


CLERK OF THE COURT

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6 DISTRICT COURT
7
8 CLARK COUNTY, NEVADA

9	NEVADA POLICY RESEARCH INSTITUTE, INC.,)	Case No. A-13-679114-C
)	
10	Plaintiff,)	Dept. No. VIII
	vs.)	
11	CLARK COUNTY SCHOOL DISTRICT, a political)	
	subdivision of the State of Nevada; THE)	
12	NEVADA PUBLIC EDUCATION FOUNDATION; and)	
	THE PUBLIC EDUCATION FOUNDATION,)	
13)	
	Defendants.)	
14)	

15
16 **DEFENDANT CLARK COUNTY SCHOOL DISTRICT’S MOTION TO DISMISS**

17 Defendant, Clark County School District (“CCSD”), moves the Court to dismiss the
18 claims against it. In this Nevada Public Records Act lawsuit, the Nevada Policy Research
19 Institute, Inc. seeks to obtain a database of all CCSD teachers’ email addresses. Yet Nevada
20 statutes and policy unequivocally prohibit CCSD from disclosing the requested database.
21 Accordingly, the Nevada Policy Research Institute, Inc.’s complaint must be dismissed for

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1 failure to state a claim upon which relief can be granted. NRC 12(b)(5).

2 DATED this 24th day of May 2013.

3 LEWIS AND ROCA LLP

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5 By: /s/ Joel D. Henriod
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14 *Clark County School District*

15 **NOTICE OF MOTION**

16 TO ALL PARTIES AND THEIR COUNSEL:

17 PLEASE TAKE NOTICE that the CLARK COUNTY SCHOOL DISTRICT's foregoing
18 MOTION TO DISMISS is scheduled to be heard in the above-entitled Court located at the
19 Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 2 day of
20 July, 2013, at 8:00 a.m./~~p.m.~~ in Department 8.

21 **POINTS AND AUTHORITIES**

22 Plaintiff, the Nevada Policy Research Institute, Inc., seeks "an email directory of all
23 Clark Country School District teachers" from the Clark Country School District ("CCSD").
24 It consequently issued a public records request to CCSD, among other governmental entities,
25 for this information. Yet Nevada law explicitly provides that a database of email addresses
26 is confidential. Moreover, the public's interest in obtaining the requested email directory of
27 an entire category of public employees pales in comparison to the concerns of CCSD and the
28 over 17,000 public teachers (as well as all other state employees), who would be inundated
by unsolicited emails if entire email directories are freely available to any person or entity

1 that requests them. Such a policy will also overburden CCSD's servers and electronic
2 systems—impeding the government's ability to function and increasing costs to taxpayers in
3 the process. Consistent with explicit Nevada law and policy, CCSD properly refused
4 plaintiff's request.

5 Plaintiff has now filed suit against CCSD and other governmental entities for
6 declaratory relief and attorneys' fees. The allegations of the complaint fail to state an
7 actionable claim, as CCSD cannot, under Nevada law, disclose the confidential email
8 directory of its state employees. Under Nevada Rule of Civil Procedure 12(b)(5), plaintiff's
9 complaint must be dismissed.

10 I.

11 PLAINTIFF'S FACTUAL ALLEGATIONS REGARDING CCSD

12 Accepting plaintiff's factual allegations against CCSD as true,¹ plaintiff, the Nevada
13 Policy Research Institute, Inc., is a "free-market think tank" focused on education and fiscal
14 policy. Compl. ¶ 3. Its purported mission is to make information regarding governmental
15 activity available to the public and "to freely communicate with government employees in so
16 doing." *Id.* at ¶ 26.

17 On June 11, 2012, plaintiff's communications director Victor Joecks requested from
18 CCSD "an email directory of all Clark County School District teachers." *Id.* at ¶ 11. CCSD
19 responded by letter, claiming that the Nevada Public Records Act did not require it to
20 disclose an email directory of teachers. *Id.* at ¶ 12. It provided several, non-exclusive
21 reasons for its refusal to release the directory, including, among other things, CCSD's need
22 to safeguard employee information and the proprietary nature of InterAct™, the software
23 used to administer the teachers' emails. *Id.* & Ex. 1 to Compl; *see also id.* at ¶ 14 & Ex. 6 to
24 Compl. (webpage regarding InterAct™).

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26 ¹ CCSD does not actually concede any fact, but accepts the plaintiff's allegations as true for
27 purposes of this motion only. *See Stockmeier v. Nev. Dep't of Corrections*, 124 Nev. Adv.
28 Op. No. 30, 183 P.3d 133, 135 (2008) (accepting allegations of complaint as true to
determine a motion to dismiss).

1 Over seven months later, plaintiff again requested CCSD provide an email directory
2 of all CCSD teachers and threatened court action if the directory was withheld. *Id.* at ¶ 17 &
3 Ex. 6 to Compl. In response, CCSD sent plaintiff a letter that reiterated its position and
4 again provided various reasons that the Nevada Public Records Act did not require it to
5 disclose an email directory of teachers. *Id.* at ¶ 18. CCSD further reserved its right to raise
6 additional arguments in the event plaintiff brought suit. *Id.* at ¶ 19 & Ex. 7 to Compl.

7 Based on these allegations, plaintiff claims “CCSD failed to comply with NRS
8 § 239.0107 by refusing to make available records that must be disclosed under the [Nevada
9 Public Records Act].” *Id.* at ¶ 23.

10 II.

11 **NRCP 12(b)(5) DISMISSAL IS WARRANTED BECAUSE PLAINTIFF** 12 **FAILS TO STATE A COGNIZABLE CLAIM FOR RELIEF AGAINST CCSD**

13 Nevada Rule of Civil Procedure 12(b)(5) governs motions to dismiss for failure to
14 state a claim upon which relief can be granted. Under Rule 12(b)(5), when all factual
15 allegations are accepted as true and all reasonable inferences are drawn in plaintiff’s favor,
16 “the allegations must be legally sufficient to constitute the elements of the claim asserted.”
17 *Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009). “Dismissal is
18 proper where the allegations are insufficient to establish the elements of a claim for relief.”
19 *Stockmeier v. Nevada Dept. of Corrections*, 124 Nev. 313, 183 P.3d 133, 135 (2008)
20 (internal quotations omitted). Here, plaintiff’s allegations cannot, under any circumstances,
21 satisfy the requirements of the Nevada Public Records Act, NRS §§ 239.001 *et seq.*
22 (hereinafter “NPRA”).²

24 ² Whether information constitutes a public record required to be disclosed under the Nevada
25 Public Records Act is a legal question for the Court to determine. *E.g.*, *Reno Newspapers,*
26 *Inc. v. Gibbons*, 127 Nev. Adv. Op. No. 79, 266 P.3d 623, 631 (2011) (district court must
27 determine whether requested information is subject to disclosure); *Reno Newspapers, Inc. v.*
28 *Sheriff*, 126 Nev. Adv. Op. No. 23, 234 P.3d 922, 928 (2010) (same); *see also Richardson*
Const., Inc. v. Clark Cnty. Sch. Dist., 123 Nev. 61, 64, 156 P.3d 21, 23 (2007) (“Statutory
construction is a question of law that this court reviews de novo.”).

1 The NPRA provides that public records of a governmental entity must be open to the
2 public unless “otherwise declared by law to be confidential.” NRS 239.010(1). If there is
3 no law that explicitly declares a record to be confidential, only then must the Court conduct
4 a “broad balancing of the interests involved,” weighing the interest in nondisclosure against
5 the public’s interest in access to the records, to determine whether nondisclosure is proper.
6 *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Op. No. 79, 266 P.3d 623, 628 (2011).

7 Nevada’s express statutes and CCSD’s significant interest in nondisclosure both
8 preclude CCSD from disclosing a database of the email addresses for all public school
9 teachers in Clark County, as requested by plaintiff.

10 **A. Nevada Statutes Explicitly Declare the Requested**
11 **Email Addresses to Be Confidential.**

12 NRS 239B.040(1)(a) permits a governmental entity to maintain a database of
13 electronic mail addresses that are provided “for the purpose of or in the course of
14 communicating with that governmental entity.” The statute *explicitly forbids* the
15 governmental entity from disclosing email databases, however:

16 A database describe in this subsection [NRS 239B.040(1)]:

17 (1) Is *confidential*;

18 (2) Is *not* a public book or record within the meaning of NRS 239.010;

19 and

20 (3) *Must not be disclosed in its entirety as a single unit.*

21 NRS 239B.040(1)(b) (emphasis added).

22 NRS 239B.040(1) plainly precludes plaintiff’s request for a database of email
23 addresses for CCSD teachers. *See Richardson Const., Inc. v. Clark Cnty. Sch. Dist.*, 123
24 Nev. 61, 64, 156 P.3d 21, 23 (2007) (when construing a statute, the court “may look no
25 further than any unambiguous, plain statutory language”); *Towbin Dodge, LLC v. Eighth*
26 *Judicial Dist. Court of State ex rel. Cnty. of Clark*, 121 Nev. 251, 253, 112 P.3d 1063, 1065
27 (2005) (holding statute “must be enforced as written”); *Erwin v. State*, 111 Nev. 1535, 1538-
28 39, 908 P.2d 1367, 1369 (1995) (“Where the language of a statute is plain and unambiguous,
and its meaning clear and unmistakable, there is no room for construction, and the courts are

1 not permitted to search for its meaning beyond the statute itself.” (internal quotations
2 omitted)). There is no question that the teachers’ email addresses are maintained and used
3 to communicate with CCSD, a governmental entity and their employer. Any database
4 containing such addresses is therefore (1) *confidential*, (2) *not a public record*, and (3) *must*
5 *not be disclosed in its entirety as a single unit*. NRS 239B.040(1)(b). Accordingly, CCSD
6 properly refused plaintiff’s NPRA request for an entire email database, and plaintiff fails, as
7 a matter of explicit Nevada law, to state a claim.³

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9 **B. CCSD’s Interest in Nondisclosure Clearly Outweighs**
10 **Plaintiff’s Interest in Access to the Requested Email Database.**

11 The Nevada Legislature plainly prohibited the disclosure of a database of CCSD
12 teachers’ email addresses when it passed NRS 239B.040(1) and NRS 603.070. These
13 statutory prohibitions are bolstered further by CCSD’s significant interest in ensuring
14 efficient government administration. Thus, even if the Court could, somehow, disregard the

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17 ³ Nevada law further prohibits CCSD from disclosing data stored electronically in
18 connection with the proprietary InterAct™ program, which includes the teachers’ email
addresses. NRS 603.070 states:

19 Except as otherwise provided in NRS 239.0115, a governmental agency which
20 obtains a proprietary program or the data stored in a computer must keep the
21 program or data confidential. The governmental agency may only use the program
or data for the purpose for which it was obtained, and may not release the program or
data without the prior written consent of the owner.

22 (Emphasis added).

23 As acknowledged throughout plaintiff’s complaint, CCSD uses InterAct™, a licensed
24 proprietary software program, to facilitate online communication within the school district.
25 The requested email addresses are electronically-stored data for this proprietary program,
26 which CCSD “*must*” keep confidential pursuant to NRS 603.070’s unambiguous, plain
27 statutory language. *See Richardson Const., Inc.*, 123 Nev. at 64, 156 P.3d at 23; *Towbin*
Dodge, LLC, 121 Nev. at 253, 112 P.3d at 1065; *Erwin*, 111 Nev. at 1538-39, 908 P.2d at
28 1369. This is another, independent reason why plaintiff’s complaint fails to state a claim
under NRCP 12(b)(5).

1 Legislature’s mandate against disclosure (it cannot⁴), plaintiff still is not entitled to the
2 requested email database because the government’s interest in nondisclosure clearly
3 outweighs any competing interest in access. *See Gibbons*, 266 P.3d at 628.

4 CCSD has a critical interest in ensuring the efficient use of its taxpayer-funded
5 resources. The email addresses provided through InterAct™ enable teachers to efficiently
6 communicate with CCSD, school administration, parents, and students. If CCSD must
7 disclose its entire database of teachers’ email addresses to the public—which includes
8 organizations like plaintiff, as well as Internet marketing companies, hackers, and anyone
9 else who may benefit from thousands of active email accounts—InterAct™’s purpose will be
10 frustrated. Teachers will be forced to spend time sifting through phishing scams, computer
11 viruses, and other unsolicited spam email, rather than furthering educational interests. In
12 addition, such excessive emails will clog CCSD’s current servers and computer systems,
13 harming the public in the process: Taxpayers will be forced to foot the bill for increased
14 costs for CCSD’s system maintenance, and Clark County’s students, parents, and employees
15 will lose the considerable benefits of the InterAct™ system. And these dire consequences
16 will extend to all other overburdened and underfunded governmental entities if they, too, can
17 be forced to provide employee email addresses *en masse* upon request.

18 In contrast to these compelling interests in nondisclosure, the public’s interest in
19 access to CCSD’s database of over 17,000 teacher email addresses is negligible.
20 Significantly, the refusal to provide an entire email address *database* does not limit a
21 student’s, parent’s, or other individual’s ability to communicate with *individual* teachers
22 through InterAct.™ Nor does it prevent plaintiff, internet spammers, or anyone else from

23 ⁴ *See, e.g., In re Estate of Melton*, 128 Nev. Adv. Op. No. 4, 272 P.3d 668, 671 (2012) (trial
24 court erred when it failed to apply statutory provision abolishing common law rules);
25 *Cramer v. State, DMV*, 126 Nev. Adv. Op. No. 38, 240 P.3d 8, 13 (2010) (administrative law
26 judge abused its discretion by admitting an expert’s affidavit that disregarded plain statutory
27 requirements); *Erwin v. State*, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995) (“Where
the language of a statute is plain and unambiguous, and its meaning clear and unmistakable,

(continued)

1 disseminating their rhetoric and advertisements. The refusal to provide email address
2 databases merely hinders plaintiff from obtaining a windfall in the form of a customized
3 email marketing list, provided at the taxpayers' expense. This purported "interest" in access
4 is undeniably outweighed by CCSD's (and all governmental entities') interest in the efficient
5 use of its limited public resources.

6 CONCLUSION

7 Plaintiff erroneously claims that CCSD must disclose a database of over 17,000
8 teachers' email addresses. Nevada law explicitly provides that this information is
9 confidential and precluded from disclosure under NPRA, however. *See* NRS 639B.040(1);
10 NRS 603.070. Moreover, even if the Court could disregard the Legislature's explicit
11 statutory prohibitions (which it cannot), disclosure still would be improper because CCSD's
12 interest in nondisclosure clearly outweigh any negligible competing interests. Accordingly,
13 CCSD properly refused to provide plaintiff with the requested database, rendering plaintiff's
14 allegations insufficient to state a claim. NRCP 12(b)(5). Plaintiff's claims against CCSD
15 must therefore be dismissed.

16 DATED this 24th day of May 2013.

17 LEWIS AND ROCA LLP

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27 there is no room for construction, and the courts are not permitted to search for its meaning
28 beyond the statute itself." (internal quotations omitted)).

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on the 24th day of May, 2013, I served the foregoing DEFENDANT CLARK COUNTY SCHOOL DISTRICT'S MOTION TO DISMISS by depositing a copy for mailing, first-class mail, postage prepaid, at Las Vegas, Nevada, to the following:

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