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8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 AMERICAN CIVIL LIBERTIES UNION OF
12 NEVADA,

13 Petitioner,

14 vs.

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

Case No.:

Department:

**Opening Brief in Support of
Petition for Writ of Mandamus
pursuant to NRS 239.001 et seq.**

**Expedited Matter Pursuant to
NRS 239.011**

Hearing requested

17
18 Petitioner, American Civil Liberties Union of Nevada (ACLU of Nevada) hereby submits
19 this Opening Brief in Support of its Petition for Writ of Mandamus. This brief is supported by the
20 attached memorandum of points and authorities, any attached exhibits, and the pleadings and
21 papers filed with this Court.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 ACLU of Nevada, who are the attorneys representing Durango High School students M.W.
3 and J.T., seek a writ of mandamus ordering the Clark County School District (CCSD) to disclose
4 all public records requested by ACLU of Nevada in its public records request issued on February
5 21, 2023, related to an incident at Durango High School that occurred on February 9, 2023, where
6 ACLU of Nevada’s clients were detained while engaging in protected First Amendment activity.
7 While the CCSD has claimed that every record requested is privileged, each privilege cited by
8 CCSD either does not apply to ACLU of Nevada or is unsupported by sufficient facts to justify
9 CCSD’s decision to withhold the documents in their entirety.

10
11 **STATEMENT OF FACTS**

12 On February 9, 2023, a video circulated on social media depicting a Clark County School
13 District (CCSD) police officer shouting at a group of Durango High School students using their
14 cell phones to record the officer and his colleagues detaining another student. On the video, the
15 officer yells “who wants next” at the recording students, walks around his squad car towards one
16 of them, grabs that student around his neck, and slams him into pavement. The video ends with
17 the officer climbing on top of the prone student and digging his knee into the child’s back.

1 This viral video immediately caught the public’s eye. Fox 5 Vegas,¹ Las Vegas Review
2 Journal,² News 3 Las Vegas,³ U.S. News,⁴ and other news agencies picked up the story and
3 reposted the video within days of the incident.

4 On February 17, 2023, the National Association for the Advancement of Colored People
5 (NAACP), the National Action Network (NAN), and over a dozen other civil rights groups held a
6 rally demanding action be taken against the officer.⁵ At the CCSD Board of School Trustees
7 meeting held on February 23, 2023, concerned parents and community members filled the public
8 comment seeking any information about the incident and begging for action to be taken against
9 the officer.⁶

10 ¹ Michael Bell and Joe Vigil, *Video shows CCSD officer shove student to ground, school district*
11 *‘concerned’ over interaction*, Fox 5 Las Vegas (February 10, 2023, 4:07 PM),
12 [https://www.fox5vegas.com/2023/02/11/video-shows-ccsd-officer-shoves-student-ground-](https://www.fox5vegas.com/2023/02/11/video-shows-ccsd-officer-shoves-student-ground-school-district-concerned-over-interaction/)

13 ² Justin Razavi, *ACLU representing Durango High students in altercation with CCSD police*, Las
14 Vegas Review-Journal (February 15, 2023, 4:06 PM),
15 [https://www.reviewjournal.com/local/education/aclu-representing-durango-high-students-in-](https://www.reviewjournal.com/local/education/aclu-representing-durango-high-students-in-altercation-with-ccsd-police-2729865/)

16 ³ Tiffany Lane, *NAACP: CCSD police officer who slammed teen to ground has been reassigned*,
17 News 3 Las Vegas (February 14, 2023, 6:31 PM), [https://news3lv.com/news/crisis-in-the-](https://news3lv.com/news/crisis-in-the-classroom/naacp-ccsd-police-officer-who-slammed-teen-to-ground-has-been-reassigned)

18 ⁴ Associated Press, *Nevada Officer Slams Student Recording Police, Kneels on Him*, U.S. News
19 (February 17, 2023, 12:47 AM), [https://www.usnews.com/news/best-](https://www.usnews.com/news/best-states/nevada/articles/2023-02-17/nevada-officer-slams-student-recording-police-kneels-on-him)

20 ⁵ Joe Vigil, *ACLU and NAACP demand CCSD police officer be fired, CCSD Police Chief*
21 *responds for first time*, Fox 5 Las Vegas (February 15, 2023, 8:47 PM),
22 [https://www.fox5vegas.com/2023/02/16/aclu-naacp-demand-ccsd-police-officer-be-fired-ccsd-](https://www.fox5vegas.com/2023/02/16/aclu-naacp-demand-ccsd-police-officer-be-fired-ccsd-police-chief-responds-first-time/)

23 ⁶ Joshua Peguero, *‘No student should be thrown,’ Outrage expressed over incident near Durango*
24 *High School at CCSD board meeting*, 8 News Now (February 23, 2023, 10:17 PM),
[https://www.8newsnow.com/news/local-news/no-student-should-be-thrown-outrage-expressed-](https://www.8newsnow.com/news/local-news/no-student-should-be-thrown-outrage-expressed-over-incident-near-durango-high-school-at-ccsd-board-meeting/)

1 Seeking answers about the February 9th incident, the NAN held an interview with CCSD
2 Police Chief Henry Blackeye on March 6, 2023.⁷ Despite the community’s explicit requests that
3 CCSD explain how such violence could occur against a student and how it intended to hold the
4 officer on the video accountable, Chief Blackeye avoided any questions about disciplining the
5 officer involved.⁸ Yet, while proclaiming that he could not talk about the incident, the Chief still
6 determined that it would be acceptable to say that, “the day before at the same time and the same
7 location [CCSD] received a report that a student had pulled out a firearm,” clearly inferring that
8 the young men detained in the video were somehow involved with guns.⁹ Chief Blackeye also
9 claimed that the student tackled on the video was not detained because he was recording but
10 provided no factual basis for his comment,¹⁰ and he provided no further information when this
11 claim was immediately disputed by the NAACP Las Vegas Chapter President Quentin Savvoir
12 who stated that the mother of one the of the students was told by the officers that her son was
13 detained for recording.¹¹ Many meeting attendees left frustrated by CCSD’s lackluster response.¹²

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17 ⁷ Joe Vigil, *CCSD police chief answers questions about racism, bias within department*, Fox 5
18 Las Vegas (March 07, 2023, 8:19 PM), [https://www.fox5vegas.com/2023/03/08/ccsd-police-
chief-answers-questions-about-racism-bias-within-department/](https://www.fox5vegas.com/2023/03/08/ccsd-police-chief-answers-questions-about-racism-bias-within-department/)

19 ⁸ *Id.*

20 ⁹ Tiffany Lane, *CCSD Police Chief talks about Durango HS incident, community still wants*
21 *answers*, News 3 Las Vegas (March 06, 2023, 11:21 PM), [https://news3lv.com/news/local/we-
still-need-our-questions-answered-community-on-police-chief-response-to-durango-hs](https://news3lv.com/news/local/we-still-need-our-questions-answered-community-on-police-chief-response-to-durango-hs)

22 ¹⁰ Vigil, *supra* note 7.

23 ¹¹ *Id.*

24 ¹² *Id.*

1 The Nevada State Senate’s Education and Judiciary Committees held a joint conference on
2 March 22, 2023, to discuss CCSD’s use of force policies.¹³ Once again, while professing that he
3 could not comment on the February 9th incident, Chief Blackeye claimed that the police were there
4 investigating a firearm when the young men depicted on the video were detained.¹⁴

5 Seeking additional information about the incident depicted on the viral video beyond a
6 CCSD-edited narrative, many of the aforementioned civil rights organizations and news agencies
7 have submitted public records requests to CCSD requesting information related to the February 9th
8 incident, but CCSD has refused to release any of the requested records.¹⁵ This stonewalling has
9 only led to increased public demands for transparency.¹⁶

10 ACLU of Nevada currently represents two Durango High School freshmen, M.W. and J.T,
11 detained while filming CCSD police during the February 9, 2023, incident. On February 17, 2023,
12 ACLU of Nevada sent a letter to CCSD informing the District that the organization legally
13 represented the two students. On February 21, 2023 ACLU of Nevada sent a public records request
14 to CCSD for:

16 ¹³ News 3 Staff, *Superintendent, police chief address CCSD officer issues in Nevada senate*
17 *meeting*, News 3 Las Vegas (March 22, 2023, 6:45 AM),
18 [https://news3lv.com/news/local/supreintendent-jesus-jara-pd-chief-called-clark-county-school-](https://news3lv.com/news/local/supreintendent-jesus-jara-pd-chief-called-clark-county-school-district-police-polices-nevada-state-senate-hearing-durango-high-school-incident-viral-video-las-vegas)
[district-police-polices-nevada-state-senate-hearing-durango-high-school-incident-viral-video-las-](https://news3lv.com/news/local/supreintendent-jesus-jara-pd-chief-called-clark-county-school-district-police-polices-nevada-state-senate-hearing-durango-high-school-incident-viral-video-las-vegas)
[vegas](https://news3lv.com/news/local/supreintendent-jesus-jara-pd-chief-called-clark-county-school-district-police-polices-nevada-state-senate-hearing-durango-high-school-incident-viral-video-las-vegas)

19 ¹⁴ Taylor R. Avery, *Nevada lawmakers ask CCSD police to change force policies*, Las Vegas
20 *Review-Journal* (March 22, 2023 6:28 PM), [https://www.reviewjournal.com/news/politics-and-](https://www.reviewjournal.com/news/politics-and-government/nevada/2023-legislature/nevada-lawmakers-ask-ccsd-police-to-change-force-policies-2748686/)
21 [government/nevada/2023-legislature/nevada-lawmakers-ask-ccsd-police-to-change-force-](https://www.reviewjournal.com/news/politics-and-government/nevada/2023-legislature/nevada-lawmakers-ask-ccsd-police-to-change-force-policies-2748686/)
[policies-2748686/](https://www.reviewjournal.com/news/politics-and-government/nevada/2023-legislature/nevada-lawmakers-ask-ccsd-police-to-change-force-policies-2748686/)

22 ¹⁵ Lorraine Longhi, *What is CCSD hiding? District denies records request for police-student*
incident, Las Vegas *Review-Journal* (March 19, 2023, 7:23 AM),
23 [https://www.reviewjournal.com/investigations/what-is-ccsd-hiding-district-denies-records-](https://www.reviewjournal.com/investigations/what-is-ccsd-hiding-district-denies-records-request-for-police-student-incident-2746975/)
[request-for-police-student-incident-2746975/](https://www.reviewjournal.com/investigations/what-is-ccsd-hiding-district-denies-records-request-for-police-student-incident-2746975/)

24 ¹⁶ *Id.*

1 Any logs, documents, and/or files related to the February 9, 2023,
2 incident at Durango High School including but not limited to:

3 (a) Any video footage—including but not limited to footage from
4 cameras worn by CCSDPD officers or CCSD surveillance
5 cameras—related to and depicting the incident;

6 (b) Any photographs from the incident;

7 (c) Any BlueTeam data related to the incident including but not
8 limited to data related to uses of force, pursuits, and complaints;

9 (d) Any witness statements related to the incident;

10 (e) Any reports, notes, or other written material generated by CCSD
11 employees describing the incident;

12 (f) Any communications by CCSD employees discussing the
13 incident, including but not limited to CCSD administration and
14 police personnel; and

15 (g) Any materials describing the disciplining, sanctioning, or
16 reprimanding of CCSD employees and students related to the
17 incident.¹⁷

18 On March 14, 2023, CCSD responded to ACLU of Nevada’s request with a flat denial
19 followed by a list of confidentiality exceptions with no further explanation.¹⁸ This response did
20 not indicate what, if any, responsive records existed.¹⁹ This response also failed to explain what,
21 if any, records the blanket list of provisions applied to, indicating that every privilege on the list
22 applied to every record requested.²⁰ ACLU of Nevada followed up immediately the same day
23 asking for clarification regarding the inadequate response and reminding CCSD that ACLU of
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20 ¹⁷ Email sent by Jacob Smith, Staff at ACLU of Nevada, on February 21, 2023, attached as
21 *Exhibit A*.

22 ¹⁸ Emails between Cynthia Smith-Johnson, Document Control Specialist at CCSD and Jacob
23 Smith, Staff Attorney at ACLU of Nevada, on March 14, 2023, attached as *Exhibit B*.

24 ¹⁹ *Id.*

²⁰ *Id.*

1 Nevada legally represented the juveniles, M.W. and J.T., who were detained for filming the police
2 during the February 9th incident.²¹

3 CCSD then emailed ACLU of Nevada on March 21, 2023, seven days after its initial
4 response, now claiming that the incident report and body-worn camera footage were related to a
5 pending juvenile justice matter and therefore could not be released, yet at the same time CCSD
6 requested consent from ACLU of Nevada's clients to release the incident report and body-worn
7 camera footage to the general public, acknowledging that it was ACLU of Nevada's own client
8 who was subject to the underlying juvenile justice matter.²²

9 CCSD sent a separate email to ACLU of Nevada on the same day stating that the other
10 documents requested by ACLU of Nevada pertained to an ongoing, pending, and active
11 employment investigation.²³

12 ACLU of Nevada answered both March 21st emails by informing CCSD for the third time
13 that ACLU of Nevada represented the impacted juveniles and explaining that the confidentiality
14 provisions regarding juvenile justice information did not apply to such attorneys.²⁴

15 Apparently ignoring ACLU of Nevada's clear explanation as to why the requested records
16 should be released to ACLU, CCSD emailed on March 27, 2023, a near identical response to their
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19 ²¹ *Id.*

20 ²² Email sent by Cynthia Smith-Johnson, Document Control Specialist at CCSD on March 21,
21 2023, stating that records pertained to juvenile justice information, attached as *Exhibit C*.

22 ²³ Email sent by Cynthia Smith-Johnson, Document Control Specialist at CCSD on March 21,
23 2023, stating that records pertained to an active employment investigation, attached as *Exhibit D*.

24 ²⁴ Email sent by Chris Peterson, Legal Director at ACLU of Nevada on March 21, 2023, attached
as *Exhibit E*.

1 first response, citing, among other privileges, the juvenile justice privilege that indisputably does
2 not apply to ACLU.²⁵

3 Considering CCSD's failure to fulfill its legal obligation to disclose records related to the
4 February 9th incident, ACLU of Nevada now files this petition for writ of mandamus.

6 ARGUMENT

7 The Nevada Public Records Act's (NPRA's) "purpose ... is to foster democratic principles
8 by providing members of the public with access to inspect and copy public books and records to
9 the extent permitted by law" and that its provisions "must be construed liberally to carry out this
10 important purpose[.]" NRS 239.001(1) and (2). Any exemptions to disclosure under the Nevada
11 Public Records Act should be construed narrowly. NRS 239.001(3).

12 When a government entity claims that a requested record is confidential, it must provide a
13 general factual description of the record to the requester, a specific explanation of what record or
14 portion of a record is confidential, and a citation to the specific laws or regulations rendering the
15 record confidential. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 885, 266 P.3d 623, 631
16 (2011). The governmental entity claiming a privilege bears the burden of proving that the requested
17 record is confidential. NRS 239.0113. The government entity must show that a provision exempts
18 the record from the Nevada Public Records Act, or if a provision does not explicitly exempt a
19 public record, that the entities' interest in non-disclosure clearly outweighs the public's interest in
20 the records. *Gibbons*, 127 Nev. 873 at 880. Even if the government entity satisfies this burden, it
21 must release the record in a redacted form if portions of the records are not confidential. NRS
22 239.010(3). Only if the entirety of the record contains confidential information may a record be

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24 ²⁵ Email sent by Cynthia Smith-Johnson, Document Control Specialist at CCSD on March 27,
2023, attached as *Exhibit F*.

1 withheld entirely rather than redacted. *See Las Vegas Review-Journal, Inc.*, 139 Nev. Adv. Rep. 8
2 at 5 (Mar. 30, 2023). (stating that redaction of records should be favored over withholding records
3 unless all portions of the record are confidential). A government entity’s failure to comply with
4 the Nevada Public Records Act allows the requesting party to recover fees and costs from the
5 government entity. NRS 239.011. Furthermore, a government entity’s willful failure to adhere to
6 the Nevada Public Records Act provides for penalties for that entity. NRS 239.340.

7 ALCU of Nevada first sent its public records request to the Clark County School District
8 (CCSD) on February 21, 2023. CCSD’s subsequent responses can only reasonably be described
9 as a string of citations followed by boilerplate declarations of confidentiality. Even without CCSD
10 describing any of the responsive records withheld with any level of particularity, the statutes cited
11 by CCSD on their face do not apply to ACLU of Nevada, nor to the records requested. Even if
12 CCSD had provided an appropriate response, any interest CCSD may have in non-disclosure does
13 not outweigh the public’s, and in particular ACLU of Nevada’s, interests in the records. Finally,
14 even if some information in these records could be considered confidential, CCSD has made no
15 attempt or offer to release redacted records as required by law—instead choosing to withhold the
16 records in their entirety. With each response, CCSD has shown a clear and willful violation of their
17 responsibilities under the Nevada Public Records Act.

18 Due to CCSD’s inexcusable failure to adequately respond to its request, ACLU of Nevada
19 seeks the disclosure of all records sought in its February 21st request, attorneys’ fees and costs
20 incurred in responding to CCSD’s denial, and the applicable sanctions under NRS 239.340.

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1 **I. CCSD’s response is insufficient under *Reno Newspapers, Inc. v. Gibbons* because**
2 **each of CCSD’s responses provided a blanket rejection followed by a string of**
3 **citations, precisely the type of response that *Gibbons* prohibits.**

4 When a governmental entity refuses to disclose a record pursuant to a public record
5 request, the requesting party is entitled to, at a minimum, “a general factual description of each
6 withheld record and a specific explanation for nondisclosure.” *Gibbons*, 127 Nev. at 876. Although
7 a government entities response to a public record request does not need to amount to a *Vaughn*
8 index, it does need to “cite to ‘specific’ authority ‘that makes the public book or record, or a part
9 thereof, confidential.’” *Id.* at 885 (citing NRS 239.0107(d)(2)). “Merely pinning a string of
10 citations to a boilerplate declaration of confidentiality” is inadequate. *Id.* In sum, there are two
11 requirements a government entity must satisfy, at a minimum, in order to claim confidentiality as
12 a refusal for producing a public record: (1) they must identify the documents and (2) they must
13 state why each record is confidential. *Id.* Failure to satisfy these requirements forces the requesting
14 party to blindly argue for disclosure which “not only runs contrary to the spirit of the NPRA” but
15 it also “seriously distorts the traditional adversary nature of our legal system’s form of dispute
16 resolution.” *Id.* at 629 (citing *Vaughn v. Rosen*, 157 U.S. App. D.C. 340, 484 F.2d 820, 824 (1973)).

17 On February 21, 2023, ACLU of Nevada sent a public records request to CCSD for records
18 related to the February 9th incident including body-worn camera or any other video footage,
19 photographs, BlueTeam data, witness reports, CCSD reports, any communications related to the
20 incident, and any materials describing any discipline that CCSD officers faced for their behavior
21 during the incident.

22 On March 14th CCSD denied this request and justified this denial with a block of text that
23 listed 31 statutory provisions, 16 cases, and 4 CCSD regulations. CCSD made no effort to either
24 provide “a general factual description” of any records that were being withheld or provide any
explanation as to how any of the privileges applied to any of the withheld records. Even after

1 ACLU of Nevada explained that the legal privileges either did not apply to the records or to ACLU
2 as representatives of the students involved, CCSD continued to respond with more denials
3 followed by blanket statements of confidentiality.

4 It is difficult to imagine a clearer example of “merely pinning a string of citations to a
5 boilerplate declaration of confidentiality” than CCSD’s responses to ACLU’s request for records.
6 CCSD’s first response to all seven record types requested was, “confidential and privileged
7 information is not required to be produced under the public records law.”²⁶ Following this
8 statement were ten generic statements of law each followed by a list of statutes, cases, and
9 regulations. With each statement, CCSD failed to in any way explain (1) what records each
10 statement might apply to or (2) how the statements were in any way relevant to ACLU of Nevada’s
11 requests. CCSD’s subsequent responses continued to leave ACLU of Nevada “to blindly argue for
12 disclosure” as these responses only clarified that CCSD was asserting a privilege that explicitly
13 did not apply to ACLU of Nevada, NRS 62H.025, over the body worn camera footage and incident
14 report from the February 9th incident but otherwise provided a functionally identical response as
15 before.

16 CCSD’s utter failure to comply with its obligations under *Gibbons* warrants complete
17 disclosure of all requested records from the February 9th incident, an award of attorney fees, and
18 sanctions pursuant to NRS 239.340.

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24 ²⁶ *Ex. A.*

1 **II. Even if CCSD’s response had been sufficient, disclosure is still required because**
2 **either (A) the cited confidentiality provisions does not apply on their face or (B)**
3 **CCSD’s interest does not outweigh ACLU of Nevada’s interest in the record**

4 Nevada courts apply a two-part framework to determine whether a record is confidential.
5 *Gibbons*, 127 Nev. at 880. First, the government entity must prove, by a preponderance of the
6 evidence, that a statutory provision makes the requested records confidential. *Id.* Second, if the
7 government cannot establish such a statutory provision applies to the requested records, the
8 government entity must prove that its interests in nondisclosure clearly outweighs the public and
9 the requestor’s interests in viewing the records. *Id.*; NRS 239.0113. Only if the government entity
10 can show that the *entirety* of the record satisfies the either test may they refuse to release the
11 requested records. *See Las Vegas Review-Journal, Inc. v. Las Vegas Metro. Police Dep’t*, 139 Nev.
12 Adv. Rep. 8 at 5 (Mar. 30, 2023).

13 Though it provided a long list of confidentiality provisions to ACLU of Nevada in its public
14 records responses, CCSD has failed to explain how any of the privileges apply to any, let alone
15 all, of the records in its possession related to the February 9th incident. Yet on their face the majority
16 of these provisions either do not apply to ACLU of Nevada or cannot rationally apply to the records
17 requested. Furthermore, even if the privileges applied to ACLU of Nevada or all of the records
18 requested, CCSD’s interest in keeping the requested public records confidential does not outweigh
19 the public and ACLU of Nevada’s interests in disclosure of the records.

20 **A. CCSD cites multiple confidentiality provisions that on their face do not apply**
21 **to ACLU of Nevada or to ACLU of Nevada’s requests.**

22 The NPRA acknowledges that records may contain confidential information. *See* NRS
23 239.010 (outlining confidentiality exemptions that may warrant redaction or confidentiality of a
24 public record). But the NPRA also requires that confidentiality provisions be construed as

narrowly as possible. NRS 239.001(3). And the government entity must prove the records confidentiality by a preponderance of the evidence. NRS. 239.0113(2).

CCSD, taking a different approach, cited a range of confidentiality provisions that on their face either do not apply to ACLU of Nevada, do not apply to CCSD, have little to no bearing on the requested records, do not prohibit disclosure of the requested records, or some combination of the aforementioned. Specifically, the below table lists provisions which were cited by CCSD and describes why the cited provision does not apply on its face:

Provisions cited by CCSD	Why the cited provision does not apply
<p>NRS 62H.020 (restrictions a news agency’s right to broadcast juvenile justice information)</p>	<p>ACLU of Nevada is not a news agency and also represents the affected juveniles.</p>
<p>NRS 62H.025 (limits the release of juvenile justice information to non-exempt parties)</p>	<p>CCSD was informed and even acknowledged ACLU of Nevada’s representation of M.W. and J.T., the young men detained by CCSD police on February 9, 2023; attorneys of juveniles are an exempt party under NRS 62H.025(f).</p>
<p>5 U.S.C. § 552(b)(6) (Outlines confidentiality provisions within the Freedom of Information Act)</p>	<p>ACLU of Nevada did not make its request pursuant to the Freedom of Information Act but rather the Nevada Public Records Act. As such, 5 U.S.C. § 552(b)(6) does not apply to this proceeding.</p>
<p>NRS 239.010(1) (lists over 100 confidentiality exemptions to the Nevada Public Records Act)</p>	<p>This provision only lists confidentiality exemptions that may apply to a public record request, it is not a confidentiality provision itself.</p>
<p>NRS 388G.525 (states that personal information such as the home address, employment records, academic records, and disciplinary records of a pupil or any other person is confidential)</p>	<p>If CCSD is referring to ACLU of Nevada’s clients, this privilege does not apply to ACLU of Nevada; if CCSD is referring to a third party, this information can be redacted, as basically every agency in this State is aware of. <i>Las Vegas Review-Journal, Inc.</i>, 139 Nev. Adv. Rep. 8 (Mar. 30, 2023).</p>

1	NRS 239B.030(2) (states that personal information recorded by a government entity is confidential and can only be disclosed to carry out a specific state or federal law)	To the extent it exists within the requested records, it can be redacted.
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4	NRS 239B.040(1) (states that a database of emails and phone numbers collected by a government entity is confidential)	ACLU of Nevada did not request a database of emails and phone numbers.
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6		
7	NRS 603.070 (states that proprietary computer programs and data are confidential)	ACLU of Nevada did not request the proprietary code or proprietary data from any computer programs.
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9	NRS 603A.040 (defines personal information)	To the extent it exists within the requested records, this information could be redacted.
10	NRS 603A.210 (states a government entities duty to implement adequate data security procedures)	This provision is unrelated to public records requests.
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12		
13	FERPA and IDEA (the Family Education and Privacy Rights Act the Individual with Disabilities Education Act apply to student education records)	To the extent that this refers to ACLU of Nevada's clients, these provisions do not apply to ACLU of Nevada; to the extent this information for other students exists within the requested records, it could be redacted.
14		
15		
16	NRS 289.025 (states that a photograph and home address of a peace officer are confidential)	To the extent that the record requested includes an officer's photograph or home address this image could be redacted.
17		
18	NRS 289.080(6) and (7) (state that communications between an officer under investigation and their attorney, labor representative, or other representative are confidential)	It is unclear what records requested in CCSD's possession this privilege would apply to, but to the extent this information is contained within a requested record, it could be redacted.
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21	Nevada Administrative Code, CCSD regulations, and CCSD policies	Internal regulations and procedures indicate best practices and cannot be used to limit the Nevada Public Records Act. <i>Clark Cnty. Sch. Dist. V. Las Vegas Rev.-J.</i> , 134 Nev. 700, 704, 429 P.3d 313, 318 (2018).
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<p>1 NRS 49.095 and NRS 49.055 2 (outline the confidentiality of attorney’s work product)</p>	<p>It is unclear what records these privileges may apply to, but to the extent this information is contained within a requested record, it could be redacted.</p>
<p>3 NRS 233.190 4 (applies to investigations into discriminatory housing, employment, 5 and public accommodations)</p>	<p>It is unclear what records this privilege may apply to, but to the extent this information is contained within a requested record, it could be redacted.</p>
<p>6 NRS 179A.070(2)(a) and (b) 7 (states that information concerning juveniles and 8 investigative/intelligence information is not included in the definition “records of criminal history”)</p>	<p>If CCSD is referring to ACLU of Nevada’s clients, this should not apply to ACLU of Nevada; if CCSD is referring to a third party, this information can be redacted, as basically every agency in this State is aware of.</p>

9
10 CCSD did not narrowly apply confidentiality provisions as required by NRS
11 239.001(3) and certainly did not prove confidentiality by a preponderance of the evidence as
12 required by NRS 239.0113(2). CCSD instead listed a slew of provisions that do not apply to
13 ACLU of Nevada’s request at most would only justify redacting the relevant information. This
14 exhausting list of confidentiality provisions CCSD pasted onto the bottom of their responses
15 to ACLU of Nevada do not provide a reasonable justification for withholding the records
16 ACLU of Nevada requested.

17 **B. ACLU of Nevada’s and the public’s right to the requested records outweigh**
18 **whatever privacy interest CCSD may have in the requested records.**

19 If the government attempts to withhold a record that does not fall under a specific
20 confidentiality statute, it must show that confidentiality is favored over disclosure of the public
21 records. *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630 (1990). This generalized balancing
22 test weighs the interests of the public in the released information against the privacy interests of
23 the government entity. *Id.* Any attempts to restrict the disclosure of records is narrowly construed:
24 disclosure is undeniably favored. *Reno Newspapers v. Sheriff*, 126 Nev. 211, 218, 234 P.3d 922,

1 927 (2010); *see also* NRS 239.001(1)-(3). Furthermore, it is the burden of the government entity
2 to show that “its interests in confidentiality or nondisclosure ‘clearly outweigh[]’ the public’s
3 interest in access to the records.” *Las Vegas Review-Journal, Inc.*, 139 Nev. Adv. Rep. 8 at 13
4 (citing *Gibbons*, 127 Nev. at 880, 266 P.3d at 628). Claiming speculative harm is insufficient. *Id.*

5 Aside from its unparticularized assertion that the records sought are “part of an ongoing
6 investigation,” CCSD has offered no explanation as to how its interest in withholding the records
7 outweighs the public’s fundamental right of access. In contrast, ACLU of Nevada and the public
8 have several judicially recognized compelling interests in the records. *Las Vegas Review-Journal,*
9 *Inc.*, 139 Nev. Adv. Rep. 8 at *8 (“the oversight of law enforcement, the safety of the community,
10 and the accountability of a law enforcement officer” are all compelling interests); NRS 239.001(1)
11 (“the purpose of [the NPRA] is to foster democratic principles by providing members of the public
12 with prompt access to inspect, copy or receive a copy of public books and records”); *Sahara*
13 *Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 221, 984 P.2d 164, 169 (1999)
14 (“[P]ublic records by their very nature are of interest to those concerned with the administration
15 of government.”) (citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495, 43 L. Ed. 2d 328,
16 95 S. Ct. 1029 (1975)). Additionally, ACLU of Nevada in particular seeks to inform its clients
17 regarding their rights related to the February 9th incident. Record disclosure for the purpose of
18 understanding rights is fundamental to the purpose of the NPRA. *Gibbons*, 127 Nev. at 882.

19 These interests are not speculative: the public has been pleading for more information about
20 the incident at Durango High School for over a month through protests,²⁷ pointed questioning
21
22

23
24

²⁷ Vigil, *supra* note 7.

1 during CCSD press conferences,²⁸ repeated news stories first about the incident²⁹ and then about
2 CCSD's stonewalling,³⁰ and even sponsoring townhalls to demand answers.³¹ Instead of
3 transparency, CCSD has responded by refusing to release the requested information about the
4 incident and only offering its spin that our clients were detained for an incident involving a firearm
5 – a blatantly inaccurate and offensive insinuation—only further increasing the public's distrust of
6 CCSD.³² The public's interest in transparency regarding a use of force incident involving a White
7 police officer assaulting Black school children is clear; CCSD's adverse interest is not.

8 Furthermore, any interests CCSD may have in non-disclosure are severely discounted by
9 the publicity already surrounding the incident. *Las Vegas Review-Journal v. Eighth Judicial Dist.*
10 *Court of Nev.*, 134 Nev. 40, 46, 412 P.3d 23, 28 (2018) (quoting *Doe v. City of N.Y.*, 15 F.3d 264,
11 268 (2d Cir. 1994) ("certainly, there is no question that an individual cannot expect to have a
12 constitutionally protected privacy interest in matters of public record")). The images and identities
13 of the students and the police officers involved in the February 9th incident are all clearly viewable
14
15

16 ²⁸ Joe Vigil, *CCSD superintendent refuses to discuss police incident near Durango High after*
17 *telling media 'happy transparency day' during news conference*, Fox 5 Las Vegas (March 21,
18 2023, 8:00 PM), <https://www.fox5vegas.com/2023/03/22/ccsd-superintendent-refuses-discuss-police-incident-near-durango-high-after-telling-media-happy-transparency-day-during-news-conference/>

19 ²⁹ Bell, *supra* note 1; Lane, *supra* note 3; Associated Press, *supra* note 4.

20 ³⁰ Longhi, *supra* note 15.

21 ³¹ Justin Razavi, *'You do not care': School board chastized over CCSD police actions*, Las
22 Vegas Review-Journal (February 23, 2023, 9:51 PM),
23 <https://www.reviewjournal.com/local/education/you-do-not-care-school-board-chastized-over-ccsd-police-actions-2734227/>

24 ³² Lane, *supra* note 9.

1 in the viral video and have been discussed by multiple news agencies.³³ It also took less than 24
2 hours for a news agency to blur the faces of any juveniles in the reposted video.³⁴ Additionally,
3 Chief Blackeye of the CCSD Police Department has already attended multiple press conferences
4 surrounding the incident.³⁵ In these press conference he has repeatedly discussed the incident,
5 claiming multiple times that guns may have been involved and that the students weren't attacked
6 for recording yet withholding the records that would potentially undermine his dubious
7 insinuations.³⁶

8 ACLU of Nevada's access to the body-worn camera footage and records related to the
9 incident at Durango High School will not expose any potentially confidential information that is
10 not already available online yet will provide a much-needed transparency as to what happened
11 during the February 9th incident.

12 **III. CCSD's failure to comply with NPRA warrants penalties under NRS 239.340**
13 **because CCSD willfully ignored their responsibilities under the Nevada Public**
14 **Records act and the privileges cited by CCSD clearly do not apply to ACLU of**
15 **Nevada.**

16 If a government entity willfully fails to comply with the Nevada Public Records Act, they
17 must pay the applicable fine. NRS 239.340. These fines are in addition to any other rights and
18 remedies available. NRS 239.340(3).

19 A willful violation of a statute is a violation that is knowing, intentional, deliberate, and
20 voluntary. *Century Steel, Inc. v. State, Div. of Indus. Rels., Occupational Safety & Health Section*,
21 122 Nev. 584, 589, 137 P.3d 1155, 1159 (2006).

22 ³³ Longhi, *supra* note 15.

23 ³⁴ Bell, *supra* note 1.

24 ³⁵ Vigil, *supra* note 7; News 3 Staff, *supra* note 13.

³⁶ *Id.*

1 CCSD has deliberately and intentionally violated the NRPA with their denials here. For
2 example, even when informed that ACLU of Nevada represented the two students involved in the
3 incident, CCSD continued to withhold the records citing juvenile justice privileges that explicitly
4 exempt the juvenile's attorneys. And as noted above, CCSD has repeatedly to cited to privileges
5 that could not possibly apply to the records requested, such as claiming attorney-work product
6 over the officer's body worn camera footage. Such blatant disregard for the NRPA necessarily
7 warrants sanctions pursuant to NRS 239.340.

8 **IV. CCSD must pay ACLU of Nevada's fees and costs pursuant to NRS 239.011.**

9 If the requester of public records prevails in a writ to enforce their rights under the Nevada
10 Public Records Act, they are entitled to recovery of their costs and associated attorney's fees. NRS
11 239.011(3).

12 ACLU of Nevada has incurred costs and fees in responding to and sorting through the slew
13 of confidentiality exemptions claimed by CCSD. Additionally, ACLU of Nevada has incurred fees
14 and costs in the drafting of this writ. As such ACLU of Nevada is requesting recovery of said costs
15 and fees.

16 Dated this 19th day of April, 2023.

17 **AMERICAN CIVIL LIBERTIES**
18 **UNION OF NEVADA**

19 

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Exhibits Index	
<i>Exhibit A</i>	Email sent by Jacob Smith, Staff Attorney at ACLU of Nevada, on February 21, 2023.
<i>Exhibit B</i>	Emails between Cynthia Smith-Johnson, Document Control Specialist at CCSD and Jacob Smith, Staff Attorney at ACLU of Nevada, on March 14, 2023.
<i>Exhibit C</i>	Email sent by Cynthia Smith-Johnson, Document Control Specialist at CCSD on March 21, 2023, stating that records pertained to juvenile justice information.
<i>Exhibit D</i>	Email sent by Cynthia Smith-Johnson, Document Control Specialist at CCSD on March 21, 2023, stating that records pertained to an active employment investigation.
<i>Exhibit E</i>	Email sent by Chris Peterson, Legal Director at ACLU of Nevada on March 21, 2023.
<i>Exhibit F</i>	Email sent by Cynthia Smith-Johnson, Document Control Specialist at CCSD on March 27, 2023.

EXHIBIT A

February 21, 2023

Community Services Department
CCSD Administrative Center
Public Records Request
5100 West Sahara Avenue
Las Vegas, NV 89146
Email: publicrecordrequest@nv.ccsd.net



RE: Incident at or near Durango High School on 2/9/2023

To whom it may concern:

This letter serves as a request under the Nevada Public Records Act, NRS § 239 *et seq.*, by the American Civil Liberties Union of Nevada (ACLUNV) for public records held by the Clark County School District and its associated subdivisions as detailed below.

A. The Requester

The ACLUNV is a statewide affiliate of the American Civil Liberties Union, a national organization whose work protects the civil liberties and civil rights of all people. Our mission includes safeguarding the basic constitutional rights to due process, equal protection, and the civil rights of marginalized communities including individuals in the criminal legal system. One of the ACLUNV's main functions is disseminating information to the public about issues of concern to the ACLUNV and its members.

B. Definitions

For the purpose of this Request, the following definitions shall apply:

- 1) "CCSD employee" includes any individual employed by the CCSD or its agencies, including but not limited to any Trustees, administrators, regular status employees, and Clark County School District Police Department (CCSDPD) personnel.
- 2) "The incident" refers to an incident that occurred at or near Durango High School on February 9, 2023 in which Officer Jason Elfberg and/or other CCSD employees detained multiple students/community members, including but not limited to [REDACTED] and [REDACTED].

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C. Request

The ACLUNV requests, in electronic format where available and pursuant to NRS 239.010(3-5), any and all records in your custody or under your control relating to the incident. This request includes but is not limited to:

- 1) Any logs, documents, and/or files related to the February 9, 2023, incident at Durango High School including but not limited to:
 - a. Any video footage—including but not limited to footage from cameras worn by CCSDPD officers or CCSD surveillance cameras—related to and depicting the incident;
 - b. Any photographs from the incident;
 - c. Any BlueTeam data related to the incident including but not limited to data related to uses of force, pursuits, and complaints;
 - d. Any witness statements related to the incident;
 - e. Any reports, notes, or other written material generated by CCSD employees describing the incident;
 - f. Any communications by CCSD employees discussing the incident, including but not limited to CCSD administration and police personnel;
 - g. Any materials describing the disciplining, sanctioning, or reprimanding of CCSD employees and students related to the incident.

- 2) Any documentation related to CCSD policies and/or training, including CCSDPD policies and/or training, related to the use of force and first amendment rights of students/community members, including but not limited to policies and/or trainings describing:
 - a. Circumstances when the use of force may and may not be used by CCSD employees;
 - b. Trainings and/or certifications CCSD employees must complete regarding the use of force;
 - c. Trainings and/or certifications CCSD employees must complete First Amendment rights; and
 - d. Any individuals, including other CCSD employees, that must be notified regarding uses of force.

D. Waiver of Fees

The ACLUNV requests a waiver of any and all fees associated with this request.

In relation to both federal and state public records requests, fees are generally waived for nonprofit organizations seeking copies of materials without commercial interest and for the purpose of contributing to public understanding and education. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53 (9th Cir. 1997); *Friends of Oceano Dunes, Inc. v. Salazar*, No. C-11-1476 EMC, 2011 WL 6748575 (N.D. Cal. Dec. 22, 2011); *North Cnty. Parents Org. for Children with Special Needs v. Dep't of Educ.*, 23 Cal. App. 4th 144 (Cal. Ct. App. 1994).

Here, the documents requested benefit the public's knowledge and oversight of the Clark County School District and its Police Department and are not sought for commercial interest. As a nonprofit 501(c)(3) and 501(c)(4) organization, the ACLUNV is well situated to disseminate information it gains from this request to the general public as well as to other targeted communities. Dissemination of information to the public is a critical and substantial component of ACLUNV's mission and work.

E. Fulfillment of Request

The State of Nevada mandates that all state agency records are public unless declared confidential by law. NRS § 239.010. Recent changes to the Public Records Act reaffirm the state's commitment to transparency and maximizing the public's right of access to agency records. NRS § 239.001.

As of October 1, 2019, Nevada law imposes additional duties on governmental entities to fulfill requests. If a governmental entity willfully fails to comply with any provision of NRS § 239 *et seq*, it is subject to up to \$10,000 in civil penalties "in addition to any other rights or remedies that may exist in law or in equity." NRS § 239.340.

If all or any part of this request is denied, Nevada law requires that you provide the ACLUNV a written statement of the grounds for the denial, citing the law or regulations under which you believe you may deny access for each document. NRS 239.0107. Furthermore, if you determine that some portions of the requested records are exempt from disclosure, we expect that you provide us with any reasonable severable portion of the records sought.

Please be advised that if any refusal to disclose is based on confidentiality, then "[t]he public official or agency bears the burden of establishing the existence of



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privilege based upon confidentiality. It is settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly." *D.R Partners v. Board of County Com'rs of Clark County*, 116 Nev. 616, 622 (2000).

Pursuant to state law, we request copies and/or access to these public records be forwarded to the ACLUNV within five (5) business days of this letter, by February 28, 2023. NRS 239.0107(1). If you are unable to make the records available by this date, you are statutorily required to state that fact in writing explaining why the book or record is unavailable and a date and time when the record will be available. NRS 239.1007(1)(c)(1).

The updated Public Records Act imposes a duty on governmental entities to "make a reasonable effort to assist the requester to focus the request in such a manner as to maximize the likelihood the requestor will be able to [access] the public book or record as expeditiously as possible." NRS 239.1007(1)(c)(2). Please contact the ACLUNV within the five (5) day statutory time frame if, for some reason, this request requires clarification.

Please forward copies of documents as they are identified, even if production is not fully complete. We appreciate your assistance with this request. You may contact me directly at 775-505-3282 or jsmith@aclunv.org.

Best,



Jacob Smith
Staff Attorney
American Civil Liberties Union of Nevada



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EXHIBIT B

From: Cynthia Smith-Johnson [Administrative Center]
To: Jacob Smith
Subject: 7263 - Re: 20230221 - Public Records Request, Durango HS
Date: Tuesday, March 14, 2023 11:06:51 AM

This Message Is From an External Sender

This message came from outside your organization.

Mr. Smith,

Pursuant to NRS 239.0107, this is in response to the below request.

Specific to #2(a), (b), and (d). There are no docs responsive to #2(c). Information responsive has been placed on a zip drive as the information is too large for an attachment. There is a powerpoint training, three videos, a CCSDPD general order, and a document with a NAC link.

You may pick up the the zip drive from the
Clark County School District Administrative
5100 West Sahara Avenue, Las Vegas, NV 89146.

The Administrative center is open from 7 a.m. to 5 p.m. Monday through Friday. The exception is Friday, March 17, 2023 as the building is closed for Spring Break Holiday.

You may proceed to the Lobby receptionist and ask for Becky Franczak. Ms. Franczak will have the information for you.

Specific to #1(a), (b), (c), (d), (e), (f), and (g).

Confidential and privileged information is not required to be produced under the public records law. NRS 239.010(1) (documents are not required to be produced if they fall within the enumerated exceptions or are “otherwise declared by law to be confidential”); NRS 239.010(3) (confidential and privileged information may be redacted). CCSD reserves the right to assert any and all additional arguments and defenses, including, but not limited to, the following:

- The documents and videos are evidence in an ongoing, pending, and active employment investigation. NRS 239.010; NRS Chapter 289 (procedures and processes must be followed to ensure the rights of peace officers); Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990) (a balancing of the interests weighs in favor of confidentiality and non-disclosure). At this time, the documents and videos may not be released without impeding and jeopardizing the ongoing, pending, and active employment investigation. The District’s

interest in nondisclosure clearly outweighs the public's interest in access. The District will provide public records as soon as the release will no longer impede or jeopardize the employment investigation (subject to withholding or redactions based on confidentiality and privilege).

- Confidential employment information is not required to be produced under the public records law. NRS 239.010(1); NRS 388G.525 (confidential information includes employment records); 5 U.S.C. 552(b)(6) (“personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy”); NAC 284.718; NAC 284.726; NRS 391.033; NRS 386.350; CCSD Regulation 1212; CCSD Regulation 4311; CCSD Policy 4235; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873 (2011); Clark County School District v. Las Vegas Review-Journal, 134 Nev. 700 (2018); Las Vegas Metropolitan Police Department v. Las Vegas Review-Journal, 478 P.3d 383 (2020); Cameranesi v. U.S. Dep’t of Defense, 856 F.3d 626 (9th Cir. 2017).
- Personally identifiable student information is confidential under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029; NRS 385A.830.
- Personally identifiable student information is confidential under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 et seq.
- Documents may be protected by the attorney-client privilege. NRS 239.010; NRS 49.095; NRS 49.055; Upjohn Co. v. United States, 449 U.S. 383 (1981); Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court of Nev., 133 Nev. 369 (2017); and all related statutory and case law regarding the attorney-client privilege.
- Documents may be protected by the attorney work-product doctrine. NRS 239.010; Hickman v. Taylor, 329 U.S. 495 (1947); Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court of Nev., 133 Nev. 369 (2017); and all related statutory and case law regarding the attorney work-product doctrine.
- Information gathered in the course of the investigation of an alleged unlawful discriminatory practice may be confidential. NRS 233.190; NAC 233.115; NAC 284.718(5); CCSD Regulation 4110(X).
- Personal information is not a public record. NRS 239.010; NRS 239.0105; NRS 388G.525 (personal information, including, without limitation, the home address, employment records, academic records and disciplinary records of a pupil or any other person is confidential); NRS 239B.030(2); NRS 239B.040(1); NRS 603.070; NRS 603A.040; NRS 603A.210; Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990); Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873 (2011).
- There are nontrivial personal privacy interests at stake that need to be protected, and in the balancing of the interests these privacy interests prevail over the public's right to information. These nontrivial personal privacy interests may warrant the redaction or withholding of certain documents. Clark County School District v. Las Vegas Review-Journal, 134 Nev. 700 (2018); Las Vegas Metropolitan Police Department v. Las Vegas Review-Journal, 478 P.3d 383 (2020); Cameranesi v. U.S. Dep’t of Defense, 856 F.3d 626 (9th Cir. 2017).

· Documents may be confidential under the common law balancing test. Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873 (2011).

Thank you,

Cindy Smith-Johnson
Document Control Specialist
Administrative Center
Clark County School District
5100 West Sahara Avenue
Las Vegas, NV 89146
PublicRecordRequest@nv.ccsd.net
smithc3@nv.ccsd.net

From: [Jacob Smith](#)
To: [Cynthia Smith-Johnson \[Administrative Center\]](#)
Subject: RE: 7263 - Re: 20230221 - Public Records Request, Durango HS
Date: Tuesday, March 14, 2023 4:10:00 PM

Good afternoon,

The ACLU of Nevada is representing [REDACTED] and [REDACTED].

At this time, the ACLU of Nevada has received the following documents pursuant to the public request below:

- A video of a South Carolina police incident
- A video of an Oregon police incident
- A video of a police incident from an undisclosed location
- A copy of GO-650 Use of Force Policy for CCSPD
- A power point titled "Use of Force"
- A hyperlink to: <https://www.leg.state.nv.us/nac/NAC-289.html>

Please notify me as soon as possible if there are any other records that CCSD intended to disclose but failed to do so.

We did not receive any records related to Request 2(c) for First Amendment training for CCSD employees, including CCSDPD officers. Please confirm that you do not have any responsive records.

Finally, it is apparent from your response that CCSD has other records responsive to our request but believes those records contain confidential information. However, the response below, which constitutes a blanket denial of our first public records request, does not satisfy the prelitigation requirements of NRS 239.0107(1)(d)(2) as articulated in *Reno Newspapers, Inc. v. Gibbons*. Please clarify (1) what records are being withheld at this time and (2) what specific privileges are being applied to each withheld record. For example, it is unlikely that there is any confidential employee information recorded on bodyworn camera as requested under Request 1(a).

Thank you,

Jacob Smith
He/Him/His
Staff Attorney
ACLU of Nevada
4362 W. Cheyenne Ave. | North Las Vegas, NV 89032
www.aclunv.org | [Facebook](#) | [Twitter](#)

EXHIBIT C

From: [Cynthia Smith-Johnson \[Administrative Center\]](#)
To: [Jacob Smith](#)
Subject: 7283 - Durango HS Incident of February 9, 2023 Request for Records
Date: Tuesday, March 21, 2023 4:57:37 PM

This Message Is From an External Sender

This message came from outside your organization.

Mr. Smith,

This pertains to your request under the Nevada Public Records Act (NPRA) for the body-worn camera (BWC) video and incident report involving the incident at Durango High School on February 9, 2023. CCSD hereby supplements its response as follows.

After further discussions with the CCSD police department, it has come to our attention that the requested BWC video and incident report contains juvenile justice information and are part of a pending active juvenile criminal case. Juvenile justice information is confidential. NRS 62H.025; NRS 62H.020; Republican Att'ys Gen. Ass'n v. Las Vegas Metro. Police Dep't, 136 Nev. 28, 33-36 458 P.3d 328, 333-335 (2020). The BWC video and incident report are also evidence in an ongoing, pending, and active juvenile criminal investigation. NRS 239.010; NRS 179A.070(2)(a); Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990); Las Vegas Metro. Police Dep't v. Anderson (In re 12067 Oakland Hills, Las Vegas), 134 Nev. 799 (2018); 5 U.S.C. § 552(b)(7); Nev. Att'y Gen. Op. 83-3.

Given the above legal authority, CCSD is highly concerned with releasing the BWC video and/or incident report without consent from your client. CCSD hereby requests consent from your client to release the juvenile justice information to your organization and to the other media outlets who have requested the same information. If consent is provided, CCSD will redact/blur the name of the student, face of the student, and other personally identifiable or confidential information and provide copies as soon as possible.

Thank you,

Cindy Smith-Johnson
Document Control Specialist
Administrative Center

Clark County School District
5100 West Sahara Avenue
Las Vegas, NV 89146
PublicRecordRequest@nv.ccsd.net
smithc3@nv.ccsd.net

EXHIBIT D

From: [Cynthia Smith-Johnson \[Administrative Center\]](#)
To: [Jacob Smith](#)
Subject: 7283 - Durango HS Incident of February 9, 2023 Request for Records
Date: Tuesday, March 21, 2023 5:06:08 PM

This Message Is From an External Sender

This message came from outside your organization.

Mr. Smith,

This pertains to your request under the Nevada Public Records Act (NPRA) for documents related to the incident at Durango High School on February 9, 2023.

As previously noted, certain documents are evidence in an ongoing, pending, and active employment investigation. NRS 239.010; NRS Chapter 289; Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990). As a supplemental response, under the applicable Negotiated Agreement, CCSD must comply with the rights of peace officers provided in NRS Chapter 289. NRS Chapter 289 discusses the rights and process (in part) afforded officers while under investigation. This matter is still under investigation.

Thank you,

Cindy Smith-Johnson
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Clark County School District
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PublicRecordRequest@nv.ccsd.net
smithc3@nv.ccsd.net

EXHIBIT E

From: [Chris Peterson](#)
To: [Jacob Smith](#); [Cynthia Smith-Johnson \[Community Services\]](#)
Subject: RE: 7283 - Durango HS Incident of February 9, 2023 Request for Records
Date: Tuesday, March 21, 2023 5:57:26 PM
Attachments: [Preservation Letter, \[REDACTED\].pdf](#)

Ms. Smith-Johnson,

I am responding to CCSD's response below to the ACLU of Nevada's Public Request submitted on February 21, 2023. Mr. Jacob Smith, my colleague, is CC'd on this email. As stated before, we are attorneys representing [REDACTED] and [REDACTED] in relation to the February 9, 2023, incident.

You reference two statutes to now claim that the information requested is privileged as juvenile justice records: NRS 62H.025 and NRS 62H.020.

Presumably you are referring to the pending juvenile matter against [REDACTED] when you refer to "a pending juvenile justice case" in your email. If that is correct, NRS 62H.025 does not apply to the ACLU of Nevada because we are attorneys "representing the child", i.e. [REDACTED], and are exempt under NRS 62H.025(f) from this privilege. In addition to our previous representations to you specifically, we sent a formal letter to CCSD's main administrative building on February 17, 2023, representing that we are [REDACTED] attorneys, as is custom practice, and to Mr. Luke Puschnig, who I understand to be your general counsel, via email. However, for your convenience, I have attached a copy of that letter for your records. If you have any basis to suggest that we are not attorneys representing [REDACTED] or [REDACTED], please let us know.

As for consent to release the material to anyone else other than the ACLU of Nevada, there is no provision in NRS 62H.025 where [REDACTED] or his attorneys' "consent" is relevant to your obligations as a governmental entity. What is clearly established under NRS 62H.025(f) is that NRS 62H.025 is an invalid basis to deny those records to the ACLU of Nevada.

Finally, NRS 62H.020 does not apply to CCSD as CCSD is not a news medium.

Please provide the records that the ACLU of Nevada have requested immediately. If you or anyone else in your office has any remaining questions, you may call me at 702.366.1902.

Christopher Peterson
He/Him/His
Legal Director
ACLU of Nevada
4362 W. Cheyenne Ave. | North Las Vegas, Nevada 89032
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Clark County School District
Attn: Luke Puschnig, General Counsel
5100 West Sahara Ave.
Las Vegas, NV 89146
Sent via email: puschpl@nv.ccsd.net
Sent via certified mail

February 17, 2023

RE: Preservation Letter, Durango High School incident, February 9, 2023

To whom it may concern,

This letter has been sent on behalf of our clients, [REDACTED] and [REDACTED], related to an incident that occurred on February 9, 2023, outside of Durango High School, where our clients were detained with force by Clark County School District Police Department (CCSDPD) officers for engaging in activity protected by the First Amendment, i.e. peacefully recording police officers detain another student on a public street.

As you are surely aware, the Nevada Supreme Court has held that a litigant is under a duty to preserve evidence which it knows, or reasonably should know, is relevant to future legal actions even where no such action has yet been commenced. *Fire Insurance Exchange v. Zenith Radio, Corp.*, 103 Nev. 648 (1987). The events of February 9th were sufficient in nature to provide notice of preservation.

Spoliation of evidence may subject you to sanctions pursuant to the Nevada Rules of Civil Procedure, and destruction of evidence may result in an adverse finding of liability. *Id.*, see also, *Bass v. Davis*, 122 Nev. 442 (2006). Furthermore, the 9th Circuit has noted that “simple notice of ‘potential relevance to the litigation’” is sufficient when entering an adverse inference. *Glover v. BIC Corp.*, 6 F.3d 1318 (9th Cir. 1993).

In this matter the preservation of electronic evidence related to the events described herein constitutes critical evidence that must be preserved. It is essential that you keep this electronic evidence in its native form (not as a paper printout) to ensure the metadata remains intact. This notice applies to your organization’s on- and off-site computer systems and removable electronic media plus all computer systems, services, and devices (including all remote access and wireless devices) used for your organization’s overall operation. This includes, but is not limited to, e-mail and other electronic communications; electronically stored documents, records, images, graphics, recordings, spreadsheets, databases; calendars, system usage logs, contact manager information, telephone logs, internet usage files, deleted files, cache files, user information, and other data. Further, this notice applies to archives, backup and disaster recovery tapes, discs, drives, cartridges, voicemail text messages, and other data. All operating systems, software, applications, hardware, operating manuals, codes, keys, and other support information needed to fully search, use, and access the electronically stored information must also be preserved.



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It is especially vital that all potential evidence, electronic or otherwise, that was generated by or in concert with the following individuals related to the events of February 9, 2023, as described above is sequestered and maintained in its native form:


- Officer Jason Elfberg;
- Any other CCSD, including CCSDPD, staff or volunteers that observed and were aware of the incident.

You, your organization, and your officers, employees, agents, and affiliated organizations must take all reasonable steps to preserve this information until this legal matter is finally resolved. Failure to take the necessary steps to preserve the information addressed in this letter or other pertinent information in your possession or control may result in serious sanctions or penalties.

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift or destruction of hardware or physical equipment. Notify all individuals and affiliated organizations of the need and duty to take the necessary affirmatives steps to comply with the duty to preserve evidence.

Please direct all future correspondence related to this matter to our office.

Sincerely,



Christopher Peterson
Legal Director
ACLU of Nevada



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EXHIBIT F

From: [Cynthia Smith-Johnson \[Administrative Center\]](#)
To: [Chris Peterson](#)
Cc: [Jacob Smith](#)
Subject: Re: 7283 - Durango HS Incident of February 9, 2023 Request for Records
Date: Monday, March 27, 2023 1:34:22 PM

This Message Is From an External Sender
This message came from outside your organization.

Mr. Peterson and Mr. Smith,

This pertains to your request under the Nevada Public Records Act (NPRA) for records related to the incident at Durango High School on February 9, 2023. The Clark County School District (CCSD) hereby supplements its response as follows:

Confidential and privileged information is not required to be produced under the public records law. NRS 239.010(1) (documents are not required to be produced if they fall within the enumerated exceptions or are “otherwise declared by law to be confidential”); NRS 239.010(3) (confidential and privileged information may be redacted). CCSD reserves the right to assert any and all additional arguments and defenses, including, but not limited to, the following:

- Juvenile justice information is confidential. NRS 62H.025; NRS 62H.020; Republican Att’ys Gen. Ass’n v. Las Vegas Metro. Police Dep’t, 136 Nev. 28, 33-36 458 P.3d 328, 333-335 (2020). “The NPRA expressly yields to NRS 62H.025, which mandates that “[j]uvenile justice information is confidential and may only be released in accordance with the provisions of this section or as expressly authorized by other federal or state law.” Republican Att’ys, 136 Nev. at 34; NRS 62H.025(1). 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.” Id. at 34-35; NRS 62H.025(6)(a). The Nevada Supreme Court has held that “Even if never brought before a juvenile court, at the time of arrest there is an allegation that the juveniles committed a delinquent act and they are presumed by the officers to be in need of supervision. Any information directly related to the arrest of juveniles therefore constitutes juvenile justice information.” Republican Att’ys, 136 Nev. at 34-35. In this case, the records requested contain juvenile justice information and are part of a pending active juvenile criminal case. The materials are evidence and directly relate to the juvenile who is now subject to the jurisdiction of the juvenile court. Some or all of the juvenile justice information may be inextricably intertwined and

commingled with any non-confidential information. Republican Att'ys, 136 Nev. at 36.

- The documents and videos are evidence in an ongoing, pending, and active juvenile criminal investigation. NRS 239.010; NRS 179A.070(2)(a); Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990) (a balancing of the interests weighs in favor of confidentiality and non-disclosure); Las Vegas Metro. Police Dep't v. Anderson (In re 12067 Oakland Hills, Las Vegas), 134 Nev. 799 (2018) (recognizing the “legitimate public policy interests in maintaining confidentiality of criminal investigation records and criminal reports”); 5 U.S.C. § 552(b)(7) (law enforcement files are confidential when pertaining to a pending or anticipated criminal proceeding if disclosure “could reasonably be expected to interfere with enforcement proceedings” or “would deprive a person of a right to a fair trial or an impartial adjudication”); Nev. Att’y Gen. Op. 83-3 (recognizing the “legitimate public policy interests in maintaining confidentiality of criminal investigation records and criminal reports”). At this time, release of the records would impede and jeopardize the ongoing, pending, and active juvenile criminal investigation. The District’s interest in nondisclosure clearly outweighs the public’s interest in access.

- The documents and videos are evidence in an ongoing, pending, and active employment investigation. NRS 239.010; NRS Chapter 289 (procedures and processes must be followed to ensure the rights of peace officers); Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990) (a balancing of the interests weighs in favor of confidentiality and non-disclosure). At this time, release of the records would impede and jeopardize the ongoing, pending, and active employment investigation. The District’s interest in nondisclosure clearly outweighs the public’s interest in access.

- Confidential employment information is not required to be produced under the public records law. NRS 239.010(1); NRS 388G.525 (confidential information includes employment records); 5 U.S.C. 552(b)(6) (“personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy”); NAC 284.718; NAC 284.726; NRS 391.033; NRS 386.350; CCSD Regulation 1212; CCSD Regulation 4311; CCSD Policy 4235; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873 (2011); Clark County School District v. Las Vegas Review-Journal, 134 Nev. 700 (2018); Las Vegas Metropolitan Police Department v. Las Vegas Review-Journal, 478 P.3d 383 (2020); Cameranesi v. U.S. Dep’t of Defense, 856 F.3d 626 (9th Cir. 2017); See also Matter of Halverson, 123 Nev. 493, 169 P.3d 1161 (2007); Department of the Air Force v. Rose, 425 U.S. 352 (1976); Simpson v. Vance, 648 F.2d 10 (D.C. Cir.

1980); Sims v. CIA, 642 F.2d 562 (D.C. Cir. 1980); Stern v. F.B.I., 737 F.2d 84 (D.C. Cir. 1984); Ripskis v. Department of Housing and Urban Dev., 746 F.2d 1 (D.C. Cir. 1984); Bloomgarden v. U.S. Department of Justice, 874 F.3d 757 (D.C. Ct. App. 2017); Smith v. F.B.I., 663 F.Supp.2d 1 (D. D.C. 2009).

- Personally identifiable student information is confidential under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029; NRS 385A.830.

- Personally identifiable student information is confidential under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 et seq.

- Documents may be protected by the attorney-client privilege. NRS 239.010; NRS 49.095; NRS 49.055; Upjohn Co. v. United States, 449 U.S. 383 (1981); Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court of Nev., 133 Nev. 369 (2017); and all related statutory and case law regarding the attorney-client privilege.

- Documents may be protected by the attorney work-product doctrine. NRS 239.010; Hickman v. Taylor, 329 U.S. 495 (1947); Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court of Nev., 133 Nev. 369 (2017); and all related statutory and case law regarding the attorney work-product doctrine.

- Information gathered in the course of the investigation of an alleged unlawful discriminatory practice may be confidential. NRS 233.190; NAC 233.115; NAC 284.718(5); CCSD Regulation 4110(X).

- Personal information is not a public record. NRS 239.010; NRS 239.0105; NRS 388G.525 (personal information, including, without limitation, the home address, employment records, academic records and disciplinary records of a pupil or any other person is confidential); NRS 239B.030(2); NRS 239B.040(1); NRS 603.070; NRS 603A.040; NRS 603A.210; Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990); Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873 (2011).

- There are nontrivial personal privacy interests at stake that need to be protected, and in the balancing of the interests these privacy interests prevail over the public's right to information. These nontrivial personal privacy interests may warrant the redaction or withholding of certain documents. Clark County School District v. Las Vegas Review-Journal, 134 Nev. 700 (2018); Las Vegas Metropolitan Police Department v. Las Vegas Review-Journal, 478 P.3d 383 (2020); Cameranesi v. U.S. Dep't of Defense, 856 F.3d 626 (9th Cir. 2017).

- Documents may be confidential under the common law balancing test. Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873 (2011).

Thank you,

Cindy Smith-Johnson
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