



BRIAN SANDOVAL
Governor

STATE OF NEVADA
PUBLIC UTILITIES COMMISSION

JOSEPH C. REYNOLDS
Chairman

PAUL A. THOMSEN
Commissioner

ANN PONGRACZ
Commissioner

STEPHANIE MULLEN
Executive Director

October 18, 2016

VIA EMAIL

Attn: Angel De Fazio
ntefusa@aol.com

Re: October 12, 2016, Public Records Request

Dear Ms. De Fazio:

Chapter 239 of the Nevada Revised Statutes ("NRS"), specifically NRS 239.0107(1), requires a governmental entity to respond to public records requests within five business days. Accordingly, the Public Utilities Commission of Nevada ("Commission") is responding to your October 12, 2016, request to inspect, at the Commission's Las Vegas office, via computer access and on October 19, 2016, at 12:00 p.m., the following records:

- The "fine collection protocol or manual" of the Commission;
- "[E]very single action that was taken on Urban Jungles fine that was assessed on 6/14/16," in Docket No. 16-04014;
- "[A]ny/all emails regarding the republication of the General Counsel's ad, including drafts;" and
- "[A]ny and all monies paid out/submitted for payment regarding moving expenses for any [Commission] employee."

Regarding your request for the Commission's "fine collection protocol or manual," please find the non-confidential public record responsive to your request attached to the email delivering this letter as Attachment 1, and, per your request, computer access to this non-confidential public record responsive to your request will be made available to you on October 19, 2016, at 12:00 pm, at the Commission's Las Vegas office.

Regarding your request to inspect "[e]very single action that was taken on Urban Jungles fine..." please find the non-confidential public records responsive to your request attached to the email delivering this letter as Attachments 2, 2-A, 2-B, and 2-C, and, per your request, computer access to these non-confidential public records responsive to your request will be made available to you on October 19, 2016, at 12:00 pm, at the Commission's Las Vegas office.

NORTHERN NEVADA OFFICE
1150 East William Street
Carson City, Nevada 89701-3109
(775) 684-6101 • Fax (775) 684-6110

<http://puc.nv.gov>

SOUTHERN NEVADA OFFICE
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148
(702) 486-7210 • Fax (702) 486-7206

Regarding your request for “any/all emails regarding the republication of the General Counsel’s ad, including drafts,” please find the non-confidential public records responsive to your request attached to the email delivering this letter as Attachments 3 and 3-A, and, per your request, computer access to these non-confidential public records responsive to your request will be made available to you on October 19, 2016, at 12:00 pm, at the Commission’s Las Vegas office.

Regarding your request for records of “any and all monies paid out/submitted for payment regarding moving expenses for any [Commission] employee,” please find the non-confidential public record responsive to your request attached to the email delivering this letter as Attachment 4, and, per your request, computer access to this non-confidential public record responsive to your request will be made available to you on October 19, 2016, at 12:00 pm, at the Commission’s Las Vegas office.

NRS 239.0107(1)(d) mandates that if a governmental entity denies a person’s request to inspect a public record, or a part thereof, based on the confidential nature of the record, the governmental entity must provide written notice of the existence of the confidential record and a citation to the specific statute or other legal authority supporting the record’s confidentiality. Therefore, the Commission now notifies you that it is withholding the following confidential records, which are protected from disclosure by the attorney-client privilege and the Deliberative Process Privilege:

- Records of email communications between the Commission’s Office of General Counsel, the Executive Director, the Assistant Commission Secretary, and Chairman Reynolds regarding the posting of the General Counsel job announcement.

Attorney-Client Privilege

The attorney-client privilege, memorialized at NRS 49.095, provides that “[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications: 1) [b]etween the client or the client’s representative and the client’s lawyer or the representative of the client’s lawyer; 2) [b]etween the client’s lawyer and the lawyer’s representative; [or] 3) [m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client’s lawyer to a lawyer representing another in a matter of common interest.”

The attorney-client privilege applies to all records of communications between attorneys for the Commission and the attorneys’ clients made for the purpose of facilitating the rendition of professional legal services. In this instance, the Chairman, the Executive Director, and the Assistant Commission Secretary are represented by the Commission’s Office of General Counsel (“General Counsel”) in matters such as personnel issues, administrative/budget issues, court proceedings, federal regulatory proceedings, state regulatory proceedings, legislative proposals, and public records requests. Therefore, General Counsel’s communications with these individuals regarding the posting of the General Counsel job announcement, are privileged to the extent that the communications are made to facilitate General Counsel’s provision of legal services to the Commission outside of the context of a contested Commission proceeding.

Deliberative Process Privilege

The deliberative process privilege “covers ‘documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.’”¹ “Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decision-making process.”² The Nevada Supreme Court has held that the deliberative process privilege applies to pre-decisional and deliberative materials or records and “permits ‘agency decision-makers to engage in that frank exchange of opinions and recommendations necessary to the formulation of policy without being inhibited by fear of later public disclosure.’”³

All of the fully-withheld records are also protected by the deliberative process privilege because their disclosure would reveal the Commission’s internal deliberation and decision-making process in formulating a job announcement that the Commission hopes will attract the most qualified candidates for its vacant General Counsel position. Therefore, while the ultimate selection of the candidate will be conducted in a public hearing, the Commission’s internal deliberations preceding the publication of the job announcement are confidential.

If you have any questions, wish to clarify your request to inspect public records, or require assistance in accessing records via the Commission’s website, please feel free to contact me. Otherwise, I will see you on October 19, 2016, at 12:00 pm, at the Commission’s Las Vegas office, per your request.

Kindly,



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Public Utilities Commission of Nevada
(702) 486-7096.
msfox@puc.nv.gov

cc: Hayley Williamson, Assistant General Counsel; Stephanie Mullen, Executive Director;
Tammy Cordova, Staff Counsel

¹ *Dept. of Interior v. Klamath Water Users Protective Ass’n.*, 532 U.S. 1, 8 (2001) (quoting *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)).

² *United States v. Nixon*, 418 U.S. 683, 705 (1974).

³ *DR Partners v. Bd. of County Comm’rs of Clark County*, 6 P.3d 465, 469 (Nev. 2000)(quoting *Paisley v. C.I.A.*, 712 F.2d 686, 697 (D.C.Cir.1983).