Government Members' Recommendation:

Request that the Nevada Legislature Consider Legislation Adopting an Exemption for Open and Active Criminal Cases from the NPRA while Allowing Disclosure of Routine Incident Reports, and Basic Facts Unless Unusual Circumstances Create Serious Investigative Or Safety Risks

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Last month, the Nevada Supreme Court unanimously reaffirmed *Donrey* to recognize strong law enforcement interests in nondisclosure of records from active criminal investigations. *City of Sparks v. Bluth*, 142 Nev. Ad. Op. 65 (Oct. 15, 2026). The Court explained that relevant considerations include "the pendency, or anticipated pendency, of criminal proceedings; the presence of confidential sources or investigative techniques; the possibility that disclosure would deny someone a fair trial; and the 'potential jeopardy to law enforcement personnel' that disclosure may cause." *Id.* The Court also recognized that nontrivial personal privacy interests are relevant to the analysis supporting nondisclosure. *Id.* However, the Court clarified that the balancing test does not categorically exempt open investigative files. *Id.*

The Task Force heard presentations and received written materials regarding law enforcement records. On one hand, there is a strong public interest in criminal activity and in law enforcement accountability. On the other hand, disclosure of investigative files raises concerns over the constitutional rights of defendants, the privacy of victims, and the integrity of prosecutions.

This tension exists nationwide. Approximately half of the states generally exempt active investigatory files from public records laws. Even in states with blanket exemptions, many states require disclosure of routine incident reports, and basic facts unless unusual circumstances create serious investigative or safety risks. For instance, California law generally exempts open investigations from disclosure, but basic information about arrests and certain information about critical incidents, among other things, must be provided. Cal. Gov't Code §§ 7923.600-7923.805.

Clarification of Nevada law in this area is a high priority to law enforcement agencies. The balancing test is difficult to apply to large files containing sensitive information. Although this recent unanimous decision from the Nevada Supreme Court reaffirms the strong interest in nondisclosure for open and active investigations, the absence of a categorical statutory rule still leaves law enforcement agencies with uncertainty about when the interest identified above will provide an adequate basis to deny a request. A statutory exemption from disclosure will save resources of law enforcement agencies that are currently spent justifying nondisclosure under the uncertainty of the balancing tests and eliminate that uncertainty for Nevada's law enforcement agencies when their attention should be focused on investigation of the underlying case.