



CASE NO: A-23-869216-W
Department 7

1 **PMAN**
2 JACOB SMITH, ESQ. (16324)
3 CHRISTOPHER M. PETERSON, ESQ. (13932)
4 **AMERICAN CIVIL LIBERTIES**
5 **UNION OF NEVADA**
6 4362 W. Cheyenne Ave.
7 North Las Vegas, NV 89032
8 Telephone: (702) 366-1226
9 Facsimile: (702) 830-9205
10 Emails: jsmith@aclunv.org
11 peterson@aclunv.org
12 *Attorneys for Petitioner*

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:

**Petition for Writ of Mandamus
pursuant to NRS 239.001 et seq.**

**Expedited Matter Pursuant to
NRS 239.011**

Hearing requested

17 Petitioner, American Civil Liberties Union (ACLU) of Nevada hereby submits this Petition
18 for Writ of Mandamus for declaratory and injunctive relief pursuant to the Nevada Public Records
19 Act. NRS 239.001. This Petition seeks from this Court an order requiring Respondent Clark
20 County School District (CCSD) to provide ACLU of Nevada with the public records detailed in
21 this petition without delay. ACLU of Nevada also requests an award for all fees and costs
22 associated with efforts to obtain the withheld public records pursuant to NRS 239.011(2).
23 Additionally, ACLU of Nevada requests that this Court assess statutory penalties against CCSD
24 for each of the ways CCSD has willfully violated the Nevada Public Records Act pursuant to NRS

1 239.340. Lastly ACLU of Nevada requests the Court expedite this matter pursuant to NRS
2 239.011(2).

3 This Petition is supported by Petitioner’s Opening Brief in Support of Writ of Mandamus,
4 and any other pleadings and papers filed with this Court.

5 Petitioner hereby alleges:

6
7 **NATURE OF THE ACTION**

8 1. ACLU of Nevada brings this Petition pursuant to NRS 239.011 which states: “[i]f
9 a request for inspection, copying or copies of a public book or record open to inspection and
10 copying is denied or unreasonably delayed... the requester may apply to the district court in the
11 county in which the book or record is located for an order: (a) Permitting the requester to inspect
12 or copy the book or record; (b) Requiring the person who has legal custody or control of the public
13 book or record to provide a copy to the requester; or (c) providing relief relating to the amount of
14 the fee.”

15 2. This Petition for a Writ of Mandamus is the proper means to secure compliance
16 with the Nevada Public Records Act. NRS 239.011; *Reno Newspapers, Inc. v. Gibbons*, 127 Nev.
17 873, 884, 266 P.3d 623, 630 n.4 (2011); *see also DR Partners v. Bd. of Cty. Comm’rs of Clark*
18 *Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Donrey of Nev. v. Bradshaw*, 106 Nev.
19 630, 798 P.2d 144 (1990) (writ of mandamus is the appropriate procedural remedy to compel
20 compliance with the NPRA).

21 3. ACLU of Nevada is entitled to an expedited hearing on this matter. NRS 239.011(2)
22 (“the court shall give this matter priority over other civil matters to which priority is not given by
23 other statutes.”)

1 **STANDING**

2 11. ACLU of Nevada has standing to pursue this Petition as public records requested
3 by ACLU of Nevada have been unjustly withheld. NRS 239.011.
4

5 **STATEMENT OF FACTS**

6 12. On February 9, 2023, two Durango High School students, M.W. and J.T., were
7 detained by police officers employed by CCSD.

8 13. Soon after the incident, video footage of CCSD police detaining M.W. and J.T.
9 circulated on the internet.¹

10 14. Multiple news agencies, including the Las Vegas Review Journal,² News 3 Las
11 Vegas,³ U.S. News,⁴ and News 5 Las Vegas,⁵ ran news stories about the incident.
12

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

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

19 ³ Tiffany Lane, *NAACP: CCSD police officer who slammed teen to ground has been reassigned*,
20 *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)
21 [classroom/naacp-ccsd-police-officer-who-slammed-teen-to-ground-has-been-reassigned](https://news3lv.com/news/crisis-in-the-classroom/naacp-ccsd-police-officer-who-slammed-teen-to-ground-has-been-reassigned)

22 ⁴ Associated Press, *Nevada Officer Slams Student Recording Police, Kneels on Him*, U.S. News
23 *(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)
24 [states/nevada/articles/2023-02-17/nevada-officer-slams-student-recording-police-kneels-on-him.](https://www.usnews.com/news/best-states/nevada/articles/2023-02-17/nevada-officer-slams-student-recording-police-kneels-on-him)

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

1 15. Many of those same agencies aired the video that had circulated on the internet.⁶

2 16. On February 17, 2023, the National Association for the Advancement of Colored
3 People (NAACP), the National Action Network (NAN), and over a dozen other civil rights groups
4 held a rally related to the incident demanding, among other items, the release of body camera
5 footage.⁷

6 17. On February 17, 2023, ACLU of Nevada informed CCSD that ACLU of Nevada
7 represents the juveniles, M.W. and J.T., who were detained by CCSD police on February 9, 2023,
8 outside of Durango High School.

9 18. On February 21, 2023, ACLU of Nevada sent a public records request to CCSD via
10 CCSD's public records email at publicrecordrequest@nv.ccsd.net.

11 19. Pursuant to that communication, ACLU of Nevada requested the following records:

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

14 B. Any video footage—including but not limited to footage from cameras worn
15 by CCSDPD officers or CCSD surveillance cameras—related to and
16 depicting the incident;

17 C. Any photographs from the incident;

18 D. Any BlueTeam data related to the incident including but not limited to data
19 related to uses of force, pursuits, and complaints;

20 E. Any witness statements related to the incident;

21 F. Any reports, notes, or other written material generated by CCSD employees
22 describing the incident;

23 ⁶ *Id.*

24 ⁷ *Id.*

1 G. Any communications by CCSD employees discussing the incident, including
2 but not limited to CCSD administration and police personnel;

3 H. Any materials describing the disciplining, sanctioning, or reprimanding of
4 CCSD employees and students related to the incident.

5 20. On February 21, 2023, ACLU of Nevada received from the CCSD Document
6 Control Specialist an email stating, “your request has been received and will be processed.”

7 21. CCSD was required to respond to ACLU of Nevada’s request within five (5)
8 business days after CCSD received ACLU of Nevada’s request. NRS 239.0107.

9 22. On March 1, 2023, ACLU of Nevada sent an email to the CCSD Document Control
10 Specialist informing them that the five-day response time for public records requests lapsed.

11 23. On March 1, 2023, after receiving notice of the lapsed time limit, CCSD sent a
12 response to ACLU of Nevada stating that more time would be needed to respond.

13 24. On March 6, NAN interviewed Chief Henry Blackeye, the head of CCSD police,
14 in front of a live audience.⁸

15 25. The event was publicized as an opportunity to seek answers related to the February
16 9, 2023, incident at Durango High School.⁹

17 26. During that event, Chief Henry Blackeye claimed that he could not comment about
18 the February 9, 2023, incident.¹⁰

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20
21 ⁸ Joe Vigil, CCSD police chief answers questions about racism, bias within department, Fox 5
22 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/).

23 ⁹ *Id.*

24 ¹⁰ *Id.*

1 27. During that same event, Chief Henry Blackeye commented about the February 9,
2 2023, incident, saying that “the day before [the incident] at the same time and same location
3 [CCSD officers] received a report that a student had pulled out a firearm.”¹¹

4 28. This comment wrongly insinuated that M.W. and J.T. had been detained during the
5 February 9, 2023, to investigate the possession of a firearm.

6 29. During the event, Chief Henry Blackeye again commented about the February 9,
7 2023, incident, stating the officers did not detain students during the February 9th incident because
8 the students were filming the officers.¹²

9 30. On March 22, 2023, the Nevada State Senate held a joint conference with its
10 Education and Judiciary Committees where Chief Henry Blackeye testified.¹³

11 31. At the joint conference Chief Henry Blackeye again claimed he could not comment
12 about the February 9th incident.¹⁴

13 32. Chief Henry Blackeye again commented on the February 9th incident, claiming that
14 CCSD police were investigating a firearm when the young men depicted in the video posted on
15 the internet were detained.¹⁵

16 33. On March 14, 2023, CCSD responded ACLU of Nevada’s request for records
17 related to the February 9th incident with a flat denial to provide any of the requested records

18 ¹¹ *Id.*

19 ¹² *Id.*

20 ¹³ News 3 Staff, *Superintendent, police chief address CCSD officer issues in Nevada senate*
21 *meeting*, News 3 Las Vegas (March 22, 2023, 6:45 AM),
22 [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)

23 ¹⁴ *Id.*

24 ¹⁵ *Id.*

1 followed by a list of statutory provisions that CCSD claimed applied to the records requested by
2 ACLU of Nevada.

3 34. CCSD's response on March 14, 2023 did not indicate what, if any, records CCSD
4 possessed that were responsive to ACLU of Nevada's initial request.

5 35. CCSD's response on March 14, 2023 also failed to explain which, if any, of ACLU
6 of Nevada's requests its list of confidentiality provisions applied to.

7 36. On the same day, March 14, 2023, ACLU of Nevada responded to the CCSD's
8 denial by asking for clarification regarding CCSD's initial response.

9 37. In that same communication, ACLU of Nevada reminded CCSD that ACLU of
10 Nevada represents the juveniles, M.W. and J.T., who were detained by CCSD police during the
11 February 9th incident.

12 38. On March 21, 2023, CCSD provided a second response to ACLU of Nevada now
13 stating that the incident report and body-worn camera footage from the February 9th incident were
14 part of a pending juvenile justice information and therefore could not be released.

15 39. In that same email, CCSD asked for ACLU of Nevada to provide ACLU of
16 Nevada's client's consent to release the incident report and body-worn camera footage to the
17 general public.

18 40. CCSD had not claimed that the records sought were confidential as juvenile justice
19 material in their initial response on March 14, 2023.

20 41. On March 21, 2023, CCSD sent a second response to ACLU of Nevada stating that
21 all responsive documents requested were confidential as related to an ongoing, pending, and active
22 employment investigation and therefore these documents would not be released.

23 42. On the same day, March 21, 2023, ACLU of Nevada responded to CCSD's claim
24 that the records sought were confidential as juvenile justice material by once again informing

1 CCSD that ACLU of Nevada represented the juveniles and therefore the confidentiality provisions
2 regarding juvenile justice information did not apply as explicitly stated under Nevada statute.

3 43. In that same email, ACLU of Nevada reminded CCSD that ACLU of Nevada's
4 client's consent is not relevant to CCSD obligations under Nevada law to disclose public records
5 to the general public.

6 44. On March 27, 2023, CCSD responded with an email functionally identical to its
7 response on March 14, 2023, but including the citation to the statutory provisions governing
8 juvenile justice materials that explicitly do not apply to the juvenile's attorney under Nevada
9 statute.

10 11 **LEGAL STANDARD AND AUTHORITY**

12 45. The Nevada Public Records Act's "purpose . . . is to foster democratic principles
13 by providing members of the public with access to inspect and copy public books and records to
14 the extent permitted by law." NRS 239.001.

15 46. The provisions mandating access to public records "must be construed liberally to
16 carry out this important purpose[.]" NRS 239.001(1) and (2).

17 47. Any exemptions to the Nevada Public Records Act should be construed narrowly.
18 NRS 239.001(3).

19 48. The burden of proving that a record is confidential is on the government agency.
20 NRS 239.0113.

21 49. A government agency must prove the confidentiality of records by a preponderance
22 of the evidence. NRS 239.0113(2).

1 50. When a government agency claims confidentiality of a record or a portion of a
2 record, they must provide a general factual description of the record to the requester. *Reno*
3 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 885, 266 P.3d 623, 631 (2011).

4 51. When a government agency claims confidentiality of a record or portion of a record,
5 they must provide a provide a specific explanation of what record or portion of a record is
6 confidential to the requester. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 885, 266 P.3d 623,
7 631 (2011).

8 52. When a government agency claims confidentiality of a record or portion of a record,
9 they must state the specific laws or regulations make the record confidential to the requester. *Reno*
10 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 885, 266 P.3d 623, 631 (2011).

11 53. Only if the entirety of the record contains confidential information can a record be
12 withheld entirely rather than redacted. *See Republican Att'ys Gen. Ass'n v. Las Vegas Metro. Police*
13 *Dep't*, 136 Nev. 28, 36, 458 P.3d 328, 335 (2020) (stating that redaction of records should be
14 favored over withholding records unless all portions of the record is confidential).

15 54. A government agencies failure to comply with the Nevada Public Records Act
16 allows the requesting party to recover attorney's fees and costs from the government agency. NRS
17 239.011.

18 55. A government agency's willful failure to adhere to the Nevada Public Records Act
19 imposes penalties upon that agency. NRS 239.340.

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FIRST CLAIM FOR RELIEF
Violation of the Nevada Public Records Act
(failure to identify records and list confidentiality provisions)

56. ACLU of Nevada re-alleges and incorporates by reference each and every allegation contained in the paragraphs above as if fully set forth herein.

57. After receiving the public record request from ACLU of Nevada, CCSD was required to describe which of the requested records were within its control.

58. CCSD refused to describe which of the requested records were within its control.

59. After receiving the public record request from ACLU of Nevada, CCSD was required to describe any records which did not exist or were not within CCSD's control.

60. CCSD refused to describe any records that may now exist or were not within CCSD's control.

61. After receiving the public record request from ACLU of Nevada, CCSD was required to assist ACLU of Nevada in narrowing or rewording the request in a way that would allow disclosure, but failed to do so.

62. In response to ACLU of Nevada's public record request, CCSD responded with a boilerplate declaration of confidentiality and a pinned string of citations.

63. CCSD's response was inadequate pursuant to NRS 239.0107(d)(2) and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 876, 266 P.3d 623, 631 (2011).

64. Even after ACLU of Nevada reminded CCSD of its obligations under the Nevada Public Records Act, CCSD still provided no list of records nor the confidentiality provisions that CCSD believed warranted withholding said records.

65. CCSD, through its non-disclosure, has left ACLU of Nevada to blindly argue for disclosure.

///

SECOND CLAIM FOR RELIEF

Violation of the Nevada Public Records Act

(assertion of inapplicable confidentiality provisions and failure to show that its privacy interests outweighed the public's interest in the records)

66. ACLU of Nevada re-alleges and incorporates by reference each and every allegation contained in the paragraphs above as if fully set forth herein.

67. CCSD, in its responses to ACLU of Nevada, cites confidentiality provisions which are inapplicable to ACLU of Nevada.

68. CCSD, in its responses to ACLU of Nevada, cites confidentiality provisions which are inapplicable to the requested records.

69. CCSD, in its responses to ACLU of Nevada, cites confidentiality provisions which are inapplicable to CCSD.

70. CCSD, in its responses to ACLU of Nevada, cites confidentiality provisions which are inapplicable to the Nevada Public Records Act.

71. CCSD is and was fully aware that ACLU of Nevada is representing the two ninth graders involved in the February 9th incident, M.W. and J.T.

72. CCSD cited the following slew of provisions as a justification for withholding the requested records: NRS 62H.020; NRS 62H.025; 5 U.S.C. § 552(b)(6); NRS 239.010(1); NRS 388G.525; NRS 239B.030(2); NRS 239B.040(1); NRS 603.070; NRS 603A.040; NRS 603A.210; the Family Education and Privacy Rights Act; the Individual with Disabilities Education Act; NRS 289.025; NRS 289.080(6); NRS 289.080(7); NRS 49.095; NRS 49.055; NRS 233.190; NRS 179A.070(2); the Nevada Administrative Code; CCSD Regulations; and CCSD policies.

73. Each of the provisions listed in the previous paragraph either do not apply to ACLU of Nevada, do not apply to CCSD, do not apply to the requested records, or at most warrant production of a redacted copy of the records.

1 74. CCSD has the burden of showing that its interest in non-disclosure outweighs the
2 public interest in disclosure in order to withhold public records.

3 75. CCSD has asserted no viable interests to ACLU of Nevada that would justify non-
4 disclosure of the requested records.

5 76. Any interests CCSD may have in non-disclosure of the records are severely
6 undercut by the fact that the officer and juveniles have already been named by the media.

7 77. Any interests CCSD may have in non-disclosure of the records are severely
8 undercut by the fact that a viral video circulated the internet depicting the juveniles and officers
9 involved in the February 9th incident.

10 78. Any interests CCSD may have in non-disclosure of the records are severely
11 undercut by the fact that CCSD Chief of Police Henry Blackeye has spoken on multiple occasions
12 about the February 9th incident – insinuating that the incident was related to a firearm
13 investigation.

14 79. CCSD has not provided any reasonable basis that the February 9th incident
15 involved a firearm.

16 80. ACLU of Nevada have several compelling interests in the records such as: the
17 oversight of law enforcement, the safety of the community, and the accountability of a law
18 enforcement officer.

19 81. ACLU of Nevada has an even greater interest in the records as ACLU of Nevada
20 seeks to inform its clients on their rights related to the February 9th incident.

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1 **THIRD CLAIM FOR RELIEF**

2 **Nevada Public Records Act**

3 **(requirement that government agency must pay attorney's fees and costs)**

4 82. ACLU of Nevada re-alleges and incorporates by reference each and every
5 allegation contained in the paragraphs above as if fully set forth herein.

6 83. The records sought by ACLU of Nevada were and still are subject to disclosure.

7 84. CCSD's failure to release the requested records to ACLU of Nevada was a violation
8 of the Nevada Public Records Act.

9 85. CCSD is required to pay ACLU of Nevada's attorney's fees and costs if ACLU of
10 Nevada succeeds on any of these claims.

11 **FOURTH CLAIM FOR RELIEF**

12 **Nevada Public Records Act**

13 **(penalties pursuant to NRS 239.340)**

14 86. ACLU of Nevada re-alleges and incorporates by reference each and every
15 allegation contained in the paragraphs above as if fully set forth herein.

16 87. "If a court determines that a governmental entity willfully failed to comply with the
17 provisions of this chapter concerning a request to inspect, copy or receive a copy of a public book
18 or record, the court must impose on the governmental entity a civil penalty" for each violation.
19 Nev. Rev. Stat. § 239.340.

20 88. A \$1,000 penalty is imposed for the first willful violation of the Nevada Public
21 Records Act within a 10-year period; a \$5,000 penalty is imposed for the second willful violation
22 of the Nevada Public Records Act within a 10-year period; and a \$10,000 penalty is imposed for
23 each subsequent willful violation after the second of the Nevada Public Records Act within a 10-
24 year period.

1 89. CCSD has committed multiple willful violations of the Nevada Public Records Act,
2 and each violation warrants a civil penalty be levied against CCSD.

3
4 **PRAYER FOR RELIEF**

5 Petitioner requests relief in the following forms:

6 90. Injunctive relief ordering CCSD to fulfil ACLU of Nevada's public record request
7 sent on February 21, 2023;

8 91. Declaratory relief;

9 92. An order finding that CCSD has willfully violated the Nevada Public Records Act
10 and therefore must pay the applicable civil penalties;

11 93. Reasonable costs and attorney's fees;

12 94. All relief necessary to secure ACLU of Nevada's access to records and CCSD's
13 current and future compliance with the Nevada Public Records Act; and

14 95. Any further relief the Court deems appropriate.

15
16 Dated this 18th day of April, 2023.

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

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20 _____
JACOB SMITH (16324)
CHRISTOPHER M. PETERSON (13932)
4362 W. Cheyenne Ave.
North Las Vegas, NV 89032
Telephone: (702) 366-1226
Facsimile: (702) 366-1331
Email: jsmith@aclunv.org
Attorneys for Petitioner