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17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

19 American Broadcasting Companies, Inc.; The  
20 Associated Press; Cable News Network, Inc.;  
21 Chesapeake Media I, LLC, d/b/a KSNV-TV; Los  
22 Angeles Times Communications, LLC; The New  
23 York Times Company; and WP Company LLC  
24 d/b/a The Washington Post,

Case No.: A-17-764030-W  
A-17-764169-W

Dept. No.: 2

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

25 **ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS**  
26 **PURSUANT TO NEV. REV. STAT. § 239.011/PETITION FOR WRIT OF MANDAMUS**

27 This matter came before the Court on Petitioners American Broadcasting Companies,  
28 Inc. ("ABC"), the Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake  
Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC  
("Los Angeles Times"), The New York Times Company ("*The New York Times*"), Scripps  
Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The  
Washington Post's ("*Washington Post*") (collectively the "Coalition") Amended Public Records  
Act Application Pursuant to Nev. Rev. Stat. § 239.011/ Petition for Writ of Mandamus; and  
Petitioner Las Vegas Review-Journal's ("Review-Journal", and collectively with the Coalition,

1 “Petitioners”) Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.011/  
2 Petition for Writ of Mandamus (collectively, the “Petitions”).

3 The Review-Journal filed its Opening Brief in Support of Amended Public Records Act  
4 Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on December  
5 8, 2017. The Coalition filed its Substantive Joinder thereto on December 15, 2017. Metro filed  
6 its Opposition to Petitioner Las Vegas Review Journal’s Public Records Act Application  
7 Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on January 8, 2018. Metro  
8 filed its Opposition to the Coalition’s Petition on January 16, 2018. The Review-Journal filed its  
9 Reply on January 22, 2018. Finally, the Coalition filed its Reply on January 31, 2018.

10 At the February 7, 2018 hearing on the Petitions, Joel E. Tasca, Esq., of the law firm  
11 Ballard Spahr LLP appeared on behalf of the Coalition; Maggie McLetchie, Esq., of the law firm  
12 McLetchie Shell LLC, appeared on behalf of the Review-Journal; and Nick D. Crosby, Esq. and  
13 Jacqueline Nichols, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of the  
14 Las Vegas Metropolitan Police Department (“Metro”). Based on the Court’s careful review of  
15 the parties’ briefs, oral argument by counsel and the pleadings and papers on file, for the reasons  
16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as  
17 follows:

- 18 1. The Nevada Public Records Act (the “Act”) is codified at Nev. Rev. Stat. § 239.
- 19 2. The Act provides that public records must be made available to the public for  
20 inspection or copying.
- 21 3. The purpose of the Act is to foster democratic principles by providing members of  
22 the public with access to inspect and copy public records to the extent permitted under Nevada  
23 law.
- 24 4. The Act, as well as the First Amendment to the Constitution, provides the press  
25 with the ability to obtain and publish information about issues that affect the public interest and  
26 information about the conduct of government officials. They further provide the press with the  
27 tools to ensure that the government is responsible and efficient.
- 28

1           5.       Furthermore, they provide the press with the tools that assist the public in holding  
2 its government accountable.

3           6.       Government records are presumed to be public records. Any restriction to the  
4 public's right of access to public records must be narrowly applied.

5           7.       Metro bears a heavy burden in preventing disclosure of public records pursuant to  
6 the Act.

7           8.       Metro must satisfy a two-pronged test to justify non-disclosure. Metro must first  
8 establish, by a preponderance of the evidence, that the public records sought are confidential.  
9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure  
10 outweighs the public's interest in access.

11          9.       The Act establishes a presumption in favor of public access.

12          10.      The Court recognizes that governmental entities are generally required to provide  
13 citations to legal authority supporting non-disclosure within five (5) business days pursuant to  
14 Nev. Rev. Stat. § 239.0107(d). However, as to the Petitioners' argument that Metro waived the  
15 right to withhold public records in this case by failing to timely respond, the Court rejects this  
16 argument.

17          11.      The Court finds that there was no implied, express, or statutory waiver due to  
18 Metro's pre-petition conduct, particularly with respect to the extraordinary circumstances  
19 surrounding the October 1 Massacre.

20          12.      The Court finds that Metro had a duty to redact confidential information and  
21 produce the non-confidential portions of the public records, if it contended that the requested  
22 public records were confidential or otherwise protected from disclosure. Wholesale withholding  
23 of public records with the general claim of confidentiality suggests to this Court that the records  
24 have not been sufficiently scrutinized.

25          13.      The Court finds that asserting a blanket protection over all categories of public  
26 records is improper.

27          14.      Metro had a duty to prove, by a preponderance of the evidence, that each public  
28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

1           15.     The Court finds that there exists no rule that records can be withheld merely  
2 because they relate to an ongoing investigation. Metro still has the duty to show that the public  
3 records of the ongoing investigation are confidential.

4           16.     In light of Metro's preliminary report concerning the October 1 Massacre, the  
5 entire universe of investigative records cannot be so sensitive as to warrant wholesale  
6 withholding.

7           17.     Additionally, Sheriff Lombardo publicly stated that it is Metro's responsibility to  
8 ensure timely disclosure of public records in this case.

9           18.     Metro, however, failed to specifically explain how the public record production  
10 would impede the investigation.

11          19.     To the extent that the disclosure might have some detrimental impact on the  
12 investigation, that impact is outweighed by the public interest. The public has the right to know  
13 the manner in which its government officials are carrying out their public safety responsibilities.

14          20.     The Court finds that any personal privacy concerns implicated by the public  
15 records disclosure can be remedied by redactions, including individual names (other than  
16 government officials), addresses, phone numbers, social security numbers, descriptions of  
17 individuals, and social media data for all individuals.

18          21.     The Court also rejects Metro's contention – that the horrifying 911 calls may be  
19 traumatic to close family members who hear the voices of their loved ones – as too speculative to  
20 weigh against disclosure.

21          22.     In the rare and limited circumstances that any such concern may arise, Metro may  
22 prepare a privilege log for future review and consideration by this Court.

23          23.     The Court denies Metro's request for an in camera review. The Court finds that  
24 the time has passed for Metro to assert any valid objection to production.

25          24.     The Court finds that Metro has engaged in wholesale withholding of public  
26 records with insufficiently specific reasons to do so.

27          25.     The Court concludes that Metro failed to prove by a preponderance of the  
28 evidence that any of the requested public records are confidential.

1           26.     The Court further concludes that the strong public interest in favor of disclosure,  
2 together with the strong presumption in favor of production, outweighs any governmental  
3 interest in withholding the public records.

4           27.     The Court finds that the public records sought include: 911 calls, body camera  
5 data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports,  
6 search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and  
7 information on any weapons obtained during the investigation into the October 1 Massacre.

8           Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

9           IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

10          IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing  
11 public records responsive to the public records request at issue in the Petitions;

12          IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a  
13 rolling basis, as public records are appropriately redacted and available for disclosure, without  
14 unnecessary delay;

15          IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith  
16 in producing the public records on a timely basis;

17          IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public  
18 record that may be highly confidential or where redactions may not be practicable, Metro shall  
19 meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this  
20 right to potentially seek a protective order is to be used very sparingly;

21          IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not  
22 to be used to withhold entire groups of public records;

23          IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a  
24 protective order shall not cause any delay in the production of all other requested public records;

25          IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in  
26 30 days to review a report, to be given by the Parties, covering what has and has not been  
27 produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00  
28 a.m.;

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IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall have an opportunity to explain whether there has been good faith communication regarding the production;

IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall hear any objections with respect to the delay in disclosure or the need for more time for Metro to produce;

IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include individual names (other than government officials), addresses, phone numbers, social security numbers, descriptions of individuals, and social media data for all individuals. To the extent that any public record produced might specifically identify the names of the individuals or the description of the individuals (or any other personal information), that information shall be redacted; and

IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records subject to this proceeding available at Metro's office for review by Petitioners, particularly where production of those public records is either too burdensome or impossible otherwise.

IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment obligation and Petitioners shall pay the fees associated with the production of the public records in accordance with NRS Chapter 239.

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1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental  
2 briefing regarding the fee amount to be charged with respect to the production of the public  
3 records.

4 IT IS SO ORDERED.

5 DATED this 27<sup>th</sup> day of February, 2018.

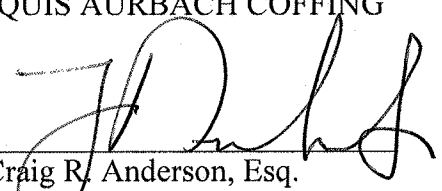
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9 DISTRICT COURT JUDGE

10 Respectfully Submitted By:

11 *Bh*

12 MARQUIS AURBACH COFFING

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