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9 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF DOUGLAS

11 NEVADA POLICY RESEARCH
12 INSTITUTE, INC.,

13 Petitioner,

14 vs.

15 TAHOE DOUGLAS SEWER
16 IMPROVEMENT DISTRICT; JANET
17 MURPHY, in her official capacity as General
18 Manager,

Respondents.

Case No.: 14-CV-0189

Dept. No.: I

20 PETITION FOR WRIT OF MANDAMUS

21 Pursuant to NRS Chapter 239, the Nevada Public Records Act, (hereinafter, "NPRO")
22 Petitioner Nevada Policy Research Institute, Inc., petitions the Court for Issuance of a Writ of
23 Mandamus directing the above-named Respondents to permit Petitioner to inspect and copy the
24 public records described herein.

25
26 Petitioner additionally requests an award of all costs and attorney's fees it incurs in
27 prosecuting this matter, together with such other relief as the Court deems proper.
28

1 This Petition is brought on the following grounds:

2 **Jurisdiction and Venue**

- 3
4 1. This Court has jurisdiction to issue writs of mandamus. Nev. Const., Art. 6, §6; NRS
5 34.160. Venue lies in this Court pursuant to NRS 239.011 because the public records at
6 issue are located in Douglas County, Nevada.

7 **Parties**

- 8
9 2. Petitioner Nevada Policy Research Institute (“NPRI”) is a free-market think tank that
10 seeks private solutions to public challenges facing Nevada, the West, and the nation.
11 With an eye towards full transparency in government, NPRI informs the public and often
12 testifies before legislative committees regarding actions and activities of the State of
13 Nevada and its political subdivisions. The Institute’s primary areas of focus are
14 education and fiscal policy. NPRI is a 501(c)(3) organization as defined by the Internal
15 Revenue Code and is a non-profit corporation incorporated in the State of Nevada.
16
17 3. Among other things, NPRI maintains **TransparentNevada.com**, a website dedicated to
18 serving Nevada’s public by providing transparency on all aspects of state, county, and
19 city governments, including the affairs of the Tahoe Douglas Sewer Improvement District
20 (hereinafter, “TDSID”).
21
22 4. TDSID is a properly constituted political subdivision, and as such is a “governmental
23 entity” and subject to the requirement of the Nevada Public Records Act as set forth in
24 NRS Chapter 239.005(5).
25
26 5. Defendant Janet Murphy is the TDSID manager and is named in her official capacity.

27 ...
28 ...

Background

6. On or about January 27, 2014, NPRI employee Robert Fellner contacted Tahoe Douglas Sewer Improvement District's General Manager, Janet Murphy, by telephone, to request an appropriate email address to which to submit a public records request for payroll records. Ms. Murphy refused to provide an email address, insisting that any public records request be made via U.S. Postal service and on official letterhead. Upon advising Ms. Murphy that Nevada State Law allows for any member of the public to make a public records request in either written or oral form, without providing identifying information (or on official letterhead), Ms. Murphy acknowledged she was aware of this, but still preferred and requested that the request be made on official letterhead and sent via U.S. Postal Service and refused to provide an email address. See Exh. 1.
7. On or about April 2, 2014, NPRI Chief Legal Counsel, Joseph Becker, sent a certified letter to Ms. Murphy, providing her *de facto* with both a written request and such a request on official letterhead and reiterating NPRI's request for 2013 payroll records of the Tahoe Douglas Sewer Improvement District. See Exh. 2.
8. United States Postal Service Return receipt indicates Ms. Murphy received the letter on April 4, 2014, at 2:09 p.m. See Exh. 3. On or about April 7, 2014, Ms. Murphy called NPRI's Las Vegas office seeking clarification as to the nature of the request. Employee, Robert Fellner, was unavailable and employee, Patricia Andrews, asked Ms. Murphy for contact information so Robert Fellner could return Ms. Murphy's call. Ms. Murphy refused to provide contact information and expressed that she did not wish to be contacted further. See Exh. 4.

1 9. The NPRA mandates that a response to a request be provided within five (5) business
2 days of its receipt. In the letter sent to TDSID, Chief Legal Counsel, Joseph Becker,
3 informed Respondents of this timing requirement. See Exh. 2. However, as of the date
4 of this Petition, TDSID has not complied with the request. Thus, TDSID is in clear
5 violation of the NPRA.
6

7 10. Based upon the foregoing, the issuance of a writ of mandamus is necessary to compel
8 TDSID to provide NPRI full access to the requested records.
9

10 Legal Authority

11 11. The Nevada Public Records Act states, in pertinent part, that “[a]ll public books and
12 public records of a government entity, the contents of which are not otherwise declared
13 by law to be confidential, must be open at all times during office hours to inspection by
14 any person . . .” NRS 239.010(1). The request for an appropriate email address to which
15 to submit a public records request for payroll records is itself a public record, and NPRI
16 has properly requested such disclosure.
17

18 12. The purpose of the Nevada Public Records Act is to ensure the accountability of the
19 government to members of the public by facilitating public access to vital information
20 about government activities. *DR Partners v. Board of County Comm’rs*, 116 Nev. 616, 6
21 P.3d 465 (2000). Disclosure of the payroll records would serve to advance this important
22 public purpose of governmental transparency.
23

24 13. In order to enforce the Nevada Public Records Act, NRS 239.011 states that: “If a
25 request for inspection or copying of a public book or record open to inspection and
26
27
28

1 copying is denied, the requester may apply to the district court in the county in which the
2 book or record is located for an order permitting him to inspect or copy it.”

- 3
4 14. The public official or agency bears the burden of establishing that the requested records
5 are “declared by law to be confidential.” *DR Partners v. Board of County Comm’rs*, 116
6 Nev. 616, 6 P.3d 465 (2000); NRS 239.0113. The TDSID has failed to meet this burden.
- 7 15. The Nevada Legislature has mandated that the Nevada Public Records Act “be construed
8 liberally”, and that any limitations on public disclosure be “construed narrowly”. NRS
9 239.001; *DR Partners v. Board Of County Comm’rs*, 116 Nev. 616, 621, 6 P.3d 465, 468
10 (2000).
- 11
12 16. Even if certain portions of a public record may properly be deemed confidential, this does
13 not mean that the entire document may be withheld. A governmental entity has a duty to
14 “redact, delete, conceal or separate the confidential information from the information
15 included in the public book or record that is not otherwise confidential.” NRS
16 239.010(3). The TDSID has failed to do so.
- 17
18 17. The payroll records are not “declared by law to be confidential” and are thus subject to
19 disclosure under NRS 239.010(1).
- 20
21 18. A writ of mandamus is the appropriate procedural remedy to compel the disclosure of
22 public books and records under the Nevada Public Records Act. *DR Partners v. Board of*
23 *County Comm’rs*, 116 Nev. 616, 6 P.3d 465 (2000).

24 **Claim for Relief**

- 25
26 19. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 18 of this
27 Petition.
28

1 20. Respondents have refused to follow the public record mandate of the Nevada Public
2 Records Act. Notwithstanding the clear public interest in the records requested by NPRI,
3 and notwithstanding the absence of any applicable or properly applied law declaring
4 those records confidential and unavailable to the public, Respondents have unlawfully
5 refused to comply with NPRI's records request.
6


7 21. A writ of mandamus as requested by Petitioner is thus necessary in order to compel
8 Respondents to comply with the Nevada Public Records Act.
9

10 **Prayer for Relief**

11 Based upon the foregoing, Petitioner respectfully requests:

- 12 1. Issuance of a writ of mandamus directing Respondents to provide Petitioner the records
13 described herein;
14
15 2. Declaration that a request under the NPRA does not need to be made on official
16 letterhead by U.S. Mail;
17
18 3. An award to Petitioner of its reasonable attorney's fees and costs incurred in this action,
19 as provided by NRS 239.011; and
20
21 4. Such other and further relief as this Court may deem just and proper.

22 Dated this 20th of August, 2014.

23 
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