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Case No. 11 EW 00009 1B

Dept. No. 1

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RENO NEWSPAPERS, INC., a Nevada corporation,

Petitioner,

vs.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA, a public agency,

Respondents.

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

Before the Court is a petition for writ of mandamus filed by Petitioner Reno Newspapers, Inc., doing business as the Reno Gazette-Journal ("RGJ").

The RGJ's petition was filed pursuant to NRS Chapter 239, the Nevada Public Records Act, and seeks the issuance of a writ mandating Respondent Public Employees' Retirement System of Nevada ("PERS") to produce documents containing the following information as to each retired employee currently receiving PERS pension benefits:

- (a) The name of the retired employee;
- (b) The name of the retired employee's employer;
- (c) The retired employee's salary;
- (d) The retired employee's hire and retirement dates; and
- (e) The amount of the retired employee's benefit payment.

1 PERS opposes the RGJ's petition, contending that pursuant to the provisions of  
2 NRS 286.110(3) and 286.117, the requested information has been declared by law to be  
3 confidential and therefore cannot be released as requested.  
4

5 On December 12, 2011, a hearing in open court was held on the RGJ's petition, and  
6 the Court received arguments from the RGJ, PERS and other interested parties. The  
7 Court has fully considered those arguments, as well as the matters presented in the  
8 various court filings in this action, and now finds and concludes as follows:

9 **1. Legal Standards In Public Records Matters.**

10 As noted, the RGJ's petition for writ of mandamus was filed pursuant to NRS  
11 Chapter 239, the Nevada Public Records Act.  
12

13 NRS 239.010(1) states, in pertinent part:

14 "[a]ll public books and public records of a governmental entity, the contents  
15 of which are not otherwise declared by law to be confidential, must be open  
16 at all times during office hours to inspection by any person . . ."

17 In Reno Newspapers v. Sheriff, 126 Nev. Adv. Op. 23, 234 P.3d 922, 923 (2010),  
18 the Nevada Supreme Court stated:

19 "The Nevada Public Records Act considers all records to be public  
20 documents available for inspection unless otherwise explicitly made  
21 confidential by statute or by a balancing of public interests against privacy or  
22 law enforcement justification for nondisclosure."

23 The purpose of the Nevada Public Records Act is to ensure the accountability of the  
24 government to members of the public by facilitating public access to vital information about  
25 government activities. DR Partners v. Board of County Commissioners, 116 Nev. 616, 6  
26 P.3d 465 (2000); see also Reno Newspapers v. Sheriff, supra, 234 P.3d at 924.

27 To this end, the Nevada Legislature has mandated that the Nevada Public Records  
28 Act "be construed liberally", and that any limitations on public disclosure be "construed  
narrowly." NRS 239.001; DR Partners v. Board of County Commissioners, supra, 116 Nev.

1 at 621; Reno Newspapers v. Sheriff, supra, 234 P.3d at 924. This mandate not only  
2 applies to any express statutory declaration of confidentiality, but also to any balancing of  
3 interests that would restrict the public's right to access a governmental entity's records. Id.  
4

5 Finally, the public official or agency bears the burden of establishing the applicability  
6 of any express statutory declaration of confidentiality or balancing of interests that restricts  
7 public access. NRS 239.011(3); DR Partners v. Board of County Commissioners, supra.

8 **2. NRS 286.110(3) and 286.117.**

9 As noted, PERS contends that the records requested by the RGJ are expressly  
10 declared by law to be confidential in NRS 286.110(3) and 286.117.  
11

12 NRS 286.110(3) states as follows:

13 "The official correspondence and records, other than the files of individual  
14 members or retired employees, and, except as otherwise provided in NRS  
15 241.035, the minutes, audio recordings, transcripts and books of the system  
16 are public records and are available for public inspection."

17 NRS 286.117 states as follows:

18 "All records maintained for a member, retired employee or beneficiary may  
19 be reviewed and copied only by the system, the member, his public employer  
20 or spouse, or the retired employee or his spouse, or pursuant to a court  
21 order, or by a beneficiary after the death of the employee on whose account  
22 benefits are received. Any member, retired employee, or beneficiary may  
23 submit a written waiver to the system authorizing his representative to review  
24 or copy all such records."

25 Construing these statutes narrowly, as this Court must, it does not appear that either  
26 statute provides the confidentiality asserted by PERS. Nowhere in NRS 286.110(3) is it  
27 stated that confidentiality applies to the names of retired employees collecting PERS  
28 benefits, or to the names of the employers of those retired employees, the salaries of those  
retired employees, the hire and retirement dates of those retired employees, or the  
amounts of the pension benefits being paid to those retired employees. Rather, NRS  
286.110(3) merely states that the files of individual members and retired employees are not

1 public records.

2 In Sacramento County Employees' Retirement System v. Superior Court, 125  
3 Cal.Rptr.3d 655 (2011), the court held that the phrase "individual records of members" --  
4 which is very similar to the phrase "files of individual members or retired employees" in  
5 NRS 286.110(3) -- does not include the kind of information requested by the RGJ in this  
6 matter. Rather, that phrase has reference to information provided by a member or on a  
7 member's behalf to the Sacramento County Employees' Retirement System.  
8

9 Had the Nevada Legislature intended differently -- that is, had the Legislature  
10 intended that the information requested by the RGJ in this matter be confidential -- it would  
11 have so stated. But it did not. Furthermore, NAC 284.714 expressly states that the names  
12 and compensation amounts of state employees are public information. It thus follows that  
13 the names of retired public employees and the amounts of pension benefits flowing to  
14 them as a result of the compensation amounts paid to them while they were active public  
15 employees are likewise public information. Furthermore, it appears to the Court that PERS  
16 receives and maintains substantial amounts of data containing the information requested  
17 by the RGJ that are not considered "files of individual members or retired employees"  
18 under NRS 286.110(3).  
19  
20

21 Under the circumstances, the Court concludes that NRS 286.110(3) does not  
22 declare the information at issue herein to be confidential and exempt from public  
23 disclosure. Likewise, the Court finds that NRS 286.117 does not declare such information  
24 to be confidential and exempted from public disclosure. Rather, that statute merely  
25 restricts physical access to records maintained for PERS members, retired employees and  
26 beneficiaries to certain designated individuals.  
27  
28

1 In sum, the Court finds and concludes that the information requested by the RGJ  
2 has not been declared by any express statutory provision to be confidential and exempt  
3 from disclosure under the Nevada Public Records Act.  
4

5 **3. The Donrey Balancing Test.**

6 Even though public records may not be expressly declared by law to be confidential,  
7 public access may nonetheless be denied to those records where a balancing of interests  
8 demonstrates that the general policy in Nevada in favor of open government is outweighed  
9 by privacy or law enforcement justifications for nondisclosure. Donrey of Nevada v.  
10 Bradshaw, 106 Nev. 630, 635-36, 798 P.2d 144, 147-48 (1990); Reno Newspapers, Inc. v.  
11 Sheriff, supra.  
12

13 As to the information requested by the RGJ, the Court finds no privacy interests  
14 outweighing the public's right to disclosure. The Court further finds, however, that  
15 residence addresses and social security numbers of retired public employees, as well as all  
16 other information contained in the files of individual PERS members and retired  
17 employees, are confidential and not subject to disclosure.  
18

19 With one exception, the Court likewise finds that there is no law enforcement  
20 interest that outweighs the public's right to disclosure of the information sought by the RGJ.  
21 The exception is that PERS' production may exclude the names of retired employees who  
22 are in sensitive law enforcement positions where public access to those names could  
23 jeopardize their personal safety or job performance, in which case the retired employees  
24 will be shown in the production as unidentified individuals.  
25

26 In all other respects, the information requested by the RGJ must be produced.

27 **4. Fee for Production.**

28 Pursuant to NRS 239.052, PERS may charge a fee to the RGJ for providing copies

1 of the records referenced in this order. That fee, however, shall not exceed PERS' actual  
2 costs of providing the copies.

3 **5. Joinder of Parties.**

4 PERS advanced the argument that the retired employees whose names the RGJ  
5 has requested are necessary parties to this action, and that their joinder herein should be  
6 required. The Court does not agree, and finds that the individuals in question are not  
7 necessary parties to this action.  
8

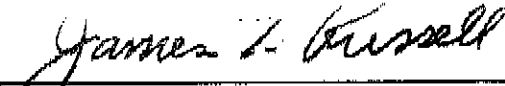
9  
10 Based upon the foregoing, and good cause appearing,

11 IT IS HEREBY ORDERED that the RGJ's petition for writ of mandamus is  
12 GRANTED, and that PERS shall produce a report to the RGJ containing the following  
13 information with respect to each retired employee currently receiving PERS pension  
14 benefits:  
15

- 16 (a) The name of the retired employee;  
17 (b) The name of the retired employee's employer;  
18 (c) The retired employee's salary;  
19 (d) The retired employee's hire and retirement dates; and  
20 (e) The amount of the retired employee's benefit payment.  
21

22 IT IS FURTHER HEREBY ORDERED that the RGJ, as the prevailing party in this  
23 matter, shall recover its costs and reasonable attorney's fees as allowed by NRS 239.011.

24 DATED: December 22, 2011

25  
26   
27 \_\_\_\_\_  
28 JAMES T. RUSSELL  
District Judge