

1 CODE: \$1425
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8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 MARK E. SMITH, an Individual,
11 Plaintiff,

Case No.

12 vs.

Dept. No.

13 INCLINE VILLAGE GENERAL IMPROVEMENT
14 DISTRICT, aka IVGID, a governmental subdivision
15 of the State of Nevada; JASON GUINASSO,
16 individually and as counsel and de facto records
17 officer for IVGID; KENDRA WONG, Chairwoman of
18 IVGID's Board of Trustees, ABC CORPORATIONS, I
19 through X; BLACK AND WHITE COMPANIES, I
20 through X, and JOHN DOES I through X, inclusive,

21 Defendants.

22 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND TO COMPEL DISCLOSURE**

23 **OF PUBLIC RECORDS**

24 (ENTITLED TO PRIORITY PER NRS §239.011)

25 COMES NOW, Plaintiff, MARK E. SMITH (hereinafter "SMITH"), by and through his
26 undersigned counsel of record, STEPHANIE RICE, ESQ. and WINTER STREET LAW GROUP, filed
27 this complaint for declaratory, injunctive and other relief against Defendants, INCLINE
28 VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID (hereinafter "IVGID"), JASON
GUINASSO (hereinafter "GUINASSO") and KENDRA WONG ("WONG") (collectively
"Defendants"), for violations of Nevada's Public Records Act ("the Act") and Nevada Revised
Statutes ("NRS"), Chapter 239. Plaintiff alleges as follows:

1 INTRODUCTION

2 1. Plaintiff submitted a request to access and inspect electronic public records of
3 Defendant, the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (“IVGID”), a
4 governmental subdivision of the State of Nevada, on October 19, 2017. The requested
5 electronic records included email communications by and between two sets of IVGID
6 individuals over a limited two-year period.

7 2. Thereafter, GUINASSO erroneously requested that Plaintiff pay TWO HUNDRED
8 NINETY NINE DOLLARS (\$299.00) for production of *copies* of the requested electronic public
9 records and left open the possibility of later demanding payment for an additional THIRTEEN
10 THOUSAND (13,000) pages of responsive documents withheld from production, asserting
11 those documents are privileged.

12 3. Section I(E)(4)(b) of Resolution No. 137, Policy for the Provision of Records and
13 Information to the Public of IVGID’s public records policy provides that, “Records which have
14 been specifically identified as being able to be provided by e-mail, i.e. **in digital form, will be**
15 **provided to the Requester at no charge.**” Emphasis Added. See, “**Exhibit 6,**” attached hereto.

16 4. Citing to Resolution No. 137, Plaintiff again reiterated that his public records
17 request was for access and inspection of electronic records, which should have been provided
18 to him at no charge. Plaintiff also reasserted his request that a privilege log be produced.

19 5. Nevertheless, to date and after more than nine (9) months, Defendants have
20 failed to provide access to any of the requested electronic documents for inspection or any
21 privilege log reflecting the documents Plaintiff will not be permitted to inspect and
22 demonstrating the basis thereof.

23 6. Defendant has no basis under the Act to withhold the requested records, and has
24 violated the Act by failing to provide access to those records. Plaintiff therefore brings this
25 action for declaratory and injunctive relief to compel production of the improperly-withheld
26 documents.

27 7. This is just the latest mis-handling of a public records request in a long list of
28 similar non-compliant responses to records requests in which IVGID has failed to comply with

1 Nevada's Public Records Act under the direction of WONG and GUINASSO.

2 **PARTIES**

3 8. Plaintiff, MARK E. SMITH ("SMITH") is a "person" within the meaning of NRS
4 §239.010 and §239.0107, and a "requester" within the meaning of NRS §239.011.

5 9. Defendant INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT ("IVGID") is a
6 general improvement district created by Washoe County pursuant to NRS 318.050. Defendant
7 has legal custody or control of the records at issue in this action. Defendant is a "governmental
8 entity" within the meaning of NRS § 239.010(1) and §239.005.

9 10. Defendant JASON GUINASSO ("GUINASSO") is IVGID's general counsel and de
10 facto records officer for IVGID, who has apparently taken the lead in handling the subject public
11 records request on behalf of IVGID.

12 11. Defendant KENDRA WONG ("WONG") is Chairwoman of IVGID's Board of
13 Trustees, and who has a history of openly encouraging GUINASSO and to restrict public access
14 to IVGID public records.

15 **JURISDICTION AND VENUE**

16 12. This action is brought pursuant to NRS §239.011.

17 13. This Court has jurisdiction over this action pursuant to NRS §239.011 because it
18 concerns the denial of access to public records, and pursuant to NRS §30.030 because it seeks a
19 declaratory judgment.

20 14. Venue is proper in this Court pursuant to NRS §239.011 because the requested
21 records are located in this County of Washoe, and pursuant to NRS §13.040 and upon
22 information and belief, this is the county where the Defendants both "reside" for venue
23 purposes.

24 15. Pursuant to NRS §239.011, this action is entitled to priority over all other civil
25 actions that are not granted priority by other statutes.

26 **FACTS**

27 16. Plaintiff incorporates by reference herein each and every allegation contained in
28 paragraphs 1 through 58 as if fully set forth herein.

1 17. Defendant IVGID is a unit of government of this State pursuant to NRS
2 §239.005(5)(b) and, as such, is governed by the public disclosure requirements of the Nevada
3 Public Records Act (“Act”), NRS §239.001, et seq.

4 18. The Act was enacted to ensure that government documents are available to the
5 public. The Legislature’s intent was clear. As NRS §239.001 states, the Act’s purpose is “to
6 foster democratic principles by providing members of the public with access to inspect and
7 copy public books and records to the extent permitted by law.” The Act “must be construed
8 liberally to carry out this important purpose,” and “[a]ny exemption, exception or balancing of
9 interests which limits or restricts access . . . must be construed narrowly.” *Id.*

10 19. On October 19, 2017 Plaintiff e-mailed a written request for access to electronic
11 public records (hereinafter, the “Request”) to Susan Herron, Records Officer of Defendant
12 IVGID, pursuant to the Act.

13 20. The Request sought “All communications by any form including email between
14 Jason Guinasso (the District’s attorney) on the one hand, and both [Susan Herron, Records
15 Officer] and Steve Pinkerton on the other, for the period of January 1, 2016 to the date of this
16 request, excluding any privileged communications but including a list of all excluded
17 communications including the nature of each, as required by law. This request is intended to be
18 as broad and inclusive as allowed by State law and as ruled by the Nevada Supreme Court
19 I request to inspect the original, unaltered documents. If the originals are electronic, then I
20 request to inspect the original, unaltered electronic files not altered or compressed files such as
21 PDF which strip important metadata from the public records.” A copy of the Request is attached
22 hereto at “**Exhibit 1.**”

23 21. The records requested in Plaintiff’s Request are “public records” within the
24 meaning of NRS §239.010(1). While some of the requested records may be designated as
25 privileged by law, Plaintiff understands that access will not be granted to any such records
26 designated as privileged, but Plaintiff is instead entitled to a privilege log containing
27 information specific enough to set forth the basis and reasoning of any claimed or asserted
28 privilege.

1 22. On October 19, 2017, Susan Herron, records officer for IVGID, responded to
2 Plaintiff's records request in part stating, "All communications with the District's General
3 Counsel are attorney/client privileged and confidential." See, "**Exhibit 2**," attached hereto.

4 23. Plaintiff then explained to Ms. Herron that as "An example of documents
5 responsive to my request and outside the protection of privilege would be most emails from
6 Jason [GUINASSO] sent to both [Herron] and members of the public." See, "**Exhibit 3**," attached
7 hereto. Thereafter, GUINASSO took over the handling of Plaintiff's records request, thus,
8 becoming the de facto records officer for Plaintiff's request.

9 24. On October 31, 2017, Plaintiff met with GUINASSO to discuss the request and
10 prior improper handling of records requests made to IVGID.

11 25. On November 7, 2017, GUINASSO responded to Plaintiff's request explaining the
12 records requested would take approximately sixty (60) days to produce and that the requested
13 records would be provided on or before January 8, 201[8]. See, "**Exhibit 3**," attached hereto.

14 26. On January 9, 2018, GUINASSO emailed Plaintiff and informed him that an
15 additional two (2) weeks would be needed to fulfill the request. See, "**Exhibit 4**," attached
16 hereto

17 27. On February 2, 2018, GUINASSO sent correspondence to Plaintiff indicating that
18 he would not be able to fulfill Plaintiff's records request, including the concurrent creation of a
19 "privilege log" identifying any non-public or otherwise protected records, until the end of
20 February 2018. See, "**Exhibit 5**," attached hereto.

21 28. On April 27, 2018, GUINASSO sent Plaintiff correspondence essentially scolding
22 Plaintiff for making his request and stating that *13,000 pages were printed* for review, and have
23 been determined to be privileged and will not be disclosed and that Plaintiff should be
24 responsible for the costs incurred printing them, but will not be this time. See, "**Exhibit 6**,"
25 attached hereto.

26 29. In his April 27, 2018 correspondence, GUINASSO further stated that "In order to
27 provide [Plaintiff] with copies of the applicable emails (which are not attorney-client
28 privileged), [Plaintiff's] cost will be \$1.00 per page, after the initial five (5) pages, and **your**

1 document consists of 304 pages. This charge is in accordance with IVGID's Policy and
2 Procedure 137 which is attached to this letter for your reference." See, "**Exhibit 6**," attached
3 hereto.

4 30. GUINASSO's April 27, 2018 correspondence did not include any type of privilege
5 log. See, "**Exhibit 6**," attached hereto.

6 31. Of relevant note, Plaintiff's request expressly sought the following: "I request to
7 inspect the original, unaltered documents. **If the originals are electronic, then I request to**
8 **inspect the original, unaltered electronic files** not altered or compressed files such as PDF
9 which strip important metadata from the public records." [Emphasis Added]. See, "**Exhibit 1**,"
10 attached hereto.

11 32. In addition, and contrary to GUINASSO's April 27, 2018 correspondence, Section
12 I(E)(4)(b) of the Policy Resolution No. 137 Policy for the Provision of Records and Information
13 to the Public of IVGID's public records policy explicitly provides that, "Records which have been
14 specifically identified as being able to be provided by e-mail, i.e. **in digital form, will be**
15 **provided to the Requester at no charge.**" Emphasis Added. See, "**Exhibit 6**," attached hereto.

16 33. Plaintiff requested to inspect the subject records in digital form and the subject
17 records all originated in electronic form; yet, IVGID took the affirmative and unnecessary action
18 of printing them and now demands payment from Plaintiff for the "printed" copies in violation
19 of IVGID's express policy.

20 34. On June 7, 2018, Plaintiff responded to GUINASSO's April 27, 2018 letter
21 explaining that his request was to inspect the electronic records, not for actual printed copies.
22 Plaintiff also again requested that a privilege log be provided for the 13,000 pages of allegedly
23 privileged documents. See, "**Exhibit 7**," attached hereto.

24 35. To date, Plaintiff has not received access to inspect the requested records or the
25 privilege log demonstrating why a privilege applies to the 13,000 pages of documents that are
26 being withheld and the basis therefore.

27 36. Defendants have no basis under the Act to withhold the requested records, and
28 has violated the Act by failing to provide access to those records as well as the privilege log

1 required under law and the long-standing Nevada jurisprudence. Plaintiff therefore brings this
2 action for declaratory and injunctive relief to compel production of the improperly-withheld
3 access to the electronic documents requested and the privilege log.

4
5 **DECLARATORY AND INJUNCTIVE RELIEF**

6 37. Plaintiff incorporates by reference herein each and every allegation contained in
7 paragraphs 1 through 58 as if fully set forth herein.

8 38. An actual and immediate controversy has arisen and now exists between Plaintiff
9 and Defendants, which have genuine and opposing interests and which interests are direct and
10 substantial.

11 39. Defendants have failed and continue to fail to comply with provisions of NRS
12 Chapter 239 for at least the reasons set forth herein. Plaintiff is, thus, entitled to a declaratory
13 judgment as well as such other and further relief as may be ordered and may follow from the
14 entry of such a declaratory judgment.

15 40. Plaintiff has no adequate remedy at law. Unless enjoined by the Court,
16 Defendants will continue to deny Plaintiff access to government records in violation of NRS
17 Chapter 239.

18 41. This threat of injury to Plaintiff from continuing violations requires temporary,
19 preliminary and permanent injunctive relief.

20 42. Pursuant to NRS 239.011(2), this Court shall give this matter priority over other
21 civil matters to which priority is not given by other statutes.

22 43. Plaintiff has been required to retain the services of an attorney to prosecute this
23 matter and as such, is entitled to an award of statutory attorney's fees and costs pursuant to
24 NRS 239.011 incurred herein.

25 **CLAIM FOR RELIEF**
26 **Violation of NRS §239.010**

27 (Failure to disclose government records, actionable pursuant to NRS §239.011)

28 44. Plaintiff incorporates by reference herein each and every allegation contained in
paragraphs 1 through 58 as if fully set forth herein.

1 45. NRS §239.010(1) provides that “unless otherwise declared by law to be
2 confidential, all public books and public records of a governmental entity must be open at all
3 times during office hours to inspection by any person”

4 46. NRS §239.011(1) provides that “[i]f a request for inspection, copying or copies of
5 a public book or record open to inspection and copying is denied, the requester may apply to
6 the District Court in the county in which the book or record is located for an order: (a)
7 Permitting the Requester to inspect or copy the book or record; or (b) Requiring the person
8 who has legal custody or control of the public book or record to provide a copy to the
9 Requester, as applicable.”

10 47. Plaintiff submitted a request to access and inspect electronic public records of
11 Defendant, the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (“IVGID”), a
12 governmental subdivision of the State of Nevada, on October 19, 2017. The requested
13 electronic records included email communications by and between two sets of IVGID
14 individuals over a limited two-year period.

15 48. Thereafter, Defendant erroneously requested that Plaintiff pay TWO HUNDRED
16 NINETY NINE DOLLARS (\$299.00) for production of *copies* of the requested electronic public
17 records.

18 49. Section I(E)(4)(b) of Resolution No. 137, Policy for the Provision of Records and
19 Information to the Public of IVGID’s public records policy provides that, “Records which have
20 been specifically identified as being able to be provided by e-mail, i.e. **in digital form, will be**
21 **provided to the Requester at no charge.**” Emphasis Added. See, “**Exhibit 6,**” attached hereto.

22 50. Citing to Resolution No. 137, Plaintiff again reiterated that his public records
23 request was for access and inspection of electronic records, which should have been provided
24 to him at no charge.

25 51. Nevertheless, to date and after more than nine (9) months, Defendants have
26 failed to provide access to any of the requested electronic documents for inspection or any
27 privilege log reflecting 13,000 pages of purportedly privileged documents Plaintiff will not be
28 permitted to inspect and demonstrating the basis of the privilege asserted.

1 52. Defendants have no basis under the Act to withhold access to the requested
2 electronic records, and have violated the Act by failing to provide access to those electronic
3 records.

4 53. This is just the latest mis-handling of a public records request in a long list of
5 similar non-compliant responses to records requests in which IVGID has failed to comply with
6 Nevada's Public Records Act under the direction of WONG and GUINASSO.

7 54. Defendants have unlawfully denied Plaintiff access to public records, which are
8 required to be open to public inspection and are not declared by law to be confidential.

9 55. Defendants have further unlawfully failed to provide Plaintiff with a privilege log
10 detailing all 13,000 pages of documents Defendants assert are "privileged" including a detailed
11 explanation of the basis for such non-disclosure.

12 56. Because Defendants have admittedly withheld more than 13,000 documents
13 responsive to Plaintiff's request and failed to provide a privilege log detailing the basis
14 therefore, Plaintiff respectfully asks this Court to conduct an in-camera review of all such
15 allegedly "privileged" documents to ensure the privilege is properly being asserted.

16 57. Pursuant to NRS 239.011(2), this Court shall give this matter priority over other
17 civil matters to which priority is not given by other statutes.

18 58. Plaintiff has been required to retain the services of an attorney to prosecute this
19 matter and as such, is entitled to an award of statutory attorney's fees and costs pursuant to
20 NRS 239.011 incurred herein.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays that this Court:

23 A. Assume jurisdiction over this action;

24 B. Issue a declaratory judgment stating that Plaintiff is entitled to inspect the
25 electronic public records described in Plaintiff's Request, and that Defendants have violated
26 NRS Chapter 239 by failing to give Plaintiff the opportunity to inspect such records;

27 C. Issue a preliminary and permanent injunction ordering Defendants to grant
28 Plaintiff access to inspect and/or copy all requested public records;

1 D. Award attorneys' fees, costs, and all other expenses to Plaintiff pursuant to NRS
2 §239.011(2), including but not limited to all reasonable fees and expenses incurred by Plaintiff
3 in attempting to obtain the government records prior to the filing of the instant Complaint;

4 E. Retain jurisdiction over Defendants until such time as the Court is satisfied that
5 Defendants' unlawful customs, policies, practices, rules, regulations, acts and omissions
6 complained of herein no longer exist and will not recur; and,

7 F. Order such other relief as this Court deems just and proper.

8 **AFFIRMATION**

9 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding
10 document and attached exhibits, if any, do not contain the Social Security Number of any
11 person.

12 Respectfully submitted this 30th day of July, 2018,

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15 _____
16 STEPHANIE RICE, ESQ.
17 WINTER STREET LAW GROUP
18 Attorney for Plaintiff
19 MARK E. SMITH
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1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF WASHOE

3 IN THE MATTER OF:
4 MARK E. SMITH v. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, et al
5 CASE NO.
6 DEPT. NO.
7 EXHIBIT INDEX

8 EXHIBIT #	9 DESCRIPTION	10 LENGTH
11 1	12 Letter to Susan Herron from Mark E. Smith dated 13 October 19, 2017	1
14 2	15 Letter from Susan A. Herron to Mark E. Smith dated 16 October 19, 2017	2
17 3	18 Email Correspondence dated November 16, 2017	2
19 4	20 Email Correspondence dated January 9, 2018	1
21 5	22 Letter to Mark Smith from Jason D. Guinasso, Esq. 23 dated February 2, 2018	2
24 6	25 Letter to Mark Smith from Jason D. Guinasso, Esq. 26 dated April 27, 2018	8
27 7	28 Letter to Jason Guinasso, Esq. from Mark E. Smith dated June 7, 2018	2