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DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING INC., Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	CASE NO.: A-18-773883-W DEPT. NO.: Department 31

VERIFIED PETITION FOR WRIT OF MANDAMUS AND INCORPORATED APPLICATION FOR ORDER AND EXPEDITED HEARING PURSUANT TO NRS 239.011

Petitioner The Center for Investigative Reporting Inc., a California nonprofit organization, by and through its counsel, hereby moves this Honorable Court for a writ of mandamus compelling Respondent Las Vegas Metropolitan Police Department to produce records and documents as set forth in more detail below related to the September 1996 murder of Tupac Shakur in Las Vegas, Nevada. This petition is brought pursuant NRS 34.160, 239.010, and 239.011, and Petitioner declares that it has no plain, speedy or adequate remedy at law to compel Respondent to produce the records sought.

Case Number: A-18-773883-W

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Petitioner further submits its Application for Order Shortening Time, which is attached as Exhibit "1" and incorporated herein.

PARTIES

1. Petitioner The Center for Investigative Reporting Inc. ("CIR"), a California nonprofit organization, owns and operates *Reveal*, a website, public radio program, and podcast. CIR was founded in 1977 as the nation's first nonprofit investigative journalism organization and its work has been recognized for its excellence with recent awards including two national News & Documentary Emmys, a George Foster Peabody Award, a Webby award, a Military Reporters and Editors Award, a Bartlett & Steele Gold Award for investigative business journalism, Alfred I. DuPont-Columbia University awards, a George Polk award, IRE Awards for multiplatform journalism and an Edward R. Murrow Award for investigative reporting. CIR was also named as a finalist for the Pulitzer Prize in 2012, 2013, and 2018.

2. Respondent Las Vegas Metropolitan Police Department ("LVMPD") is a state agency and the joint city-county police force for the City of Las Vegas and Clark County, Nevada.

FACTS

3. On or about December 11, 2017, Andy Donohue, the Managing Editor of CIR, contacted LVMPD's Office of Public Information to request information under the Nevada Open Records Act (the "Act") concerning the murder of Tupac Shakur in Las Vegas, Nevada in September 1996. Specifically, Mr. Donohue formally requested the opportunity to inspect or obtain copies of "[a]ny and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder." *See* Exhibit "2," E-mail Correspondence between Andy Donohue and LVMPD Office of Public Information.

4. The purpose of Mr. Donohue's request was to gather information for a piece of investigative journalism about the decades-old unsolved murders of Tupac Shakur and Christopher

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Wallace aka Notorious B.I.G. that would be broadcast to a national audience on one of CIR's platforms.

5. If LVMPD refused to comply with CIR's public records request, Mr. Donohue asked that LVMPD cite each specific exemption justifying such refusal under Nevada law. *Id.* To the extent LVMPD determined that some, but not all, of the information in the subject records was exempt from disclosure, Mr. Donohue further requested that LVMPD redact that information and produce the segregable portions of the records. *Id.*

6. Although Nevada law requires that a governmental entity respond to a request for public records under the Act with five (5) business days, LVMPD did not respond to Mr. Donohue's December 11, 2017 e-mail.

7. On January 10, 2018, Mr. Donohue followed up on CIR's public records request and noted that LVMPD had failed to comply with its statutory obligations under the Act. Ex. 2. That same day, LVMPD's Office of Public Information responded to Mr. Donohue by stating that his e-mail had been forwarded to PIO Officer Lawrence Hadfield for "follow-up." *Id.* Nevertheless, neither Officer Hadfield nor any other individual from LVMPD provided a determination to CIR regarding its public records request. *Id.*

8. On January 22, 2018, Mr. Donohue followed up on CIR's public records request for a second time and noted that LVMPD's determination was more than one month overdue. *Id.* Again, LVMPD did not respond to Mr. Donohue's e-mail. *Id.*

9. On March 15, 2018, Mr. Donohue followed up on CIR's public records request for a third time and pointed out that LVMPD's determination was now more than three months overdue. *Id.* Consistent with its prior failures to comply with the requirements of the Act, LVMPD did not respond to Mr. Donohue's e-mail. *Id.*

10. On March 28, 2018, the undersigned counsel sent a letter to LVMPD Director of Public Information, Carla Alston, setting forth LVMPD's failure to comply with its statutory

obligations under the Act and demanding a complete response to CIR's public records request on or before April 4, 2018. *See* Exhibit "3," 3/28/2018 Letter from Philip R. Erwin, Esq.

11. On April 5, 2018, LVMPD produced a two-page police report concerning the murder of Tupac Shakur. *See* Exhibit "4" Police Report. In direct contravention of its obligations under NRS 239.0107(d), LVMPD did not indicate whether additional documents existed or were withheld based on alleged confidentiality grounds.

12. On April 11, 2018, the undersigned counsel e-mailed Officer Hadfield and asked for confirmation that the two-page police report was the only document in LVMPD's possession responsive to CIR's public records request. *See* Exhibit "5," 4/11/2018 E-mail Correspondence from Philip R. Erwin, Esq. The undersigned counsel likewise requested that LVMPD confirm that it did not withhold any responsive documents—*e.g.* investigative files, correspondence, memoranda, et cetera—based on confidentiality grounds. *Id.* If LVMPD did withhold responsive documents on confidentiality grounds, the undersigned counsel demanded that it provide notice of that fact along with a citation to the supporting statute(s) or other legal authorities as required by NRS 239.0107(d). *Id.*

13. On April 12, 2018, Charlotte M. Bible, Assistant General Counsel for LVMPD, sent a letter in response to the undersigned counsel's April 11, 2018 e-mail. *See* Exhibit "6," 4/12/2018 Letter from Charlotte M. Bible, Esq. Ms. Bible first confirmed that LVMPD failed to advise CIR that it would research its public records request and respond within 30 days as required by NRS 239.0107(1)(c). *Id.* Ms. Bible then claimed that the criminal investigation of Tupac Shakur's murder is an "open active investigation" and, as such, the requested records are (i) not public records under NRS 239.010(1), (ii) declared by law to be confidential, (iii) subject to the "law enforcement privilege," and (iv) protected from disclosure because law enforcement policy justifications for nondisclosure outweigh the public's interest in access to the records. *Id.* Notwithstanding LVMPD's continued refusal to comply with CIR's public records request, Ms.

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Bible conceded that LVMPD had failed to notify CIR that responsive documents were withheld and did not provide supporting legal authorities as required by the Act. *Id.* In sum, Ms. Bible declared that "disclosure of the investigative file would jeopardize apprehending a murder suspect" although she did not provide any information or evidence to suggest that LVMPD's purported investigation into Tupac Shakur's murder was, in fact, "open" and "active." *Id.*

14. On April 23, 2018, the undersigned counsel responded to Ms. Bible's letter and disputed LVMPD's legally unsupported position that any and all records related to Tupac Shakur's 22-year-old murder are confidential as a matter of law because LVMPD has labeled its investigation as "open" and "active." *See* Exhibit "7," 4/23/2018 Letter from Philip R. Erwin, Esq. In addition, the undersigned counsel pointed out that LVMPD's stated reason for withholding the requested records—*i.e.* that the mere categorization of a criminal investigation as "open" precluded the public dissemination of records under the Act—was recently rejected in the widely-publicized public records litigation related to the October 1 shooting at Mandalay Bay. *Id.* In short, the undersigned counsel submitted that the production of records related to the murder of Tupac Shakur was required under Nevada law and requested that LVMPD confirm its intention to comply with its statutory obligations by April 27, 2018. *Id.*

15. On April 27, 2018, Ms. Bible responded and maintained LVMPD's position that the requested records are confidential and, therefore, not subject to disclosure under the Act. *See* Exhibit "8," 4/27/2018 Letter from Charlotte M. Bible, Esq. Although Ms. Bible attempted to expand on LVMPD's policy justifications for nondisclosure, she did not provide any additional information or evidence to suggest that the LVMPD's alleged investigation into the decades-old murder of Tupac Shakur was "open" and "active." *Id.* Ms. Bible also did not indicate whether LVMPD had actually reviewed the requested records to determine whether each and every document is confidential. *Id.* Instead, LVMPD maintained its blanket objection to CIR's request

on confidentiality grounds and refused to produce any documents other than the two-page police report.

POINTS AND AUTHORITIES

A. Legal Standard

16. In Nevada, writs of mandamus are governed by NRS 34.150, *et seq.* A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion. *See* NRS 34.170; *DR Partners v. Bd. of County Comm'rs of Clark County*, 116 Nev. 616, 621-22, 6 P.3d 465, 468 (2000). Specifically, NRS 34.160 authorizes the District Court to compel the performance of an act which the law otherwise requires:

> The writ may be issued by the supreme court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

17. Writs of mandamus are appropriate where there is no "plain, speedy and adequate remedy in the ordinary course of law." *See* NRS 34.170.

18. In analyzing NRS 34.160 and its accompanying provisions, the Nevada Supreme Court has consistently ruled that a writ of mandamus is appropriate where a public official has failed to perform an act that is required by law. *See, e.g.*, *Nova Horizon, Inc. v. City Council of the City of Reno*, 105 Nev. 92, 769 P.2d 721 (1989); *State, ex rel Johns v. Gragson*, 89 Nev. 478, 515 P.2d 65 (1973); *Henderson v. Henderson Auto Wrecking*, 77 Nev. 118, 359 P.2d 743 (1961). Mandamus is the appropriate procedural remedy to compel the production of public records under NRS 239.010, *et seq.* *See, e.g.*, *DR Partners*, 116 Nev. at 622, 6 P.3d at 468 (compelling disclosure of billing statements documenting county officials' use of publicly owned cellular telephones); *Donrey of Nev., Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990) (compelling disclosure of a police investigative report concerning the City Attorney's dismissal of charges against a defendant); *Las*

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Vegas Metro. Police Dep't v. Blackjack Bonding, Inc., 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015) (compelling disclosure of records for telephones used by county jail inmates).

19. The Nevada Public Records Act expressly provides that "all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person." NRS 239.010. "The purpose of the [Nevada Public Records Act] is to ensure the accountability of the government to the public by facilitating public access to vital information about governmental activities." *DR Partners*, 116 Nev. at 622, 6 P.3d at 468.

20. In 2007, the Legislature amended the Act to ensure the presumption of openness, and provided that all statutory provisions related to the Act must be construed liberally in favor of the Act's purpose of fostering the principles of democracy by allowing public access to information about government activities. *Reno Newspapers v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010); *Reno Newspapers v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011) ("First, we begin with the presumption that all government-generated records are subject to disclosure."). The Legislature likewise provided that any exemption, exception, or balancing of interests that restricts the public's right to access a governmental entity's records must be construed narrowly. *Id.* As a result, Nevada courts presume that all public records are open to disclosure unless (1) the Legislature has expressly and unequivocally created an exemption or exception by statute, or (2) balancing the private or law enforcement interests for nondisclosure against the general policy in favor of an open and accessible government requires restricting public access to government records. *Id.* at 214-15, 234 P.3d at 924-25. In accordance with the underlying policy of ensuring an open and accountable government, the burden is on LVMPD to prove confidentiality by a preponderance of the evidence. *Id.* at 215, 234 P.3d at 925.

21. If a request for production of public records under the Nevada Public Records Act is denied, then NRS 239.011 provides that relief shall be granted expeditiously as follows:

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> If a request for inspection is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes.

B. Records Related To LVMPD's Investigation Of Tupac Shakur's Murder Are Not Confidential And Disclosure Is Required Pursuant To The Act.

22. LVMPD claims that the criminal investigation into the murder of Tupac Shakur is an "open active investigation." Ex. 6. More specifically, LVMPD asserts that it "obtained evidence, conducted an investigation and continues its investigation concerning the murder of Tupac Shakur because it is the law enforcement agency with jurisdiction to enforce the laws of the State of Nevada to protect the public." Ex. 8. Based on its supposedly open investigation, LVMPD submits that "the requested records are not public records under NRS 239.010(1), as such records are declared by law to be confidential." Ex. 6.

23. In support of its position that records related to an open criminal investigation are confidential as a matter of law, LVMPD cited the Nevada Supreme Court's opinion in *Pub. Emps. Ret. Sys. (PERS) v. Reno Newspapers*, 129 Nev. Adv. Op. 88, 313 P.3d 221 (2013). The Nevada Supreme Court, however, did not address the confidentiality of criminal investigative materials in *PERS*. *Id.* Rather, the Nevada Supreme Court in *PERS* considered whether records related to retired state employees who were collecting pensions were confidential. *Id.* As such, the Nevada Supreme Court's opinion in *PERS* is not controlling in this matter. *See Blackjack Bonding*, 343 P.3d at 613-14 (stating that "the scope of the holding in *PERS* is gleaned from the facts of that case" and rejecting LVMPD's reliance on *PERS* to support withholding of public records).

24. Next, LVMPD relies on the so-called "law enforcement privilege" which appears to be a self-manufactured combination of the Freedom of Information Act ("FOIA") exception for "records and information compiled for law enforcement purposes," *see* 5 U.S.C. § 552(b)(7), and the "federal law enforcement privilege, a qualified privilege designed to prevent the disclosure of information [in a civil suit for damages] that would be contrary to the public interest in the effective

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functioning of law enforcement." *In re Micron Tech., Inc. Sec. Litig.*, 264 F.R.D. 7, 10 (D. D.C. 2010) (citing *Tuite v. Henry*, 181 F.R.D. 175, 176 (D. D.C. 1998)). Here, however, CIR submitted its public records request pursuant to the Act, which renders LVMPD's reliance on FOIA exceptions inapposite. *See City of Garland v. Dallas Morning News*, 22 S.W. 351, 364 (Tex. 2000) ("Unlike the FOIA, our Act [like Nevada's Act] contains a strong statement of public policy favoring public access to governmental information and a statutory mandate to construe the Act to implement that policy and to construe it in favor of granting a request for information."). LVMPD's citation to the federal law enforcement privilege is similarly misplaced. *See Schneider v. City of Jackson*, 226 S.W. 332, 344 (Tenn. 2007) ("Having examined the Public Records Act and prior Tennessee decisions, we conclude that the [federal] law enforcement privilege has not been previously adopted as a common law privilege in Tennessee and should not be adopted herein. As a result, the law enforcement privilege is not a 'state law' exception to the Public Records Act.").

25. Nevada law provides that public records are subject to disclosure under the Act unless the contents are otherwise declared by law to be confidential. NRS 239.010. In this case, there is no Nevada statute that expressly and unequivocally deems records relating to an open criminal investigation to be privileged or confidential. Moreover, the Nevada Supreme Court in *Bradshaw* expressly rejected the proposition that intelligence and investigative information prepared by law enforcement agencies is confidential and instead held that investigative materials "are subject to disclosure if policy considerations so warrant." 106 Nev. at 634, 798 P.2d at 147.

26. To that end, the *Bradshaw* court determined that "a balancing of the interests involved is necessary" to determine whether disclosure of investigative materials generated by a law enforcement agency is required under the Act. *Id.* The Nevada Supreme Court in *Bradshaw* applied the balancing test and compelled disclosure of the investigative materials because "none of the public policy considerations identified [ ] as justifying the withholding of investigation

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information [were] present. There [was] no pending or anticipated criminal proceeding; there [were] no confidential sources or investigative techniques to protect; there [was] no possibility of denying someone a fair trial; and there [was] no potential jeopardy to law enforcement personnel." *Id.* at 635-36, 798 P.2d at 148-49.

27. In its original iteration, the balancing test "equally weighed the general policy in favor of open government against privacy or law enforcement policy justifications for nondisclosure." *Reno Newspapers*, 126 Nev. at 217, 234 P.3d at 926. "However, in light of the Legislature's declaration of the rules of construction of the Act [in its 2007 Amendments]—requiring the purpose of the Act to be construed liberally and any restriction to government documents to be construed narrowly—the balancing test under *Bradshaw* now requires a narrower interpretation of private or government interests promoting confidentiality or nondisclosure to be weighed against the liberal policy for an open and accessible government." *Id.* at 217-18, 234 P.3d at 926. Turning to the *Bradshaw* factors, it is abundantly clear that the disclosure of records related to the murder of Tupac Shakur is warranted especially where, as here, the incident in question occurred 22 years ago.

28. The first *Bradshaw* factor addresses the existence of a pending or anticipated criminal *proceeding*, not a criminal investigation as initially argued by LVMPD. Ex. 6. A "criminal proceeding" is a defined as "[a] judicial hearing, session, or prosecution in which a court adjudicates whether a person has committed a crime or, having already fixed guilt, decides on the offender's punishment; a criminal hearing or trial." Black's Law Dictionary (10th ed. 2014); *see also United States v. Quinones*, 201 F.Supp.3d 789, 796-97 (S.D. W.Va. 2016) ("By commencement of criminal proceedings, I mean the initiation of an actual case in a court of law, such as the filing of a criminal complaint."). It is undisputed that there is no pending or anticipated criminal proceeding related to the unsolved murder of Tupac Shakur.

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29. As to the second *Bradshaw* factor regarding the protection of confidential sources or investigative techniques, LVMPD claims that "[d]isclosing the investigative records may alert persons of interest or possible suspects of the investigation and investigative leads which could cause the destruction or concealment of evidence or other circumvention of the investigation." Ex. 8. To begin, LVMPD has not provided any concrete evidence to support its dubious contention that it is still gathering evidence, pursuing leads, and actively investigating the decades-old murder of Tupac Shakur. *DR Partners*, 116 Nev. at 628, 6 P.3d at 472-73 (holding county failed to meet its burden to establish confidentiality where "no offer of proof of any kind was submitted to the district court for the purpose of balancing important or critical privacy interests against the presumption in favor of public disclosure of these redacted records."); *Reno Newspapers*, 126 Nev. at 219, 234 P.3d at 927 (compelling disclosure where Washoe County Sheriff failed to provide evidence that public access to records would increase crime or create an unreasonable risk of harm). LVMPD's claim that its investigation is "open" and "active" is particularly hard to believe when the LVMPD Homicide Sergeant in charge of the case stated "[w]e're at a standstill" ***in 1997***—just one year after Tupac Shakur's murder. *See* Exhibit "9," Cathy Scott, *The Death of Tupac Shakur One Year Later*, Las Vegas Sun, Sept. 6, 1997. Simply put, the mere fact that LVMPD may still label the Tupac Shakur murder investigation as "open"—while not actively pursuing the case—is patently insufficient to establish a justifiable law enforcement interest against disclosure. *See, e.g.*, *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 870 (D. D.C. 1980) ("There is no reason to protect yellowing documents contained in long-closed files. DOE made no effort whatsoever in the district court to demonstrate that any of these cases are still under investigation or being actively pursued).

30. Moreover, LVMPD's argument that disclosure of investigative records may alert possible suspects of the investigation and result in the destruction or concealment of evidence is a purely hypothetical justification for withholding the requested materials. Indeed, LVMPD has not

identified any suspects who could potentially destroy or conceal evidence of a 22-year-old crime. Ex. 8 (stating that "***If a suspect is identified***…") (emphasis added). Moreover, it has been widely-reported that the murder weapon was already discovered by the Compton Police Department in 1998, but subsequently misplaced by state and federal authorities in California. *See, e.g.*, Exhibit "10," Shenequa Golding, *Weapon Used in Tupac's Murder Suddenly Disappears*, Billboard, December 17, 2017. Here, LVMPD has only pointed to "merely hypothetical and speculative" justifications to prevent disclosure, which the Nevada Supreme Court has repeatedly held are insufficient to establish confidentiality under the Act. *PERS*, 129 Nev. at 839, 313 P.3d at 225; *DR Partners*, 116 Nev. at 628, 6 P.3d at 472-73 ("Rather, the County seeks to meet its burden by voicing non-particularized hypothetical concerns."); *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 ("[O]ur caselaw stresses that the state entity cannot meet this burden with a non-particularized showing or by expressing hypothetical concerns.") (internal citations omitted); *Star Pub. Co. v. Parks*, 875 P.2d 837, 838 (Ariz. 1993) ("[I]t is insufficient [for the public entity] to hypothesize cases where secrecy might prevail and then contend the hypothetical controls all cases.").

31. The third *Bradshaw* factor contemplates the possibility of denying someone a fair trial and LVMPD again attempts to meet its burden with hypothetical prognostications. Ex. 8 (stating that "[i]f a suspect is identified then the suspect has a right to a fair and impartial trial and a right to view the evidence prior to the media or any other person.") (emphasis added). Suffice it to say, a hypothetical suspect's right to a fair trial is insufficient to warrant nondisclosure when 22 years have passed since Tupac Shakur's murder and no suspects have been identified or apprehended. *PERS*, 129 Nev. at 839, 313 P.3d at 225; *DR Partners*, 116 Nev. at 628, 6 P.3d at 472-73; *Star Pub. Co.* 875 P.2d at 838. This is especially true when many of the witnesses and/or persons with knowledge including Orlando Anderson—the gang member who brawled with Tupac Shakur on the night of the murder and was a primary suspect in the case—are now dead. *See, e.g.*, Exhibit "11," Eric Malnick and Chuck Philips, *Possible Suspect in Tupac Shakur Death Killed in*

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Shootout, L.A. Times, May 30, 1998; Ex. 9 (reporting that the sole witness who claimed to be able to identify the shooter was killed two months after Tupac Shakur's murder before police could question him at length).

32. As to the final *Bradshaw* factor, LVMPD has not claimed—nor can it—that the disclosure of investigative records from a murder that occurred in 1996 will endanger law enforcement personnel. Accordingly, this and the other three *Bradshaw* factors clearly weigh in favor of compelling disclosure of the records related to the murder of Tupac Shakur.

33. Lastly, the public's interest in information related to the murder remains at a fever pitch to this day. It is undisputed that Tupac Shakur's murder and the unsolved question of who killed him has resulted in countless pieces of print journalism, documentaries, television shows, and movies. In that regard, the nationally televised drama *Unsolved: The Murders of Tupac and Notorious B.I.G.* aired its final episode just days ago. In recognition of the public's significant interest in information related to the murder of Tupac Shakur, the Federal Bureau of Investigation began releasing its investigatory file to the public as early as 2011 thereby confirming the absence of any law enforcement justifications for maintaining secrecy over this information. Simply put, LVMPD cannot identify a single compelling interest that would override the public's right to obtain records related to Tupac Shakur's unsolved murder and the Court should issue a writ of mandamus compelling disclosure under the Act.

PRAYER FOR RELIEF

Accordingly, Petitioners respectfully requests that the Court:

1. Conduct an expedited hearing on the instant matter;

2. Order Respondent to produce any and all documents responsive to the following request: "Any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder."

3. Award Petitioner its attorney fees and costs; and

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4. Grant such other and further relief as the Court deems just and proper..

DATED this 2nd day of May, 2018.

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EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE CENTER FOR INVESTIGATIVE REPORTING INC., a California Nonprofit Organization, Petitioner, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Respondent.	CASE NO.: DEPT. NO.: **APPLICATION FOR ORDER SHORTENING TIME**

Petitioner The Center for Investigative Reporting Inc., a California nonprofit organization, by and through its counsel, hereby moves this Court for an Order Shortening Time. This Application is made and based upon Petitioner's Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 and the attached declaration.

DATED this 2nd day of May, 2018.

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DECLARATION IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND REQUEST FOR EXPEDITED HEARING THEREON

I, ANDY DONOHUE, declare under penalty of perjury as follows:

1. I am the Managing Editor of The Center for Investigative Reporting.

2. I make this Declaration in support of the Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011.

3. I have read the contents of the Petition and know the same to be true and correct to the best of my knowledge.

4. I declare there to be no plain, speedy or adequate remedy to compel Respondent to produce the requested public records.

5. Pursuant to NRS 239.011, which provides that this matter is entitled "to priority over other civil matters to which priority is not given by other statutes," I respectfully request that an expedited hearing be set on this matter.

6. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

DATED this 2nd day of May, 2018.

ANDY DONOHUE

ORDER SHORTENING TIME

Upon the motion of the Petitioner, by and through their attorneys of record, and for good cause appearing:

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011 is hereby set for hearing on the _____ day of _____, 2018, at the hour of _____o'clock before the above entitled Court.

DATED this _____ day of May, 2018.

_____
DISTRICT COURT JUDGE

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

EXHIBIT 2

EXHIBIT 2

REDACTED

REDACTED

---------- Forwarded message ----------
From: **Andy Donohue** <adonohue@revealnews.org>
Date: Thu, Mar 15, 2018 at 12:30 PM
Subject: Re: Records request
To: PIO <PIO@lvmpd.com>, Victoria Baranetsky <vbaranetsky@revealnews.org>

Hello,

You are now nearly three months past the legal deadline for responding to this records request. I've attempted to work with you on this cordially, but if I do not get a response very soon, my attorney will be in

touch directly. She is copied on this email.

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076
Reveal
from The Center for Investigative Reporting
@add | podcast | website

On Mon, Jan 22, 2018 at 11:18 AM, Andy Donohue <adonohue@revealnews.org> wrote:

> Hello,
>
> I still haven't received any response to my records request. It is my understanding that under state public records law, you were to have responded by Dec. 18, more than one month ago. I have copied my attorney, Victoria Baranetsky, on this conversation.
>
> Andy Donohue
> Managing Editor
> o: 510.809.2205 c: 619.847.7076
> Reveal
> from The Center for Investigative Reporting
> @add | podcast | website
>
> On Wed, Jan 10, 2018 at 1:22 PM, PIO <PIO@lvmpd.com> wrote:
>
> > Hello Andy,
> >
> > I have forwarded your e-mail over to PIO Officer Hadfield for follow-up. He will be back in the office tomorrow.
> >
> > Thank you,
> >
> > **Office of Public Information**
> > **Las Vegas Metropolitan Police Department**
> > 400-B South Martin L. King Boulevard, Las Vegas, Nevada 89106
> > ☎ 702.828.4082 office | 🖷 702.828.1550 fax | ✉ PIO@LVMPD.com
> > Follow us on Facebook, Twitter and Instagram
> >
> > mg
> >
> > **From:** Andy Donohue [mailto:adonohue@revealnews.org]
> > **Sent:** Wednesday, January 10, 2018 12:59 PM

To: PIO <PIO@LVMPD.COM>; Victoria Baranetsky <vbaranetsky@revealnews.org>
Subject: Re: Records request

I'm writing to follow up on the below request, which was filed December 11.

It is my understanding that under the Nevada Public Records Act, a request must be fulfilled or acknowledged within five business days of receipt. I have yet to receive any communication from the department.

Please advise when the request will be fulfilled. Thank you.

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076

Reveal
from The Center for Investigative Reporting
@add | podcast | website

On Mon, Dec 11, 2017 at 3:03 PM, Andy Donohue <adonohue@revealnews.org> wrote:

> Las Vegas Police Department
>
> Office of Public Information
>
> PIO@lvmpd.com
>
> December 11, 2017
>
> Via email
>
> **Re: Nevada Open Records Act Request**
>
> Under the **Nevada Open Records Act § 239 et seq.**, I am requesting an opportunity to inspect or obtain copies of the following records:
>
> * Any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder.

* Any and all records related to the American rapper Christopher Wallace, aka Notorious B.I.G., aka Biggie Smalls, including but not limited to law enforcement files involving his murder.

The FBI has long since released its records, doing so in 2011, indicating that there should be no privacy or law enforcement concerns in releasing these files. Additionally all privacy concerns are moot, where both men have been deceased now for more than two decades, as are many of the people involved.

If there are any fees for searching or copying these records, please inform me if the cost will exceed $50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of unsolved murders of major historical figures. This information is not being sought for commercial purposes.

If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. Additionally, if you determine that some but not all of the information in the requested records is exempt from disclosure, please redact that information and make all segregable portions available.

Thank you for considering my request.

Sincerely,

Andy Donohue
Managing Editor
o: 510.809.2205 c: 619.847.7076
Reveal
from The Center for Investigative Reporting
@add | podcast | website

--
Victoria D. Baranetsky
General Counsel
(w) 510-982-2890
(c) 201-306-4831
PGP EA48 1FB7 98E3 156E 3AFF 6748 F7B1 8B23 0838 D7F5

the center for investigative reporting

EXHIBIT 3

EXHIBIT 3

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW

March 28, 2018

VIA E-MAIL (PIO@LVMPD.COM)

Carla Alston
Director of Public Information
Las Vegas Metropolitan Police Department
400 Stewart Avenue
Las Vegas, Nevada 89101

Dear Ms. Alston:

Please be advised that this firm represents The Center for Investigative Reporting ("CIR").

On December 11, 2017, CIR's Managing Editor, Andy Donohue, served a public records request on the Las Vegas Metropolitan Police Department ("LVMPD") pursuant to NRS 239.010 for (i) any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder, and (ii) any and all records related to the American rapper Christopher Wallace, aka Notorious B.I.G., aka Biggie Smalls, including but not limited to law enforcement files involving his murder. *See* Exhibit "1," E-mail Correspondence. The LVMPD did not provide the requested records or otherwise respond to Mr. Donahue's request.

On January 10, 2018, Mr. Donohue followed up on his original request and was informed by the Office of Public Information that his request had been forwarded to PIO Officer Hadfield. *Id.* Nevertheless, neither the Officer Hadfield nor anyone else from the Office of Public Information responded to Mr. Donohue's original request for public records. *Id.* Mr. Donohue subsequently contacted the Office of Public Information on January 22, 2018 and, again, did not receive a response. *Id.* Finally, Mr. Donohue contacted the Office of Public Information for a fourth time on March 15, 2018 and achieved the same unsuccessful result. *Id.*

Pursuant to NRS 239.0107, the LVMPD was required to respond to Mr. Donahue's original request within five (5) business days yet it has failed to comply with its statutory obligations for more than three (3) months. Accordingly, we hereby demand that the LVMPD fully respond to Mr. Donahue's public records request by no later than the close of business on Wednesday, April 4, 2018. If the LVMPD fails to comply with the requirements of Nevada's Public Records Act by the foregoing date, the CIR will make application for judicial relief pursuant to NRS 239.011 and seek its attorney's fees and costs.

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

Thank you in advance for your cooperation and please do not hesitate to contact me with any questions.

Very truly yours,

CAMPBELL & WILLIAMS

Philip R. Erwin, Esq.

cc: Liesl K. Freedman, Esq., *via e-mail at L8706@lvmpd.com*
D. Victoria Baranetsky, Esq., General Counsel at The Center for Investigative Reporting

REDACTED

REDACTED

---------- Forwarded message ----------
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Date: Thu, Mar 15, 2018 at 12:30 PM
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To: PIO <PIO@lvmpd.com>, Victoria Baranetsky <vbaranetsky@revealnews.org>

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Managing Editor
o: 510.809.2205 c: 619.847.7076
Reveal
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@add | podcast | website

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> Managing Editor
> o: 510.809.2205 c: 619.847.7076
> Reveal
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>
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> > **Las Vegas Metropolitan Police Department**
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Managing Editor
o: 510.809.2205 c: 619.847.7076

Reveal
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@add | podcast | website

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> Office of Public Information
>
> PIO@lvmpd.com
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The FBI has long since released its records, doing so in 2011, indicating that there should be no privacy or law enforcement concerns in releasing these files. Additionally all privacy concerns are moot, where both men have been deceased now for more than two decades, as are many of the people involved.

If there are any fees for searching or copying these records, please inform me if the cost will exceed $50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of unsolved murders of major historical figures. This information is not being sought for commercial purposes.

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Thank you for considering my request.

Sincerely,

Andy Donohue
Managing Editor
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Victoria D. Baranetsky
General Counsel
(w) 510-982-2890
(c) 201-306-4831
PGP EA48 1FB7 98E3 156E 3AFF 6748 F7B1 8B23 0838 D7F5

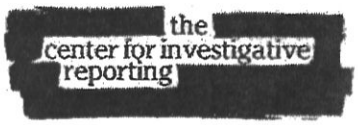

EXHIBIT 4

EXHIBIT 4

Las Vegas Metropolitan Police Department
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106

Case Report No: LLV960907002063

Administrative

Location 160 E FLAMINGO RD, Bldg#
Occurred On (Date and Time) 9/7/1996 11:17:00 PM
Reporting Officer
Entered By

Or Between (Date and Time)
Report Taken On 9/7/1996 12:30:00 AM
Entered On 9/19/1996 6:04:00 PM

Sector /Beat M2

Offenses:

MURDER
Completed No
Domestic Violence No
Hate/Bias

Victims:

Name: CROOKS, LESANE PARISH

Victim Type Individual
DOB [redacted]
Height 5' 11"
Employer/School
Occupation/Grade
Injuries

Age 25
Weight 165
Sex Male
Hair Color Black
Work Schedule

Written Statement No
Race Black or African American
Can ID Suspect No
Eye Color Brown

Addresses

[redacted]

Nature/Cause GSW,
Transported To UMC
Medical Attendant Name DR CARRINGTON,
Notified By

Pronounced Date/Time
Transported By MERCY
Medical Clearance Required No

Coroner Notified No
Medical Attendant Type PHYSICIAN
Next Of Kin Notified No
Medical Clearance By

Notes

: KNIGHT, MARION

Victim Type Individual
DOB [redacted]
Height 6' 2"
Employer/School
Occupation/Grade
Injuries

Age 31
Weight 315
Sex Male
Hair Color Black
Work Schedule

Written Statement No
Race Black or African American
Can ID Suspect No
Eye Color Brown

The Use and Dissemination of this Record is Regulated by Law. Secondary Dissemination of any kind is Prohibited and could subject the offender to Criminal and Civil Liability.
This Information Released To:
Rosal - Donahue
By: [illegible] Date: 3/28/18
Las Vegas Metro Police Dept.

Suspects:

Name: NAME NOT GIVEN,
Aliases:
NAME NOT GIVEN,

Written Statement No
DOB
Height 0' 0"
Age 0
Weight 0
Sex Male
Hair Color
Race Black or African American
Eye Color

Name: NAME NOT GIVEN,
Aliases:
NAME NOT GIVEN,

Written Statement No
DOB
Height 0' 0"
Age 0
Weight 0
Sex Male
Hair Color
Race Black or African American
Eye Color

Properties:

Type:
Status **Used In the Commission of a Crime** Quantity Value Color
Description **CADILLAC SEVILLE AND STS / SLS [ ]**
Manufacturer **CADILLAC** Model **SEVILLE AND STS / SLS** Serial Number\VIN
Vehicle Year **1990** Lic Plate # Lic Plate State **Nevada** Lic Plate Exp
Body Style **4-door** Vehicle Type

Vehicle Colors
Primary **White**
Secondary **White**
Tertiary **White**
Notes

Type:
Status **Stolen Locally - Recovered Locally** Quantity Value Color
Description **CADILLAC SEVILLE AND STS / SLS [ ]**
Manufacturer **CADILLAC** Model **SEVILLE AND STS / SLS** Serial Number\VIN
Vehicle Year **1990** Lic Plate # Lic Plate State **Nevada** Lic Plate Exp
Body Style **4-door** Vehicle Type

Vehicle Colors
Primary **White**
Secondary **White**
Tertiary **White**
Notes

Narrative:

Subject: NARRATIVE # 002

Author: BECKER, B 2838 [2838]

Entered Date: 09/07/1996 00:30

Narrative Type: ENTRY-SU

PER OFFICER'S INCIDENT CRIME REPORT ATTEMPTED MURDER SHOULD BE ATTEMPTED MURDER 2CTS. ON 090796 AT 2317 LESANE CROOKS (AKA TUPAC SHAKUR) WAS SHOT MULTIPLE TIMES WHILE RIDING IN A CAR DRIVEN BY MARION KNIGHT AT FLAMINGO AND KOVAL. KNIGHT ALSO SUFFERED A MINOR GSW. THE SUSPECTS WERE IN A WHITE CADILLAC WHICH FLED THE SCENE.

EXHIBIT 5

EXHIBIT 5

Subject: Re: LVMPD Request
Date: Wednesday, April 11, 2018 at 1:47:40 PM Pacific Daylight Time
From: Phil Erwin
To: Lawrence Hadfield
CC: Samuel R. Mirkovich, Victoria Baranetsky
Attachments: 20180405154727644.pdf, image001.jpg, image002.jpg, image003.png, image004.jpg, image005.jpg

Dear Officer Hadfield,

On April 5, 2018, the Las Vegas Metropolitan Police Department ("LVMPD") produced the attached two-page police report in response to Mr. Andy Donohue's multiple public records requests and my letter dated March 28, 2018. The LVMPD did not produce a log of responsive documents or otherwise indicate whether additional documents exist or were withheld based on alleged confidentiality grounds.

Can you please confirm that the attached police report is the only document in the LVMPD's possession that is responsive to our public records request? Can you likewise confirm that the LVMPD did not withhold any responsive documents—e.g. investigative files, correspondence, memoranda, etc.—based on confidentiality? If the LVMPD did withhold certain documentation due to confidentiality, please provide notice of that fact along with a citation to the supporting statute(s) or other legal authorities as required by NRS 239.0107.

Given the prior delays associated with our public records request and the statutory deadlines in Nevada's Public Records Act, we would ask that you respond to this e-mail by no later than the close of business on Friday, April 13, 2018. Thank you and please do not hesitate to contact me with any questions.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

** This message is intended for the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this information in error, please notify us immediately by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank You.**

From: Lawrence Hadfield <L7171H@LVMPD.COM>
Date: Wednesday, March 28, 2018 at 1:10 PM
To: Phil Erwin <pre@cwlawlv.com>, Lucinda Martinez <lmm@cwlawlv.com>
Cc: Sam Mirkovich <srm@cwlawlv.com>

Subject: LVMPD Request

Mr. Erwin,

We are in receipt of your letter to the director of the PIO. Your request is being processed via our Records section.

Officer Larry Hadfield
Office of Public Information
Las Vegas Metropolitan Police Department
400-B South Martin L. King Boulevard, Las Vegas, Nevada 89106
☎ 702.828.4082 office | 🖷 702.828.1550 fax | ✉ L7171H@lvmpd.com

EXHIBIT 6

EXHIBIT 6

April 12, 2018

pre@cwlawlv.com
Phil R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, NV 89101

Re: Public Records Request dated December 11, 2017
LVMPD PIO Request Number 171212-02

Dear Mr. Erwin:

Your email dated April 11, 2018 addressed to Officer Lawrence Hadfield assigned to the Las Vegas Metropolitan Police Department (LVMPD) Office of Public Information was forwarded to the Office of General Counsel for response. In your email you are addressing concerns about a public records request that Mr. Andy Donohue submitted. Mr. Donohue requested the following records:

- Any and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder.

- Any and all records related to the American rapper Christopher Wallace, aka Notorious B.I.G., aka Biggie Smalls, including but not limited to law enforcement files involving his murder.

Mr. Donohue made his initial public records request on December 11, 2017. LVMPD's practice is to forward the request to the custodians of records who may have records responsive to the request. You should have been advised LVMPD would research your request and respond to you within 30 days. See, NRS 239.0107(1)(c). In response to your records request, LVMPD provided you on or about March 18, 2018 a report responsive to your request. When your record request was forwarded to the Homicide Bureau, which is the custodian of records of other responsive records to your request, it was learned the criminal investigation of the murder of Lesane Parrish Crooks also known as Tupac Shakur is an open active investigation. For this reason, no other records were provided. Unfortunately, this information was not communicated to you or

your client. Due to the open investigation, the requested records are not public records under NRS 239.010(1), as such records are declared by law to be confidential. *See Pub. Employees Ret. Sys. v. Reno Newspapers* 129 Nev. Adv. Op. 88, 313 P.3d 221, 224-25 (2013).

The public records law does not require the disclosure of materials that are confidential as a matter of law. *See, Civil Rights for Seniors v. Admin-Office of the Courts* 129 Nev. Adv. Op. 80, 313 P.3d 216, 219-20 (2013). The open criminal investigation is confidential because it subject to the law enforcement privilege and is protected from disclosure. *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 636, 798 P.2d 144, 148, (1990)); *Miller v. Mehltretter*, 478 F. Supp. 2d 415 (W.D.N.Y.)(2007); *See also,* 5 U.S.C. section 552(b)(7)(Nevada Supreme Court cites to the FOIA exemptions as analogous authority for the Nevada Public Records Act).

The requested documents are protected from disclosure because when the interests are weighed, the law enforcement policy justifications for nondisclosure clearly outweigh the public's interest in access to the records. In this case, disclosure of the investigative file would jeopardize apprehending a murder suspect. *See, Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 636, 798 P.2d 144, 148, 1990 (acknowledging that law enforcement policy justifications for nondisclosure such as pending criminal investigations, confidential investigative techniques, potential jeopardy to law enforcement personnel, and a defendant's right to a fair trial may outweigh the general policy in favor of open government).

Based on the foregoing, there are no other public records responsive to your request.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By: Charlotte M. Bible
Charlotte M. Bible
Assistant General Counsel

CMB:sa

EXHIBIT 7

EXHIBIT 7

CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

April 23, 2018

VIA E-MAIL (C9479B@LVMPD.COM)

Charlotte M. Bible, Esq.
Associate General Counsel
Las Vegas Metropolitan Police Department
400 Stewart Avenue
Las Vegas, Nevada 89101

Dear Ms. Bible:

I am in receipt of your letter dated April 12, 2018, which states that there are no other public records responsive to Mr. Andy Donohue's repeated public records requests because the criminal investigation of the 1996 murder of Lesane Parrish Crooks a/k/a Tupac Shakur is an "open active investigation" and "disclosure of the investigative file would jeopardize apprehending a murder suspect." Suffice it to say, we disagree with the legal grounds for the Las Vegas Metropolitan Police Department's ("LVMPD") blanket refusal to produce the requested records as Nevada law clearly provides that disclosure is required here.

Under the Nevada Public Records Act (the "Act"), all public records generated by government entities are public information and subject to disclosure unless otherwise declared to be confidential. *Reno Newspapers v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010). In 2007, the Legislature amended the Act to ensure the presumption of openness, and provided that all statutory provisions related to the Act must be construed liberally in favor of the Act's purpose of fostering the principles of democracy by allowing public access to information about government activities. *Id.* The Legislature likewise provided that any exemption, exception, or a balancing of interests that restricts the public's right to access a governmental entity's records must be construed narrowly. As a result, Nevada courts presume that all public records are open to disclosure unless either (1) the Legislature has expressly and unequivocally created an exemption or exception by statute, or (2) balancing the private or law enforcement interests for nondisclosure against the general policy in favor of an open and accessible government requires restricting public access to government records. *Id.* at 214-15, 234 P.3d at 924-25.

Beginning with the first prong, you cite *Pub. Emps. Ret. Sys. (PERS) v. Reno Newspapers*, 129 Nev. Adv. Op. 88, 313 P.3d 221, 224-25 (2013) for the proposition that "[d]ue to the open investigation, the requested records are not public records under NRS 239.010(1), as such records are declared by law to be confidential." The Nevada Supreme Court, however, did not address the confidentiality of criminal investigative materials in *PERS*. Rather, the Nevada Supreme Court in *PERS* assessed the confidentiality of records related to retired state employees who were collecting pensions were confidential. As such, the Nevada Supreme Court's opinion in *PERS* is wholly inapplicable to this matter.

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

Similarly unavailing is your suggestion that "[t]he open criminal investigation is confidential because it is subject to the law enforcement privilege and is protected from disclosure." The Nevada Supreme Court in *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 634, 798 P.2d 144, 147 (1990) expressly held that investigative materials prepared by law enforcement agencies "are subject to disclosure if policy considerations so warrant." As to your apparent reliance on the federal "law enforcement privilege," I would simply note that the Honorable Richard F. Scotti recently rejected this exact argument when it was advanced by the LVMPD in response to public records requests concerning the October 1 Massacre. *See* March 2, 2018 Order, *Am. Broad. Cos. v. Las Vegas Metro. Police Dep't*, Case No. A-17-764030-W. To that end, Judge Scotti compelled the production of the file related to that incident on grounds "that there exists no rule that records can be withheld merely because they relate to an ongoing investigation."

Turning to the balancing of interests, we recognize that law enforcement justifications may outweigh the general policy in favor of open government in some limited circumstances. *Bradshaw*, 106 Nev. at 635-36, 798 P.2d at 147-48. We would further note, however, that "the balancing test under *Bradshaw* now requires a narrower interpretation of private or government interests promoting confidentiality or nondisclosure to be weighed against the liberal policy for open and accessible government" as a result of the Legislature's amendments to the Act in 2007. *Reno Newspapers*, 126 Nev. at 217-18, 234 Nev. at 926.

In that regard, the *Bradshaw* factors clearly weigh in favor of disclosure of the requested records especially where, as here, the murder of Tupac Shakur occurred in 1996. First, your reference to "pending criminal investigations" mischaracterizes the Nevada Supreme Court's opinion in *Bradshaw* as the relevant consideration is whether there is a pending or anticipated criminal *proceeding*—and there is none. Second, the LVMPD cannot credibly claim that there are confidential sources or investigative techniques to protect in the criminal investigation of a murder that took place twenty-two years ago. This is especially true when many of the witnesses and/or persons with knowledge have since passed away. Lastly, there is no possibility of denying someone a fair trial nor is there any potential jeopardy to law enforcement personnel. While the LVMPD may still label the Tupac Shakur murder investigation as "open," any claimed justification for withholding the requested records would be "merely hypothetical and speculative[,]" which is insufficient to prevent disclosure under the Act. *PERS*, 129 Nev. at 839, 313 P.3d at 225. Simply put, the LVMPD cannot demonstrate that law enforcement justifications "clearly outweigh" the public interest in access to the requested records concerning a decades-old unsolved murder.

Based on the foregoing, we again demand that the LVMPD produce the requested records as required by Nevada law. We further request that the LVMPD confirm its intention to produce the requested records in writing on or before the close of business on Friday, April 27, 2018. Should the LVMPD fail to respond by that date and/or maintain its improper refusal to produce the requested records, we will promptly seek judicial intervention along with our attorney's fees and costs pursuant to NRS 239.111.

[redacted]

Thank you and please do not hesitate to contact me with any questions.

Very truly yours,

CAMPBELL & WILLIAMS

Philip R. Erwin, Esq.

cc: Liesl K. Freedman, Esq., *via e-mail at L8706@lvmpd.com*
Lawrence Hadfield, *via e-mail at L7171H@lvmpd.com*
D. Victoria Baranetsky, Esq., General Counsel at The Center for Investigative Reporting

[redacted]

EXHIBIT 8

EXHIBIT 8

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT
JOSEPH LOMBARDO, Sheriff

Partners with the Community

April 27, 2018

SENT VIA EMAIL: pre@cwlawlv.com

Philip R. Erwin, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89101

Dear Mr. Erwin:

I am in receipt of your letter sent to my email address. I am very familiar with the 1 October public records request and the proceedings that have occurred. As you should know a District Court order is not precedent, should not be cited as authority and is not binding other than in the case. For your information, LVMPD is appealing Judge Scotti's orders.

Regarding the application of the public records law and its exceptions to the Tupac Shakur murder investigation, I may not have been as clear as I could have been in explaining the public policy justification for non-disclosure of the investigative file. LVMPD's interest in protecting the investigative file is to avoid interference with the investigation of the murder of Tupac Shakur which LVMPD is actively pursuing. Disclosing the investigative records may alert persons of interest or possible suspects of the investigation and investigative leads which could cause the destruction or concealment of evidence or other circumvention of the investigation. If a suspect is identified then the suspect has a right to a fair and impartial trial and a right to view the evidence prior to the media or any other person. Based on these reasons, the policy justification for nondisclosure of the records clearly outweighs the media's interest in disclosure. LVMPD obtained evidence, conducted an investigation and continues its investigation concerning the murder of Tupac Shakur because it is the law enforcement agency with jurisdiction to enforce the laws of the State of Nevada to protect the public.

Contrary to your understanding of *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990), LVMPD understands *Donrey* to protect open, ongoing law enforcement investigations from interference by premature disclosure of the investigative records or information. Preventing interference with a criminal investigation is a strong policy justification for denying the request for disclosure. LVMPD asserts the law enforcement privilege in good faith. Accordingly, LVMPD maintains the records are confidential by law and will not be producing the records requested at this time.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By: Charlotte M. Bible
Charlotte M. Bible
Assistant General Counsel

:sa

EXHIBIT 9

EXHIBIT 9

LAS VEGAS SUN

The death of Tupac Shakur one year later

Cathy Scott

Saturday, Sept. 6, 1997 | 3:16 a.m.

A year has passed since rap and film star Tupac Shakur was shot to death near the Las Vegas Strip.

The murder has yet to be solved, and, according to investigators, it may never be.

"We're at a standstill," said Metro Police homicide Sgt. Kevin Manning, who is heading the investigation.

Still, detectives receive "information constantly" about the murder, he said.

The information, however, hasn't moved the case forward. In addition to bona fide tips, police have received many false tips from people claiming to know who did it.

Police say the case slowed early in the investigation as few new clues came in and witnesses clammed up. The murder weapon has not been found, and no one has fingered a suspect.

The Shakur slaying is one of the biggest murder cases in Las Vegas history.

The case attracted national media attention, and has been featured on television shows such as "America's Most Wanted," "Unsolved Mysteries," "Prime Time Live" and "Hard Copy."

Before his death, Shakur, 25, was a music icon for many who saw him as a voice for young people rebelling against their lot in life.

Since his death and the release of the critically acclaimed film "Gridlock'd" and his last album, "Don Killuminati -- The 7-Day Theory," he's been likened to a prince.

But he also was heavily criticized, before and after his death, for his violent lyrics and negative depictions of women.

Fateful night

On Sept. 7, 1996, Shakur and Death Row Records owner Marion "Suge" Knight were driving to a nightclub with an entourage behind them on East Flamingo Road. They were in town for the Mike Tyson-Bruce Seldon heavyweight championship boxing match. Tyson was to meet them later at Club 662, where Shakur and other rap artists were scheduled to perform.

They never made it.

A light-colored late-model Cadillac pulled up next to Knight's rented BMW 750 and a gunman in the back seat opened fire on the passenger side. Shakur was hit three times.

He died six days later at University Medical Center.

So the question remains: Who killed Tupac Shakur? Was it as simple as jealousy over women and money? Was it related to street gangs, namely the Crips and Bloods? Was it because of an East Coast-West Coast rap music rivalry?

On Nov. 13, two months after Shakur's death, 19-year-old Yafeu Fula, a backup singer in Shakur's group Outlaw Immortalz, was shot gangland-style in the hallway of a housing project in Orange, N.J. The 19-year-old was part of Shakur's entourage in Las Vegas and was a passenger in a car directly behind Shakur's when Shakur was shot.

Police say Fula's murder was unrelated to the Shakur case, even though Fula was the only witness who told Metro investigators that night that he could possibly identify Shakur's assailant. Fula was killed before police could question him at length.

Then five months later, on March 9, Christopher Wallace, who also went by the name Biggie Smalls and performed under the name The Notorious B.I.G., was killed in Los Angeles in a shooting similar to Shakur's.

There was bad blood between the rappers. Wallace, on the East Coast, and Shakur, on the West Coast, had been involved in what has been termed a "bi-coastal rivalry" about who was the best rapper. Wallace, like Shakur, was a platinum-selling recording artist.

Metro's Manning said at the time of Wallace's death that it resembled "about 90 percent of drive-by shootings."

The 24-year-old drug dealer-turned-rap artist was killed as he sat in the passenger seat of his GMC Suburban while leaving a crowded party following the 11th annual Soul Train Music Awards.

Los Angeles Police have yet to solve Smalls' murder.

Lawsuits galore

Shakur's estate has been hit with a slew of lawsuits since his death. And his mother, Afeni Shakur, has been fighting to gain some control and benefit from his record sales as well as from as-yet-unreleased records. Afeni Shakur filed a suit against Death Row Records and its owner and chief executive officer, Marion "Suge" Knight.

Her New York attorney, Richard Fischbein, said he was close to reaching a settlement that would give his client a share of Shakur's earnings.

In another suit, Jacquelyn McNealey, now a paraplegic after being shot during one of Shakur's concerts, was awarded an undisclosed judgment in November against the late rapper's estate. She claimed Shakur "taunted and challenged" rival gang members in the audience, which caused a frenzy ending in her being shot, the lawsuit alleges.

And in yet another legal action, C. Delores Tucker, who in 1994 formed an anti-rap campaign with former U.S. drug czar William Bennett and is mentioned derogatorily in one of Shakur's songs, filed a lawsuit for damages against Shakur's estate. She claimed that her sex life with her husband was adversely affected because of some of Shakur's lyrics.

The latest suit was filed by Shakur's estranged father, Billy Garland of New Jersey. He's trying to share control of the estate with Afeni Shakur, even though he left the family when Shakur was 4 and remained absent until visiting Shakur in 1994 at a New York hospital.

Estimates of Shakur's worth vary because Death Row Records, the label under which Shakur recorded his last two albums, has claimed that Shakur was given hundreds of thousands of dollars in jewelry, cars, homes and cash that have been deducted from his platinum-selling records. Death Row Records wants millions of dollars in reimbursement it claims was advanced to Shakur.

The 32-year-old Knight has been imprisoned since November for violating a 1995 parole. He was sentenced to nine years in the California state prison system. A Los Angeles Superior Court judge said Knight violated his probation

by taking part in a fight at the MGM Grand hotel-casino on Sept. 7 following the Tyson-Seldon bout. About three hours later, Shakur was shot and Knight was grazed in the drive-by shooting on East Flamingo Road.

Police later identified the person beaten in the fight as Orlando Anderson of Compton, Calif. He was held for questioning by Compton and Las Vegas police, but later released. He has contended, through his attorney Edi O. Faal, that he had nothing to do with Shakur's killing.

Knight's downfall

Since the Shakur murder, more information has been learned about Knight's activities in Las Vegas, including a 1987 arrest at the Rancho Sahara Apartments at 1655 E. Sahara Ave., where Knight lived at the time. He was arrested on charges of attempted murder and grand larceny on Halloween night after Knight shot a man in the wrist and leg during an argument. Knight pleaded guilty to a misdemeanor.

On Nov. 3, 1989, Knight and Sharitha Lee Golden were married in Las Vegas.

Then, on June 6, 1990, Knight was charged with assault after he broke a man's jaw outside a house in West Las Vegas. Knight later pleaded guilty to felony assault with a deadly weapon.

Knight had attended UNLV and played on the Rebel football team in 1985 and 1986 but dropped out shortly before graduation, according to his teammates.

In May, several months after his parole violation conviction, Knight was transferred to the California Men's Colony East in San Luis Obispo, where he is serving out his nine-year sentence.

Since Knight's incarceration, his now-estranged wife, Sharitha Knight, has been taking care of the day-to-day operations of Death Row Records.

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EXHIBIT 10

EXHIBIT 10

Weapon Used in Tupac's Murder Suddenly Disappears

12/17/2017 by Shenequa Golding

Raymond Boyd/Michael Ochs Archives/Getty Images

Tupac Shakur

The handgun used to shoot and kill Tupac Shakur in September of 1996 was reportedly found in a Compton backyard. However, new reports indicate the gun's current location is a mystery.

According to *TMZ*, the latest detail in the cold case involving the beloved rapper was discovered after an A&E producer for the *Who Killed Tupac?* series found documents outlining the gun's disappearance.

In 1998, an unidentified citizen called Compton police after finding a .40 caliber Glock in his backyard. Police arrived and records show the handgun was booked on May 30, 1998 as found property. In 2000, the Los Angeles Sheriff's Department took over the Compton Police Department and confiscated about 3,800 firearms, including the Glock used in Tupac's murder. All the guns were transported.

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Now, this is where things get a bit sticky.

In 2006, Deputy T. Brennan, who was also working the Biggie Smalls case, began combing through records and recognized the address where the gun was originally found to be that home of a Crip gang member who allegedly had issues with the "Dear Mama" singer.

Brennan ordered ballistics testing and the results matched the Glock used to kill Tupac. Reportedly, a federal prosecutor assigned to the case claimed news of the gun's discovery would alert conspirators and ordered the gun not be transported to the Las Vegas Police Department. While it's not outlined in the document, the belief is fear of renewed gang violence may erupt.

Tupac's brother was said to be frustrated that a vital piece of evidence in his brother's case was not handled properly.

This article originally appeared on Vibe.

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EXHIBIT 11

EXHIBIT 11

Los Angeles Times | ARTICLE COLLECTIONS

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Possible Suspect in Tupac Shakur Death Killed in Shootout

May 30, 1998 | ERIC MALNIC and CHUCK PHILIPS | TIMES STAFF WRITERS

Orlando Anderson--once named by police as a suspect in the Las Vegas slaying of rap star Tupac Shakur--was killed Friday in a gang shootout in Compton that also claimed the life of another man, sources close to the case said.

Police withheld formal identification of the victims, saying that the next of kin had yet to be notified. Officers said only that two men were dead, a third man was in critical condition and a fourth, who was treated for gunshot wounds, had been booked on suspicion of murder.

Anderson, whose grandmother had died of natural causes earlier in the day, told friends about 2 p.m. that he was "going to the store." A few minutes later, he left his home in Compton and drove off with friends, the sources said.

About 3:10 p.m., Anderson and another man--both believed to be members of the Southside Crips--drove up to a carwash at Alondra Boulevard and Oleander Avenue where several members of a rival gang had gathered, police said.

"There was an altercation," Compton Police Lt. Robert Baker said. "Both sides began shooting."

The brief but intense gun battle scattered bystanders and left four men sprawled on the pavement, all of them gang members, according to police.

The four were taken to Martin Luther King Jr./Drew Medical Center in nearby Willowbrook, where Anderson, 23, and another man were pronounced dead a short time later.

A third man was in critical condition and "just clinging to life," according to a nurse at the hospital.

The fourth--Michael Reed Dorrough, 24--was treated for lesser wounds before being booked by Compton police on suspicion of murder.

Investigators said the confrontation that preceded the shooting apparently stemmed from a dispute over money. The shootout occurred next to Compton High School, but police said that although classes were in session, no students or staff members were involved.

Although Las Vegas police say there was never any direct evidence linking Anderson to Shakur's death, Los Angeles police said as recently as last September that they still considered Anderson a suspect in the unsolved murder.

Last September, Shakur's mother filed a wrongful-death lawsuit against Anderson, saying he was the one who gunned down the rap star on the Las Vegas Strip in September 1996.

According to the lawsuit, the rapper's shooting followed a fight in a hotel lobby between Shakur's entourage and Anderson. An affidavit filed with the lawsuit contends that Anderson was seen carrying a Glock .40-caliber handgun--the same type of weapon used to kill Shakur--several days after the rapper's death.

Times staff writer Nieson Himmel contributed to this report.

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