



JONATHAN BERKON, ESQ. (*pro hac vice* forthcoming)
COURTNEY WEISMAN, ESQ. (*pro hac vice* forthcoming)
MEAGHAN MIXON, ESQ. (*pro hac vice* forthcoming)

ELIAS LAW GROUP LLP

10 G St. NE Suite 600
Washington, DC 20002
(202) 968-4511/Fax: (202) 968-4498
jberkon@elias.law
cweisman@elias.law
mmixon@elias.law

CASE NO: A-22-853953-W
Department 14

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
DANIEL BRAVO, ESQ. (NSB 13078)
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
dbravo@wrslawyers.com

Attorneys for Plaintiff

**IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY**

DUE DILIGENCE GROUP, LLC, a limited
liability company,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

Case No.:

Dept. No.:

**APPLICATION FOR ORDER
COMPELLING DISCLOSURE OF
PUBLIC RECORDS PURSUANT TO
NRS 239.011/PETITION FOR WRIT
OF MANDAMUS**

**Priority Matter Pursuant to
NRS 239.011(2)**

COMES NOW Plaintiff Due Diligence Group, LLC, a limited liability company formed under the laws of Delaware ("Plaintiff"), by and through its undersigned counsel, and files this Nevada Public Records Act Application and Petition for Writ of Mandamus for declaratory and injunctive relief ("Application"), ordering the Las Vegas Metropolitan Police Department ("LVMPD" or "Defendant") to provide Plaintiff access to and complete copies of public records requested pursuant to the Nevada Public Records Act, NRS §§ 239.001 *et seq.* ("NPRA"). Plaintiff

1 also requests an award of all fees and costs associated with its efforts to compel LVMPD's
2 compliance and obtain the withheld public records, and that this matter be expedited as mandated
3 by NRS § 239.011(2).

4 In support thereof, Plaintiff alleges as follows:

5 **NATURE OF ACTION**

6 1. Plaintiff brings this application for relief pursuant to NRS § 239.011. *See Reno*
7 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877-78, 882, 266 P.3d 623, 626 (2011).

8 2. Plaintiff's application to this Court is the proper means to secure LMVPD's
9 compliance with the NPRA. *Id.*; *see also DR Partners v. Bd. of Cnty. Comm'rs of Clark Cnty.*, 116
10 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Donrey of Nev. v. Bradshaw*, 106 Nev. 630, 798
11 P.2d 144 (1990)) (writ of mandamus is the appropriate procedural remedy to compel compliance
12 with the NPRA).

13 3. Plaintiff is entitled to an expedited hearing on this matter pursuant to NRS §
14 239.011(2), which mandates that "the court shall give this matter priority over other civil matters
15 to which priority is not given by other statutes."

16 **JURISDICTION AND VENUE**

17 4. This Court has jurisdiction to issue a writ of mandamus pursuant to Article 6
18 Section 6 of the Nevada Constitution and NRS § 34.160.

19 5. This Court has jurisdiction to hear Plaintiff's claim pursuant to NRS § 239.001
20 because Clark County is where the public records requested are held.

21 6. Venue is proper in the Eighth Judicial District Court of Nevada because all relevant
22 actions have occurred in Clark County, Nevada.

23 **PARTIES**

24 7. Plaintiff Due Diligence Group, LLC is a limited liability company and consulting
25 firm specializing in background research, which often requires the submission of public records
26 requests to federal, state, and local government agencies. Plaintiff helps ensure government
27 transparency and accountability in the provision of public services and public records.
28

1 8. Defendant LVMPD is a public agency in Clark County, Nevada subject to the
2 NPRA pursuant to NRS § 239.005(5)(d).

3 **STANDING**

4 9. Plaintiff has standing to pursue this action pursuant to NRS § 239.011 because
5 LVMPD has unjustifiably withheld documents responsive to Plaintiff’s numerous public records
6 requests, each of which were properly submitted in accordance with all applicable state laws and
7 LVMPD’s prescribed policies and procedures. Furthermore, LVMPD has failed to meaningfully
8 respond to Plaintiff’s requests, in violation of the NPRA.

9 **FACTUAL ALLEGATIONS**

10 10. On December 1, 2021, Plaintiff submitted two public records requests to LVMPD
11 (NPR2022-0018285 and NPR2022-0018286) seeking “releasable/redacted copies of incoming-
12 and-outgoing emails (including attachments) between Sheriff Joe Lombardo” and his campaign
13 consultants Mike Slanker and Ryan Ewrin “from January 1, 2021, to December 1, 2021.”

14 11. Just a day later, on December 2, 2021, LVMPD informed Plaintiff that “[i]n order
15 for the [LVMPD] Public Records Unit to proceed with researching [Plaintiff’s] request” it had to
16 “provide email address(s) [sic] for the individual(s) [Plaintiff was] inquiring about.” Without those
17 email addresses, LVMPD’s Public Records Unit claimed that it would be unable to proceed with
18 researching Plaintiff’s requests. LVMPD’s Public Records Unit then informed Plaintiff that
19 Plaintiff’s requests would be cancelled and instructed Plaintiff to submit new requests for the same
20 information.

21 12. On January 5, 2022, Plaintiff resubmitted its requests (NPR2022-0019318 and
22 NPR2022-0019319) as instructed and provided LVMPD’s Public Records Unit with the email
23 addresses associated with Messrs. Slanker and Erwin.

24 13. That same day, January 5, LVMPD’s Public Records Unit requested payment of
25 \$153.00 for approximately three hours of preliminary research to determine whether any
26 responsive records existed. Plaintiff remitted payment immediately to LVMPD on January 8 with
27 a check delivered via United States Postal Service.

1 14. On January 11, 2022, LVMPD informed Plaintiff that it had received payment and
2 would begin processing requests NPR2022-0019318 and NPR2022-0019319.

3 15. On January 28, 2022, LVMPD informed Plaintiff that its search had revealed
4 numerous emails responsive to Plaintiff's requests and that it anticipated those emails would be
5 ready for release on February 4, 2022.

6 16. However, on February 4, 2022, LVMPD changed its tune. Instead of releasing the
7 emails, LVMPD alleged, for the first time, that "the only records located [were] not public
8 records." LVMPD then selected and produced only a small sampling of the responsive emails
9 uncovered in its search "to demonstrate their nature" and withheld the remaining responsive
10 emails.

11 17. On March 24, 2022, Plaintiff submitted a third records request, NPR2022-0021998,
12 seeking emails between Sheriff Lombardo and former Lieutenant Governor Mark Hutchison,
13 another campaign consultant that Sherriff Lombardo hired as part of his campaign for governor.

14 18. On April 6, 2022, LVMPD refused Plaintiff's third and final records request. In
15 doing so, LVMPD cited Plaintiff's previous requests, noting that LVMPD's Public Records Unit
16 search revealed "very few emails responsive" to Plaintiff's request. LVMPD reiterated its belief
17 that "[t]he email [sic] are not public records" and that "[i]t was unlikely that any communications
18 would be related to LVMPD business[]," because the emails were "related to Mr. Lombardo's
19 campaign and not his duties as Clark County Sheriff."

20 19. LVMPD's denials of requests NPR2022-0019318, NPR2022-0019319, and
21 NPR2022-0021998 (collectively, the "Requests") prompted Plaintiff to send its first demand letter
22 on April 12, 2022, requesting LVMPD immediately produce all records responsive to Plaintiff's
23 Requests within five business days and challenging the purported justification for withholding
24 records that LVMPD had already conceded were responsive to Plaintiff's requests.

25 20. On April 19, 2022, LVMPD again refused to provide Plaintiff the records
26 responsive to its requests. LVMPD reiterated its mistaken belief that the emails were not related
27 to Sheriff Lombardo's duties as Sheriff and that, therefore, they did not concern the provision of
28 public service and were not public records subject to disclosure.

21. Contrary to LVMPD's assessment, the emails requested are directly related to Sheriff Lombardo's duties as sheriff. First, the sample emails that the LVMPD produced include information directly related to government conduct and the provision of public service, including Nevada's COVID policies, an LVMPD deputy's presentation analyzing Clark County and Nevada's economic status, emails from a disgruntled citizen regarding Sheriff Lombardo's mismanagement of the fingerprint bureau, and press releases from Governor Sisolak regarding new and pending state legislation.

22. Second, the timing and nature of the sample emails that the LVMPD produced show that Sheriff Lombardo was using his government-issued email address to engage in political activity during his hours of employment. That, in itself, sheds light on his provision of public services, as it is directly in contrast to his duty to avoid conflicts of interest between public duties and private interests. NRS § 281A.020. Moreover, as a state employee, Sheriff Lombardo is proscribed from engaging in political activity during his hours of employment and is subject to disciplinary or corrective action for doing so. NAC §§ 284.650(9), 284.770(2).

23. This is different than a situation where the documents sought are entirely divorced from a public employee's duties and have no bearing on the public employee's execution of their duties or the provision of public services. It would be deeply troubling if Nevada's public records law allowed state entities to avoid compliance with public records laws by categorizing materials that show that an employee is violating their duties under state law as "unrelated" to those duties and thus refusing to produce them in response to a properly constituted public records request.

24. On April 27, 2022, in the face of LVMPD's continued refusal to produce records responsive to Plaintiff's Requests, undersigned counsel sent a second demand letter directing that LVMPD "produce all requested emails within 5 business days of receipt of" Plaintiff's second letter.

25. On May 4, 2022, LVMPD again refused Plaintiff's Requests but raised a new justification, not previously asserted, for withholding the responsive emails. For the first time, LVMPD asserted that the records were confidential under the deliberative process privilege. That privilege protects the decision-making processes of government agencies. However, Messrs.

1 Erwin, Slanker, and Hutchison are campaign consultants hired by Sheriff Lombardo for political,
2 strategic and communications consulting for his campaign for governor. They are not employees
3 of the state of Nevada, Clark County, or the LVMPD.

4 26. It cannot be that the emails were unrelated to his duties as sheriff, yet also included
5 ideas, opinions, and viewpoints which were predecisional and deliberative to an LVMPD policy
6 decision. This puts LVMPD's earlier and later justifications for withholding the emails directly at
7 odds.

8 27. To the extent Sheriff Lombardo was engaging in predecisional communications that
9 contributed to an LVMPD policy decision with his campaign consultants, that would also violate
10 his duties as sheriff. *See supra* ¶ 22.

11 28. LVMPD's persistent denials run afoul of Nevada law and the fundamental purpose
12 of the NPRPA. The NPRPA favors transparency and accountability in government and is meant to
13 guarantee that public records are broadly accessible. *See Gibbons*, 127 Nev. at 878, 266 P.3d at
14 626 (citing NRS 239.001(1)).

15 29. There is no privilege or confidentiality designation that applies to Plaintiff's
16 requests or the Sheriff's emails that justify withholding on the basis of confidentiality or the
17 deliberative process privilege.

18 30. Defendant has failed to comply with the NPRPA by providing woefully and
19 intentionally deficient responses to Plaintiff's lawful and proper Requests without any legitimate
20 basis permitting withholding under NRS § 239.107

21 **LEGAL AUTHORITY**

22 ***Legal Framework***

23 31. The NPRPA provides that a writ of mandamus is the appropriate procedural remedy
24 for pursuing the disclosure of public records and compelling production once a request is denied.
25 *See* NRS § 239.011; *City of Sparks v. Reno Newspapers, Inc.*, 133 Nev. 398, 399, 399 P.3d 352,
26 355 (2017) (collecting cases); *DR Partners*, 116 Nev. at 621, 6 P.3d at 468 (citing *Donrey*, 106
27 Nev. 630, 798 P.2d 144).

1 32. Under the NPRA, “all public records generated by government entities are public
2 information and are subject to public inspection unless otherwise declared to be confidential.” *City*
3 *of Sparks*, 133 Nev. at 400, 399 P.3d at 355 (quoting *Reno Newspapers, Inc. v. Haley*, 126 Nev.
4 211, 214, 234 P.3d 922, 924 (2010)). Specifically,

5 this court will presume that all public records are open to disclosure unless either
6 (1) the Legislature has expressly and unequivocally created an exemption or
7 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.

8 *Id.* (quoting *Haley* at 214-15, 234 P.3d at 924-25). Unlike a typical mandamus case, under the
9 NPRA, “the burden is on the government to prove confidentiality by a preponderance of the
10 evidence” in order to advance “the underlying policy of ensuring an open and accountable
11 government.” *Id.* (quoting *Haley* at 215, 234 P.3d at 925).

12 33. Here, LVMPD first disputes the requested emails are public records at all. LVMPD
13 contends that the emails are personal and unrelated to the provision of public service and therefore
14 exempt from the NPRA’s disclosure requirements. That characterization is simply incorrect, as
15 explained below. *See infra* ¶¶ 42–45.

16 34. Second, LVMPD claims that even if the emails are public records, they are
17 confidential. In support, LVMPD has not asserted any statutory exception or exemption, but argues
18 that the common-law “deliberative process privilege” would shield the emails from disclosure.

19 35. The Supreme Court established the requirements for the deliberative process
20 privilege in *DR Partners*, 116 Nev. 616, 623, 6 P.3d 465, 469 (2000). To qualify for non-disclosure
21 under the deliberative process privilege records must be both predecisional and deliberative. *See*
22 *id.* To qualify as “predecisional” the governmental entity must pinpoint “an agency decision or
23 policy to which the documents contributed” or played a role in making. *See id.* To be deemed part
24 of the “deliberative” process, the record “must consist of opinions, recommendations, or advice
25 about agency policies.” *Id.* at 623, 6 P.3d at 469-70. Even if the subject records played a role in
26 the agency’s decision-making process, the records still must be proven deliberative—it is not
27 enough for them to be either/or. *See id.* The emails at issue here are neither. *See infra* ¶ 56.

1 36. Even if the deliberative process privilege applied to the emails in this case, it is not
2 an absolute statutory privilege, but rather a conditional common-law privilege that is subject to a
3 balancing of interests:

4 In balancing the interests . . . , the scales must reflect the fundamental right of a
5 citizen to have access to the public records as contrasted with the incidental right
6 of the agency to be free from unreasonable interference The citizen's
7 predominant interest may be expressed in terms of the burden of proof which is
applicable in this class of cases; the burden is cast upon the agency to explain why
the records should not be furnished.

8 *DR Partners*, 116 Nev. at 621, 6 P.3d at 468 (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d
9 413, 421-22 (1961)).

10 37. As outlined above, in balancing interests, the burden lies with the governmental
11 entity to overcome the presumption in favor of disclosure and prove by a preponderance of the
12 evidence that its interest in nondisclosure clearly outweighs the public's interest in access. *See id.*
13 at 621-22, 6 P.3d at 468; *see also Gibbons*, 127 Nev. at 880, 266 P.3d at 628. Moreover, the NPRA
14 "requires a narrower interpretation of private or government interests promoting confidentiality or
15 nondisclosure." *Id.* at 880, 266 P.3d at 627. LVMPD's interest in withholding must *clearly*
16 outweigh the presumption in favor of Plaintiff and the public's shared interest in disclosure—and
17 any doubt or ambiguities should be resolved in favor of disclosure. *See id.*; *see also* NRS §
18 239.0113; *New York Times Co. v. U.S. Food & Drug Admin.*, 529 F. Supp. 3d 260, 269–70
19 (S.D.N.Y. 2021) ("The government bears the burden of demonstrating that an exemption applies
20 to each item of information it seeks to withhold, and all doubts as to the applicability of the
21 exemption must be resolved in favor of disclosure.") (citing *Florez v. Cent. Intel. Agency*, 829 F.3d
22 178, 182 (2d Cir. 2016)).

23 38. Notably, the privilege does not apply when the government's actions are being
24 called into question and the interest in preventing disclosure is preventing the revelation of
25 misconduct. *See Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 705, 429 P.3d 313,
26 318–19 (2018). Nor does the privilege cover records prepared by outside consultants who do not
27 have a formal relationship with the government. *See DR Partners*, 116 Nev. at 624-25, 6 P.3d at
28 470 (collecting cases). Accordingly, even if the privilege applied to the emails requested here, it

1 would not shield them from disclosure. *See infra* ¶ 57.

2 ***The emails sought are public records subject to disclosure under the NPRA.***

3 39. Sheriff Lombardo’s emails constitute public records as contemplated by the NPRA.
4 The NPRA applies to records of non-federal Executive Branch agencies in Nevada unless
5 otherwise declared confidential by law. NRS § 239.010(1).

6 40. Though the NPRA does not explicitly define “public record,” under the NPRA, an
7 “official state record” includes, *without limitation*, information stored on computers and materials
8 made, received, or preserved by an agency as evidence of its activity or because of the information
9 contained in the material. NRS § 239.005(6). This definition, like all other provisions of the NPRA,
10 must be construed liberally to maximize the requesting party’s right to access those records. *See*
11 NRS 239.001; *Gibbons*, 127 Nev. at 878, 266 P.3d at 626.

12 41. The emails in question fall within the NPRA’s operative definition because of the
13 information that they contain. *See, e.g., Serv. Emps. Int’l Union Loc. 925 (SEIU) v. Univ. of Wash.*,
14 193 Wash. 2d 860, 874-76, 447 P.3d 534, 541-42 (2019) (finding emails at issue satisfied statutory
15 definition of “public records” because the information contained in the material related to
16 government conduct).

17 42. The sample emails include exactly the type of information contemplated in the
18 NPRA: information that is directly related to government conduct and, more broadly, the provision
19 of public services. *See* NRS § 239.005(6); *see also Las Vegas Metro. Police Dep’t v. Blackjack*
20 *Bonding, Inc.*, 131 Nev. 80, 86, 343 P.3d 608, 613 (2015) (“[T]he information . . . requested is a
21 public record because it relates to the provision of a public service.”). They include a discussion
22 of Nevada’s COVID policies, a presentation prepared by an LVMPD deputy analyzing Clark
23 County and Nevada’s economic status, emails from a disgruntled citizen regarding Sheriff
24 Lombardo’s mismanagement of the fingerprint bureau, and press releases from Governor Sisolak
25 regarding new and pending state legislation.

26 43. Nonetheless, LVMPD ignored the NPRA’s statutory definition of “official state
27 record” in favor of the Merriam-Webster dictionary definition of “public record.” This is plainly
28 inappropriate, where the controlling statute provides a relevant definition itself. But LVMPD used

Merriam-Webster’s definition to summarily conclude that Sheriff Lombardo’s emails were not public records subject to disclosure under the NPRA without examining the definition of an “official state record” as defined in the NPRA.

44. With the emails provided serving as a representative sample of the larger collection, it follows that the remaining emails similarly contain information related to government conduct or the provision of public service, and therefore constitute public records subject to the NPRA’s disclosure requirements. *See id.*

45. To support its argument to the contrary, LVMPD suggested that the emails were not public records because they were personal in nature. The LVMPD cited *Comstock Residents Ass’n v. Lyon Cnty. Bd. of Comm’rs*, 134 Nev. 142, 414 P.3d 318 (2018), and *Blackjack Bonding, Inc.*, 131 Nev. 80 343 P.3d 608, for support. However, in both cases, the Court employed an expansive reading of the NPRA, as mandated, to determine that records at issue *were* in fact public records subject to disclosure because they related to or concerned the provision of public service. Although *Comstock* and *Blackjack* involve requests for records maintained on private devices or by a private entity, the dispositive inquiry supports Plaintiff’s request here, given that the emails at issue relate to the provision of a public service. *See supra* ¶ 42.

46. To the extent that the fact pattern in this case is different from those in *Comstock* and *Blackjack* because the emails at issue were sent using Sheriff Lombardo’s government email, that fact does not help Defendant. Indeed, Sheriff Lombardo used his government email to engage in political activity in contravention of the Nevada Administrative Code, which itself weighs on the Sheriff’s duties. *See* NAC §§ 284.650(9), 284.770(2); *see supra* ¶¶ 22, 42.

47. LVMPD’s reliance on *Gibbons*, in support of its decision to withhold the communications in question is also misplaced. In *Gibbons*, 104 of Governor Jim Gibbons’ emails were at issue, 24 of which the lower court had deemed personal and exempt from disclosure. 127 Nev. 873, 877, 266 P.3d 623, 626. However, the issue before the Court was whether the governmental entity was required to provide the requesting party a privilege log. *See id.* at 877, 266 P.3d at 626. Having reached a conclusion on that issue, the Court never performed an analysis of the lower court’s determination that those 24 emails at issue were personal and therefore exempt

1 from disclosure. *Id.* at 884, 266 P.3d at 630 n.5. Consequently, *Gibbons* offers no guidance as to
2 whether the emails at issue here are indeed personal in nature.

3 48. LVMPD's reliance on an out-of-jurisdiction case, *Zeigler v. United States*
4 *Department of Agriculture-Farm Services Agency*, No. 4:19-cv-02633-RBH, 2021 WL 4155260,
5 (D.S.C. Sep. 10, 2021), is inapposite as well. As an initial matter, in reaching its conclusion, the
6 Court relied on tests crafted specifically for the federal Freedom of Information Act ("FOIA"),
7 which have never been adopted or applied by any Nevada state court for NPRA requests.
8 Additionally, the facts were decidedly different from those before the Court here.

9 49. At issue in *Zeigler* was whether some of a government employee's e-mails sent to
10 and from the employee's government-issued account were truly personal in nature and not
11 reachable under FOIA. 2021 WL 4155260, at *7. After an *in camera* review of a representative
12 sample, the Court found the agency had properly withheld specific emails that were completely
13 unrelated to government conduct or the provision of public service. *See id.* at *8, 11 (explaining
14 that

15 the emails designated as 'personal' do not contain substantive or official agency
16 information and they do not appear to facilitate any agency business"). Quite to the
17 contrary, the emails discussed "various aspects of the hunting business such as the
18 number of hogs killed in the past year, obtaining tags to hunt turkeys, different
19 animals caught on trail cameras, acquiring land through sale or lease to hunt,
20 weather, taxes paid on hunting land, etc. Other withheld emails include emails
between [the employee] and his Sunday School class, members of the community
regarding local athletics, Junior Legion, and Booster Club. There are also some
emails that involve personal real estate transactions and other personal business. *Id.*
at *8.

21
22 50. These emails are distinguishable from the emails here. Sheriff Lombardo's ongoing
23 exchange of emails with his consultants as part of his campaign, which *do include* substantive and
24 official LVMPD information, are patently different.

25 51. More on point is *SEIU*, 193 Wash. 2d 860, 447 P.3d 538. In *SEIU*, the court
26 considered a similarly broad definition of "public record" from Washington's Public Records Act,
27 which requires that a writing contain "information relating to the conduct of government or the
28 performance of any governmental or proprietary function." *Id.* at 867, 447 P.3d at 538. The

1 information contained in a record is key to a court’s consideration of whether it constitutes a public
2 record. *See id.* at 870, 447 P.3d at 539. The court further explained that this standard “‘casts a wide
3 net’ and ‘suggest[s] records can qualify as public records if they contain any information that refers
4 to or impacts the actions, processes, and functions of government.’” *Id.*

5 52. The emails at issue in *SEIU* were sent from a state employee’s government issued
6 email account but were not created within the scope of his employment. *See id.* at 872-73, 447
7 P.3d at 540-41. The emails were created in the employee’s capacity as chapter president for the
8 American Association of University Professors and unrelated to his duties as a state employee. *See*
9 *id.* In its analysis, the Court found that the contents of the emails made them public records because
10 the topics discussed were related to government functions or conduct. *See id.* at 872-73, 875, 447
11 P.3d at 540-42.

12 53. The court emphasized that, “for an e-mail to ‘contain information relating to the
13 conduct of government or the performance of any governmental or proprietary function, it need
14 not have been sent or received within the scope of employment.’” *Id.* at 876, 447 P.3d at 542
15 (internal citations omitted). In other words, the fact that Sheriff Lombardo’s emails “contain
16 information relating to the conduct of government or the performance of any governmental or
17 proprietary function”—including, it would appear, his violation of his duties as a public
18 employee—is sufficient to bring them within the NRPA’s broad definition of what constitutes a
19 public (or state) record subject to disclosure.

20 54. The law is clear: if the communications are related to government conduct or the
21 provision of public service—which these are—then they are public records subject to disclosure.
22 Though the emails were exchanged with the Sherriff’s campaign consultants in furtherance of his
23 efforts to win his race for governor, this is not enough to show they are not public.

24 ***The deliberative process privilege does not apply, and, even if it did, Plaintiff’s interest in***
25 ***disclosure outweighs Defendant’s interest in nondisclosure.***

26 55. LVMPD’s second justification for withholding the requested emails—that they are
27 subject to the deliberative process privilege—is equally unsuccessful.
28

1 56. The deliberative process privilege requires communications be both predecisional
2 *and* deliberative. Sheriff Lombardo’s emails are neither. As LVMPD itself has admitted, the emails
3 at issue are related to Sheriff Lombardo’s campaign for governor. LVMPD has never identified an
4 agency decision or policy that the Sheriff’s emails contributed to or played a role in making.
5 Instead, LVMPD has relied on Plaintiff’s assertion that Sheriff Lombardo’s emails with his
6 consultants contained the Sheriff’s views, opinions, and viewpoints on matters on which Sheriff
7 Lombardo has issued official policies. Plaintiff’s observations regarding the sample emails do not
8 carry LVMPD’s heavy burden to justify withholding pursuant to the deliberative process privilege,
9 as mere mention of views, opinions, and viewpoints without more do not show the emails were
10 predecisional—that they played a role in the decision-making process for the policies discussed.
11 *See id.* at 623, 6 P.3d at 469.

12 57. Even if the emails were both deliberative and predecisional, the privilege would not
13 apply here. The emails at issue contain information that the Sheriff shared with his campaign
14 consultants to gain a political advantage in his race for governor and improve his chances of
15 winning office. This violates NAC § 284.770, which prohibits employees from “engag[ing] in
16 political activity during the hours of his or her state employment to improve the chances of a
17 political party or a person seeking office[.]”

18 58. Consequently, even if the privilege did apply, its conditional nature would still
19 make it inapplicable to Sheriff Lombardo’s emails, as the only interest in nondisclosure is
20 preventing the revelation of wrongdoing. *See Clark Cnty. Sch. Dist.*, 134 Nev. at 705, 429 P.3d at
21 318–19. Additionally, as Sheriff Lombardo’s campaign consultants have no formal relationship
22 with LVMPD, the deliberative process privilege does not cover their exchanges with Sheriff
23 Lombardo in either his capacity as a candidate nor as sheriff. *See DR Partners*, 116 Nev. at 624–
24 25, 6 P.3d at 470 (collecting cases).

25 59. Lastly, LVMPD never addresses the burden it carries pursuant to *Donrey* to show
26 that its interest in withholding the emails *clearly* outweighs Plaintiff and the public’s shared
27 interest in disclosure. Instead LVMPD relied solely on its presumption that the emails are not
28 public records and that even if they were, the deliberative process privilege would still justify

1 withholding. Nevertheless, a balancing of interests under *Donrey* favors disclosure because the
2 LVMPD has not articulated an interest in withholding the emails. This alone is insufficient to
3 overcome the NPRA's strong presumption in favor of disclosure. *See, e.g., Gibbons*, 127 Nev. at
4 880, 266 P.3d at 628.

5 60. There is no basis pursuant to the NPRA or any exceptions articulated in the
6 applicable case law which would support withholding Sheriff Lombardo's emails. Thus, the only
7 remaining basis for deeming the Sheriff's emails confidential would be an express provision of
8 law—and there's not one which is applicable to Sheriff Lombardo's emails. *See, e.g., NRS §*
9 *239.010(1)*. With no legal authority or basis in law for withholding LVMPD's persistent refusal to
10 produce Sheriff Lombardo's email is in direct contravention of the NPRA and infringes on
11 Plaintiff's inherent right to access the requested records.

12 **PRAYER FOR RELIEF**

13 1. The foregoing paragraphs of this Complaint are realleged and fully incorporated as
14 if set forth in full herein.

15 2. Plaintiff should be provided with the records requested pursuant to the Nevada
16 Public Records Act.

17 3. Defendant has violated the intent and letter of the Nevada Public Records Act by
18 failing to provide Plaintiff with the Records responsive to its Requests.

19 4. The Records requested are subject to disclosure and Defendant has failed to meet
20 its burden of proving otherwise by providing any legitimate legal basis for withholding as is
21 mandated by the Nevada Public Records Act. NRS § 239.0107(1)(d).

22 5. A writ of mandamus is the only relief available to Plaintiff and necessary to compel
23 Defendant's compliance with the Nevada Public Records Act.

24 **WHEREFORE**, Plaintiff prays for the following relief:

25 A. That the Court resolve this matter on an expedited basis as mandated by NRS §
26 239.011(2);

27 B. Injunctive relief ordering the Las Vegas Metropolitan Police Department to come
28 into compliance the Nevada Public Records Act, NRS §§ 239.001 *et seq.*,

1 C. Grant a writ of mandamus ordering the Las Vegas Metropolitan Police Department
2 to provide complete copies of all Records responsive to requests NPR2022-0019318, NPR2022-
3 0019319, and NPR2022-0021998 no later than five days after issuance of the Court's order in this
4 case;

5 D. Declaratory relief that the Las Vegas Metropolitan Police Department has violated
6 the NPRA by refusing to disclose records responsive to Plaintiff's requests;

7 E. Awarding Plaintiff reasonable costs and attorneys' fees; and

8 F. Granting such other relief as the Court deems appropriate.

9
10 DATED this 10th day of June, 2022

11 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &**
12 **RABKIN, LLP**

13 By: /s/ Bradley S. Schrager

14 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
15 DANIEL BRAVO, ESQ. (NSB 13078)
16 3773 Howard Hughes Parkway, Suite 590 South
17 Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
dbravo@wrslawyers.com

18 JONATHAN BERKON, ESQ. (*pro hac vice forthcoming*)
19 COURTNEY WEISMAN, ESQ. (*pro hac vice forthcoming*)
20 MEAGHAN MIXON, ESQ. (*pro hac vice forthcoming*)
21 **ELIAS LAW GROUP LLP**
22 10 G St. NE Suite 600
Washington, DC 20002
(202) 968-4511/Fax: (202) 968-4498
jberkon@elias.law
cweisman@elias.law
mmixon@elias.law

23 *Attorneys for Plaintiff*
24
25
26
27
28