LVMPD, stating the investigation involved juvenile suspects and arrestees. LVMPD justified their third refusal to disclose records by citing NRS 62H.025 and NRS 62H.030. RAGA sent a fourth and final request, this time asking only for records relating to or depicting Ford's interactions with LVMPD officers. None of LVMPD's responses to RAGA were within five business days as required by NRS 239.0107(1).

After being met with resistance, RAGA petitioned for a writ of mandamus under the NPRa. LVMPD submitted six hours of bodycam footage with a privilege log to the district court where a review was conducted.

Upon review, the district court denied RAGA's petition. It concluded that the bodycam footage is protected under NRS 62H.025, relating to confidentiality of juvenile justice information. The presence of an adult at the scene does not remove these records from protection. The district court also concluded that LVMPD's failure to respond to RAGA's requests in a timely manner did not result in LVMPD waiving its assertion of confidentiality.

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<sup>1</sup> By Nicholas Hagenkord

## Discussion

The interplay between confidentiality of juvenile justice information and disclosure of public records under the NPRA is of first impression. A district court's order denying a petition for a writ of mandamus is reviewed for an abuse of discretion.<sup>2</sup> However, questions of statutory construction and interpretation are questions of law reviewed de novo.<sup>3</sup> Here, the court assesses: (1) whether LVMPD waived its assertion of confidentiality; (2) whether the district court erred in finding all portions of bodycam footage contain juvenile justice information and are therefore excluded from disclosure; and (3) whether the district court abused its discretion in denying RAGA's petition as to other records.

### *LVMPD did not waive its assertion of confidentiality*

The Court agrees with the district court that there is no legal basis for RAGA's argument that LVMPD waived its assertion of confidentiality when it failed to timely respond to the requests for records.

The NPRA allows the public to access public records to foster democratic principles.<sup>4</sup> However, there are more than 400 stated exceptions, including NRS 62H.025 for confidential juvenile justice information.<sup>5</sup> Under NRS 239.0107(1)(d), a governmental denial of an NPRA request due to confidentiality must include citation to relevant authority and must respond within five business days.

LVMPD did not respond in a timely fashion and thus, RAGA argues that LVMPD waived its assertion of confidentiality. The NPRA includes several remedies for noncompliance, however, the statute does not mention waiver as a remedy.<sup>6</sup> Because the statute in question is clear and unambiguous, the Court gave effect to the ordinary meaning of the text's plain language without reading other remedies into the statute. NRS 239.011 states remedies for when a governmental entity fails to comply with response requirements in NRS 239.0107(1)(d) as: apply to the district court and obtain costs and attorney fees upon prevailing. Waiver is not an enumerated remedy and thus, the Court declined to apply it as such.

RAGA also argued that waiver is an appropriate remedy existing in equity. The Court adamantly disagrees, stating that it would lead to an absurd penalty resulting in the public disclosure of Nevadans' private information. The proposed remedy would infringe on innocent actors' confidentiality and expose private information, solely because of LVMPD's failure to respond in a timely fashion.

In concluding that the LVMPD did not waive its assertion of confidentiality by failing to timely respond, the Court also noted that the legislative history supports their determination. A waiver provision in NRS 239.0107 was stricken by Amendment No. 415. S.B. 123, Amendment

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<sup>2</sup> *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> NEV. REV. STAT. 239.001(1), 239.010; *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011).

<sup>5</sup> *See City of Sparks v. Reno Newspapers, Inc.*, 133 Nev. 398, 402, 399 P.3d 352, 356 (2017) (regarding the statutes listed in NRS 239.010(1) as specific exemptions to the NPRA).

<sup>6</sup> *See* NEV. REV. STAT. 239.011.

no. 415, § 4, 74th Leg. (Nev., Feb. 20, 2007) for concerns that the Department of Corrections would not have time to address requests for confidential records.<sup>7</sup>

*The district court did not err as to the bodycam footage*

RAGA argued: (1) bodycam footage is not subject to the confidentiality provisions in the NPRA; (2) information on juvenile arrests does not constitute juvenile justice information; (3) not all portions of the footage contain confidential information; and (4) any confidential portions of the footage could have been redacted. The Court did not find weight in any of these arguments.

1.

RAGA contended that the bodycam footage is not subject to the confidentiality provisions in NRS 239.010(1) because it is trumped by NRS 239.830(2)(b) pertaining to bodycam footage. The Court clarified that bodycam footage, like all other public records, is subject to the NPRA. However, the NPRA expressly yields to confidentiality provisions.<sup>8</sup> One of these confidentiality provisions is NRS 62H.025 which protects juvenile justice information. The Court determined that the confidentiality provision in NRS 62H.025 is the more specific provision and will control to the extent that it conflicts with NRS 289.830(2)(b).

2.

The Court also disagreed with RAGA's argument that NRS 62H.025, the statute governing juvenile justice information, does not apply when a juvenile is arrested but not brought before a juvenile court. "Juvenile justice information" means any information which is directly related to a child in need of supervision, a delinquent child or any other child who is otherwise subject to the jurisdiction of the juvenile court."<sup>9</sup> Nothing in this statute requires juveniles to be brought before a juvenile court for information to be considered "juvenile justice information" and, therefore, the Court determined any information related to the arrest of juveniles constitutes juvenile justice information.

3.

RAGA's argument that not all bodycam footage contain juvenile justice information was denied. Findings of fact will not be set aside unless clearly erroneous or not supported by the evidence.<sup>10</sup> After reviewing the bodycam footage, the Court agreed with the district court's decision that all portions of the footage contain juvenile justice information.

4.

The Court concluded that it is not possible to redact any non-confidential bodycam footage because all portions of the footage contain juvenile justice information. NRS 239.010(3) does provide that a governmental entity shall not deny a request for public records on the basis of confidentiality if the entity can "redact, delete, conceal, or separate" the confidential information, however, that is not possible in this case. Requiring LVMPD to redact the confidential portions of the footage would leave RAGA with no footage at all.

*The district court abused its discretion as to the other related records*

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<sup>7</sup> See Hearing on S.B. 123 Before the Subcommittee of the Senate Comm. On Gov't Affairs, 74th Leg. (Nev., Apr. 9, 2007).

<sup>8</sup> NEV. REV. STAT. 239.010(1).

<sup>9</sup> NEV. REV. STAT. 62H.025(6)(b).

<sup>10</sup> *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013).

“A district court abuses its discretion when it fails to conduct an ‘individualized exercise of discretion’ in the context of analyzing issues in a write petition or fails to consider such petition ‘upon its own merits.’”<sup>11</sup> The district court failed to analyze or make findings as to the confidentiality of the police report, witness and victim statements, computer-aided dispatch, and other statements by officers. The Court, therefore, found that the district court abused its discretion. It reversed the district court’s decision pertaining to the related records and remanded back to determine if the related records are subject to NPRA disclosure.

### **Conclusion**

The Court found that LVMPD did not waive its assertion of confidentiality by failing to respond in a timely fashion to RAGA’s request for records. After finding that all portions of bodycam footage contain juvenile justice information, the Court also held that the district court did not err in its judgment. Thus, RAGA’s petition for a writ of mandamus as to the bodycam footage was denied. Contrarily, the Court reversed the district court’s decision as to the other records requested by RAGA.

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<sup>11</sup> *See Wilmes v. Reno Mun. Court*, 118 Nev. 831, 835, 59 P.3d 1197, 1200 (2002)).