ARIZONA PUBLIC RECORDS LAW

This Information is compiled and provided by:

The Arizona Ombudsman- Citizens' Aide
7878 N. 16th Street, Suite 235
Phoenix, Arizona 85020

(602) 277-7292
1-800-872-2879
Fax: (602)277-7312

e-mail: ombuds@azoca.gov
website: www.azoca.gov
December 2018 Edition
[Current as of June 2019]

Arizona’s Public Records Law Overview

Arizona law requires all officers and public bodies to maintain records reasonably necessary to provide an accurate accounting of their official activities and of any government funded activities.

An officer is any person elected or appointed to hold office of a public body or any chief, administrative officer, head, director, superintendent or chairman of any public body. Public bodies include the state, counties, cities, towns, school districts, political subdivisions, or special taxing districts and any branch, department, board, bureau, commission, council, or committee thereof.

Records are defined as books, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by an governmental agency in pursuance of law or in connection with the transaction of public business and preserved by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of government. Examples of public records and other matters include calendars, reports, legal memoranda, policies and procedures, accident reports, training videos and materials, tape recordings of meetings where there are no written minutes, personnel records, case files, and data bases.

It is best to request public records from the agency that owns or created the record. It is also advised to keep the scope of your request as narrow and specific as possible. Doing so will save time and expense for all parties.

Table of Contents

Part I

Arizona Revised Statutes

Last Amended November 2018

Arizona Revised Statutes
Title 39. Public Records, Printing and Notices
Chapter 1. Public Records

Title 39, Article 1 - Requirements for Material Used

§ 39-101. Permanent public records; quality; storage; violation; classification

A. Permanent public records of the state, a county, city or town, or other political subdivision of the state, shall be transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona state library, archives and public records.

B. Permanent public records transcribed or kept as provided in subsection A shall be stored and maintained according to standards for the storage of permanent public records established by the director of the Arizona state library, archives and public records.

C. A public officer charged with transcribing or keeping such public records who violates this section is guilty of a class 2 misdemeanor.

§ 39-102. Annual report; copies

Unless otherwise specifically required by law, each agency, board, commission and department which prepares an annual report of its activities shall prepare and distribute as provided by law copies of such annual report on twenty pound bond paper printed with black ink except that the cover and back pages may be of sixty-five pound or less cover paper.

§ 39-103. Size of public records; exemptions

A. All public records of this state or a political subdivision of this state created on paper, regardless of weight or composition, shall conform to standard letter size of eight and one-half inches by eleven inches, within standard paper manufacturing tolerances.

B. This section does not apply to public records smaller than eight and one-half inches by eleven inches, public records otherwise required by law to be of a different size, engineering drawings, architectural drawings, maps, computer generated printout, output from test measurement and diagnostic

equipment, machine generated paper tapes and public records otherwise exempt by law. Additionally, records kept exclusively on photography, film, microfiche, digital imaging or other type of reproduction or electronic media as provided in section 41-151.16, subsection A are exempt from the size restrictions of this section. On written application the director of the Arizona state library, archives and public records may approve additional exemptions from this section if based on such application the director finds that the cost of producing a particular type of public record in accordance with subsection A of this section is so great as to not be in the best interests of this state.

Title 39, Article 2 - Searches and Copies

§ 39-121. Inspection of public records

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.

§ 39-121.01. Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index

A. In this article, unless the context otherwise requires:
   1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.
   2. "Public body" means this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.

B. All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state.

C. Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for

the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to sections 41-151.15 and 41-151.19.

D. Subject to section 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of such records shall promptly furnish such copies, printouts or photographs and may charge a fee if the facilities are available, except that public records for purposes listed in section 39-122 or 39-127 shall be furnished without charge.

2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person. The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order. This paragraph shall not be construed by an administrative tribunal or a court of competent jurisdiction to prevent or require an order compelling a public body other than an agency to furnish an index. For the purposes of this paragraph, "agency" has the same meaning prescribed in section 41-1001, but does not include the department of public safety, the department of transportation motor vehicle division, the department of juvenile corrections and the state department of corrections.

3. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian of the public record and shall be subject to the supervision of such custodian

E. Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production pursuant to subsection D, paragraph 2 of this section.

§ 39-121.02. Action on denial of access; costs and attorney fees; damages

A. Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

B. The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed. Nothing in this subsection shall limit the rights of any party to recover attorney fees, expenses and double damages pursuant to section 12-349.

C. Any person who is wrongfully denied access to public records pursuant to this article has a cause of action against the officer or public body for any damages resulting from the denial.

§ 39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition

A. When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:
   1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
   2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.
   3. The value of the reproduction on the commercial market as best determined by the public body.

B. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the

right to receive public records, the custodian may apply to the governor requesting that the governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.

C. A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

D. For the purposes of this section, "commercial purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

§ 39-122. Free searches for and copies of public records to be used in claims against United States; liability for noncompliance

A. No state, county or city, or any officer or board thereof shall demand or receive a fee or compensation for issuing certified copies of public records or for making search for them, when they are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which is to be presented to the United States or a bureau or department thereof.

B. Notaries public shall not charge for an acknowledgment to a document which is to be so filed or presented.

C. The services specified in subsections A and B shall be rendered on request of an official of the United States, a claimant, his guardian or attorney. For each failure or refusal so to do, the officer so failing shall be liable on his official bond.

§ 39-123. Information identifying eligible persons; confidentiality; definitions

A. Nothing in this chapter requires disclosure from a personnel file by a law enforcement agency or employing state or local governmental entity of the home address or home telephone number of eligible persons.

B. The agency or governmental entity may release the information in subsection A of this section only if either:
   1. The person consents in writing to the release.
   2. The custodian of records of the agency or governmental entity determines that release of the information does not create a reasonable risk of physical injury to the person or the person's immediate family or damage to the property of the person or the person's immediate family.

C. A law enforcement agency may release a photograph of a peace officer if either:
   1. The peace officer has been arrested or has been formally charged by complaint, information or indictment for a misdemeanor or a felony offense.
   2. The photograph is requested by a representative of a newspaper for a specific newsworthy event unless:

(a) The peace officer is serving in an undercover capacity or is scheduled to be serving in an undercover capacity within sixty days.
(b) The release of the photograph is not in the best interest of this state after taking into consideration the privacy, confidentiality and safety of the peace officer.
(c) An order pursuant to section 28-454 is in effect.

D. This section does not prohibit the use of a peace officer's photograph that is either:
1. Used by a law enforcement agency to assist a person who has a complaint against an officer to identify the officer
2. Obtained from a source other than the law enforcement agency.

E. This section does not apply to a certified peace officer or code enforcement officer who is no longer employed as a peace officer or code enforcement officer by a state or local government entity.

F. For the purposes of this section:
1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.
2. "Commissioner" means a commissioner of the superior court.
3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.
4. "Eligible person" means a former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, border patrol agent, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is assigned to the Arizona counterterrorism center in the department of public safety or victim of domestic violence or stalking who is protected under an order of protection or injunction against harassment.
5. "Former public official" means a person who was duly elected or appointed to Congress, the legislature or a statewide office, who ceased

serving in that capacity and who was the victim of a dangerous offense as defined in section 13-105 while in office.

6. "Judge" means a judge or former judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the United States immigration court, the Arizona court of appeals, the superior court or a municipal court.
7. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.
8. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.
9. "Peace officer" has the same meaning prescribed in section 13-105.
10. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.
11. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

§ 39-123.01. Personal identifying information of crime witnesses; confidentiality; definition

A. The personal identifying information of a witness to a crime contained in a record that is created or received by a law enforcement or prosecution agency and that is related to a criminal investigation or prosecution may not be disclosed by a public body pursuant to this article unless any of the following applies:
   1. The witness consents in writing to the disclosure.
   2. A court of competent jurisdiction orders the disclosure.
   3. The witness's address is the location where the crime occurred.

B. This section does not affect any records that are transmitted between law enforcement and prosecution agencies, a court or a clerk of the court or any provision of law that governs the discovery process or the conduct of trials.

C. For the purposes of this section, "personal identifying information" includes a witness's date of birth, social security number, personal telephone

number, home address, personal e-mail address and official state or government-issued driver license or identification number.

§ 39-124. Releasing information identifying an eligible person; violations; classification; definitions

A. Any person who is employed by a state or local government entity and who, in violation of section 39-123, knowingly releases the home address or home telephone number of an eligible person with the intent to hinder an investigation, cause physical injury to an eligible person or the eligible person's immediate family or cause damage to the property of an eligible person or the eligible person's immediate family is guilty of a class 6 felony.

B. Any person who is employed by a state or local government entity and who, in violation of section 39-123, knowingly releases a photograph of a peace officer with the intent to hinder an investigation, cause physical injury to a peace officer or the peace officer's immediate family or cause damage to the property of a peace officer or the peace officer's immediate family is guilty of a class 6 felony.

C. For the purposes of this section:
   1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.
   2. "Commissioner" means a commissioner of the superior court.
   3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.
   4. "Eligible person" means a former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, border patrol agent, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is assigned to the Arizona counterterrorism center in the department of public safety or victim of domestic violence

or stalking who is protected under an order of protection or injunction against harassment.

5. "Former public official" means a person who was duly elected or appointed to Congress, the legislature or a statewide office, who ceased serving in that capacity and who was the victim of a dangerous offense as defined in section 13-105 while in office.
6. "Judge" means a judge or former judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the United States immigration court, the Arizona court of appeals, the superior court or a municipal court.
7. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.
8. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.
9. "Peace officer" has the same meaning prescribed in section 13-105.
10. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.
11. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

§ 39-125. Information relating to location of archaeological discoveries and places or objects included or eligible for inclusion on the Arizona register of historic places; confidentiality

Nothing in this chapter requires the disclosure of public records or other matters in the office of any officer that relate to the location of archaeological discoveries as described in section 41-841 or 41-844 or places or objects that are included on or may qualify for inclusion on the Arizona register of historic places as described in section 41-511.04, subsection A, paragraph 9. An officer may decline to release this information if the officer determines that the release of the information creates a reasonable risk of vandalism, theft or other damage to the archaeological discoveries or the places or objects that are included on or may qualify for inclusion on the register. In making a decision to disclose public

records pursuant to this section, an officer may consult with the director of the Arizona state museum or the state historic preservation officer.

§ 39-126. Federal risk assessments of infrastructure; confidentiality

Nothing in this chapter requires the disclosure of a risk assessment that is performed by or on behalf of a federal agency to evaluate critical energy, water or telecommunications infrastructure to determine its vulnerability to sabotage or attack.

§ 39-126.01. Local government; telecommunications infrastructure records; nondisclosure; exceptions

A. Except as provided in subsection B, a city, town or county shall not disclose any records relating to the construction of wireline telecommunications infrastructure, including the location of lines, equipment and plants used for telecommunications services on or along public streets or highways.

B. A city, town or county may disclose information relating to the location of lines, equipment and plants used for telecommunications services for any of the following:
   1. As part of the bid, design or construction process of a capital project.
   2. To provide information on the availability of telecommunications services for economic development purposes.
   3. To provide general information to residents regarding construction activity within the city, town or county.

§ 39-127. Free copies of police reports and transcripts for crime victims; definitions

A. A victim of a criminal offense that is a part I crime under the statewide uniform crime reporting program, the victim's attorney on behalf of the victim or an immediate family member of the victim if the victim is killed or incapacitated has the right to receive one copy of the police report from the investigating law enforcement agency at no charge and, on request of the victim, the court or the clerk of the court shall provide, at no charge, the minute entry or portion of the record of any proceeding in the case that arises out of the offense committed against the victim and that is reasonably necessary for the purpose of pursuing a claimed victim's right. For the purposes of this subsection, "criminal offense", "immediate family" and "victim" have the same meanings prescribed in section 13-4401.

B. A victim of a delinquent act that is a part I crime under the statewide uniform crime reporting program, the victim's attorney on behalf of the victim or an immediate family member of the victim if the victim is killed or incapacitated has the right to receive one copy of the police report from the investigating law enforcement agency at no charge and, on request of the victim, the court or the clerk of the court shall provide, at no charge, the minute entry or portion of the record of any proceeding in the case that arises out of the offense committed against the victim and that is reasonably necessary for the purpose of pursuing a claimed victim's right. For the purposes of this subsection, "delinquent act", "immediate family" and "victim" have the same meanings prescribed in section 8-382.

C. For the purposes of this section, "attorney" means any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or district of the United States and who is not under any order of any court suspending, enjoining, restraining, disbarring or otherwise restricting the person in the practice of law.

§ 39-128. Disciplinary records of public officers and employees; disclosure; exceptions

A. A public body shall maintain all records that are reasonably necessary or appropriate to maintain an accurate knowledge of disciplinary actions, including the employee responses to all disciplinary actions, involving public officers or employees of the public body. The records shall be open to inspection and copying pursuant to this article, unless inspection or disclosure of the records or information in the records is contrary to law.

B. This section does not:
   1. Require disclosure of the home address, home telephone number or photograph of any person who is protected pursuant to sections 39-123 and 39-124.
   2. Limit the duty of a public body or officer to make public records open to inspection and copying pursuant to this article.

Title 39, Article 3 - Lost Records

§ 39-141. Proof of certain lost or destroyed documents or instruments

Any deed, bond, bill of sale, mortgage, deed of trust, power of attorney or conveyance which is required or permitted by law to be acknowledged or recorded which has been so acknowledged or recorded, or any judgment, order

or decree of a court of record in this state or the record or minute containing such judgment, which is lost or destroyed, may be supplied by parol proof of its contents.

§ 39-142. Action for restoration and substitution of lost or destroyed documents

Upon loss or destruction of an instrument as indicated in section 39-141, a person interested therein may bring an action in the superior court of the county where the loss or destruction occurred for restoration and substitution of such instrument against the grantor in a deed, or the parties interested in the instrument, or the parties who were interested adversely to plaintiff at the time of the rendition of judgment, or who are then adversely interested, or the heirs and legal representatives of such parties.

§ 39-143. Judgment of restoration; recording of judgment; judgment as substitute for original instrument

A. If upon the trial of the action provided for in section 39-142, the court finds that such instrument existed, and has been lost or destroyed and determines the contents thereof, it shall enter a judgment containing the finding and a description of the lost instrument and contents thereof.

B. A certified copy of the judgment may be recorded, and shall be substituted for and have the same force and effect as the original instrument.

§ 39-144. Recording of certified copies of lost or destroyed records or records of a former county

Certified copies from a record of a county, the record of which has been lost or destroyed, and certified copies from records of the county from which a new county was created, may be recorded in such county when the loss of the original has been first established.

§ 39-145. Re-recording of original papers when record destroyed

When the original papers have been preserved but the record thereof has been lost or destroyed, they may again be recorded within four years from the loss or destruction of such record. The last registration shall have force and effect from the date of the original registration.

Title 39, Article 4 - False Instruments and Records

§ 39-161. Presentment of false instrument for filing; classification

A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section “instrument” includes a written instrument as defined in section 13-2001.

Title 41. State Government
Chapter 1. Executive Officers

Title 41, Article 2.1 – Arizona State Library, Archives and Public Records Established in the Office of the Secretary of State

§ 41-151.12. Records; records management; powers and duties of director; fees; records services fund

A. The director is responsible for the preservation and management of records. In addition to other powers and duties, the director shall:

1. Establish standards, procedures and techniques for effective management of records.
2. Make continuing surveys of record keeping operations and recommend improvements in current record management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records.
3. Establish standards and procedures for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of records no longer possessing sufficient administrative, legal or fiscal value to warrant their further keeping.
4. Establish criteria for designation of essential records within the following general categories:
   (a) Records containing information necessary to the operations of government in the emergency created by a disaster.
   (b) Records containing information necessary to protect the rights and interests of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.
5. Reproduce or cause to be reproduced essential records and prescribe the place and manner of their safekeeping.
6. Obtain such reports and documentation from agencies as are required for the administration of this program.
7. Request transmittal of the originals of records produced or reproduced by agencies of the state or its political subdivisions pursuant to section 41-151.16 or certified negatives, films or electronic media of such originals, or both, if in the director's judgment such records may be of historical or other value.
8. On request, assist and advise in the establishment of records management programs in the legislative and judicial branches of this state and provide program services similar to those available to the executive branch of state government pursuant to this article.

9. Establish a fee schedule to systematically charge state agencies, political subdivisions of this state and other governmental units of this state for services described in this section and section 41-151.13 and deposit monies received from fees in the records services fund established by subsection B of this section.
10. Subject to approval of the secretary of state, establish a fee schedule to charge state agencies, political subdivisions of this state and other governmental units of this state for services and expenses incurred by the state library in obtaining copies of those reports, documents and publications that are required to be delivered, supplied or provided pursuant to sections 35-103, 41-151.05 and 41-151.08 and deposit these monies in the records services fund established by subsection B of this section.

B. A records services fund is established consisting of monies deposited pursuant to subsection A, paragraphs 9 and 10 of this section. The director shall administer the fund for the purposes provided in subsection A of this section. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

§ 41-151.13. Records management officer; duties

A. The state library shall employ a records management officer who is responsible for the direction and control of the records management program. The records management officer shall at the direction of the director administer the provisions of section 41-151.12.

B. The state library shall:
1. hrough consultation and education, provide for an efficient and contemporary records management program using modern techniques to facilitate the efficient and economic creation, maintenance, control, retention and disposition of records as defined in section 41-151.18.
2. Operate a records management center for the maintenance and housing of inactive non-archival records. The records management center shall be the only inactive records center operated by a state agency. State agencies may use other facilities for inactive records storage with prior approval of the director.
3. Establish standards and procedures for records accepted for storage.
4. Operate a secure vault as part of the records management center for the housing and maintenance of micrographic, machine read and selected essential records.

5. Operate a preservation imaging function that is responsible for:
   (a) The efficient and coordinated use of micrographics and digital imaging equipment, techniques and personnel to achieve optimum quality, effectiveness and economy in the production of source document micrographics and digital imaging.
   (b) The processing and duplication of microfilm produced by the preservation imaging operation and film produced by other agencies of this state.

§ 41-151.14. State and local public records management; violation; classification; definition

A. The head of each state and local agency shall:

1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.
2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities.
3. Submit to the director, in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.
4. Submit a list of public records in the agency's custody that are not needed in the transaction of current business and that are not considered to have sufficient administrative, legal or fiscal value to warrant their inclusion in established disposal schedules.
5. Once every five years submit to the director lists of all essential public records in the custody of the agency.
6. Cooperate with the director in the conduct of surveys.
7. Designate an individual within the agency to manage the records management program of the agency. The agency shall reconfirm the identity of this individual to the state library every other year. The designated individual:
   (a) Must be at a level of management sufficient to direct the records management program in an efficient and effective manner.
   (b) Shall act as coordinator and liaison for the agency with the state library.
8. Comply with rules, standards and procedures adopted by the director.

B. he governing body of each county, city, town or other political subdivision shall promote the principles of efficient record management for local public records. Such governing body, as far as practicable, shall follow the program established for the management of state records. The director, on request of the governing body, shall provide advice and assistance in the establishment of a local public records management program.

C. A head of a state or local agency who violates this section is guilty of a class 2 misdemeanor.

D. For the purposes of this section, "records management" means the creation and implementation of systematic controls for records and information activities from the point where they are created or received through final disposition or archival retention, including distribution, use, storage, retrieval, protection and preservation.

§ 41-151.15. Preservation of public records

A. All records made or received by public officials or employees of this state or the counties and incorporated cities and towns of this state in the course of their public duties are the property of this state. Except as provided in this article, the director and every other custodian of public records shall carefully protect and preserve the records from deterioration, mutilation, loss or destruction and, when advisable, shall cause them to be properly repaired and renovated. All paper, ink and other materials used in public offices for the purpose of permanent records shall be of durable quality and shall comply with the standards established pursuant to section 39-101. Additionally, the custodian of records that keeps photography, film, microfiche, digital imaging or other types of reproduction or electronic media pursuant to section 41-151.16, subsection A shall protect records from loss or destruction pursuant to standards that are established by the director.

B. Records shall not be destroyed or otherwise disposed of by any agency of this state unless it is determined by the state library that the record has no further administrative, legal, fiscal, research or historical value. The original of any record produced or reproduced pursuant to section 41-151.16 may be determined by the state library to have no further administrative, legal, fiscal, research or historical value. A person who destroys or otherwise disposes of records without the specific authority of the state library is in violation of section 38-421.

§ 41-151.16. Production and reproduction of records by agencies of the state and political subdivisions; admissibility; violation; classification

A. Each agency of this state or any of its political subdivisions may implement a program for the production or reproduction by photography or other method of reproduction on film, microfiche, digital imaging or other electronic media of records in its custody, whether obsolete or current, and classify, catalogue and index such records for convenient reference. The agency, before the institution of any such program of production or reproduction, shall obtain approval from the director of the types of records to be produced or reproduced and of the methods of production, reproduction and storage and the equipment which the agency proposes to use in connection with the production, reproduction and storage. Approval pursuant to this subsection is necessary for digitizing programs but not for individual instances of digitization. On approval from the director, the source documents may be destroyed, but only after an administrative audit and after safeguards are in place to protect the public records pursuant to section 41-151.15, subsection A.

B. Except as otherwise provided by law, records reproduced as provided in subsection A of this section are admissible in evidence.

C. A head of an agency of this state or a political subdivision of this state who violates this section is guilty of a class 2 misdemeanor.

§ 41-151.17. Duties relating to historical value

A. The state library shall:
   1. Determine whether public records presented to it are of historical value.
   2. Dispose of records determined to be of no historical value.
   3. Accept those records deemed by a public officer having custody of the records to be unnecessary for the transaction of the business of the public officer's office and deemed to be of historical value.

B. All public records of any public office, upon the termination of the existence and functions of the office, shall be checked by the state library and either disposed of or transferred to the custody of the state library, in accordance with this article. If a public office is terminated or reduced by the transfer of its powers and duties to another office or to other offices, its appropriate public records shall pass with the powers and duties transferred.

§ 41-151.18. Definition of records

In this article, unless the context otherwise requires, "records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to section 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute. Library or museum material made or acquired solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications or documents intended for sale or distribution to interested persons are not included within the definition of records as used in this article.

§ 41-151.19. Determination of value; disposition

Every public officer who has public records in the public officer's custody shall consult periodically with the state library and the state library shall determine whether the records in question are of legal, administrative, historical or other value. Those records determined to be of legal, administrative, historical or other value shall be preserved. Those records determined to be of no legal, administrative, historical or other value shall be disposed of by such method as the state library may specify. A report of records destruction that includes a list of all records disposed of shall be filed at least annually with the state library on a form prescribed by the state library.

Part II

Table of Contents

Arizona Agency Handbook
CHAPTER 6
PUBLIC RECORDS
Last Amended 2018

Note: The Attorney General's Agency Handbook can be found at the following web site: https://www.azag.gov/outreach/publications/agency-handbook.

CHAPTER 6
PUBLIC RECORDS

6.1 Scope of this Chapter.

This Chapter presents guidelines for agencies to use in determining which documents may be subject to public inspection pursuant to the Arizona Public Records Law, A.R.S. §§ -39-101 to -161 and discusses the procedure for handling public records requests. It also discusses the preservation and disposition of records. Notwithstanding the guidelines examined here, counsel likely should be consulted for advice in specific circumstances.

6.2 Scope of Public Records Requirements.

6.2.1 Arizona's Policy of Public Disclosure.

The general policy of this State with respect to public inspection of governmental records is set forth in A.R.S. § 39-121: "Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." This public records statute seeks to increase public access to government information and to make government agencies accountable to the public. However, some public records are confidential and should not be disclosed to the public. *See* Section 6.4 *infra*.

6.2.1.1 Defining a Public Record.

"Public Record" is not defined in statute, though A.R.S. § 39-121.01(B) requires all officers and public bodies to "maintain records, including records defined in A.R.S. § 41-151.18, that are reasonably necessary to provide an accurate accounting of their official activities and government-funded activities. "Records" are defined in A.R.S. § 41-151.18 as:

> all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to § 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute.

As a general rule, "all records required to be kept under A.R.S. § 39-121.01(B), are presumed open to the public for inspection as public records." *Carlson v. Pima Cty.*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984).

In addition, A.R.S. § 39-121 provides that "other matters in the custody" of public officers are open to inspection by the public. "Other matters subject to the public's right of access include 'documents which are not required by law to be filed as public records. . . .'" *Salt River Pima-Maricopa Indian Cmty. v. Rogers*, 168 Ariz. 531, 539, 815 P.2d 900, 908 (1991). "Other matters" include documents held by the public officer in his or her official capacity and in which the public's interest in disclosure outweighs the governmental interest in confidentiality. Id. "Because the language of A.R.S. § 39-121.01(B) is so broad, [the Arizona Supreme] Court has abandoned any 'technical distinction' between public records and other matters." *Griffis v. Pinal Cty.*, 215 Ariz. 1, 4 n.5, 156 P.3d 418, 421 n.5 (2007) (quoting *Carlson*, 141 Ariz. at 490, 687 P.2d at 1245). Although most documents in a public officer's possession are public records, documents that relate solely to personal matters and have no relation to official duties are not public records even if a public officer or agency possesses them or uses public funds to create them. *See id.* at 5, ¶ 14, 156 P.3d at 422 (recognizing that e-mails on a county-owned computer system may be purely personal and not subject to disclosure under the Public Records Law).

For examples of documents that have been found to be "public records" and "other matters," *see* Section 6.3 *infra*. A custodian of public records may be justified in not disclosing some public records (*see* Section 6.4 *infra*) but this determination does not change their character as public records.

6.2.1.2 Persons Subject to the Public Records Law.

The Public Records Law applies to "any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body." A.R.S. § 39-121.01(A)(1). Public body is defined as "this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state." *Id.* § (A)(2). This definition differs from and is more inclusive than the term "public body" as defined in the State's Open Meeting Law. *See* A.R.S. § 38-431(6): *see*, e.g., Ariz. Att'y Gen. Op. I95-010 (both Public Records Law and Open Meeting Law apply to charter schools but a different analysis applies); Ariz. Att'y Gen. Op. I85-101 (for public records purposes, the county public defender is a public official and therefore records made or received by that office are records of the

State subject to the requirements discussed in this Chapter). By definition, the employees of public officers and public bodies are also bound by the Public Records Law.

Arizona courts are not subject to Arizona's public records laws. Arizona Supreme Court Rule 123 governs the maintenance and disclosure of judicial records.

6.2.1.3 Public Records and the federal Freedom of Information Act (FOIA).

Arizona's Public Records Law is wholly separate from the federal law regarding disclosure of public information by the federal government as required under the Freedom of Information Act ("FOIA"). *See* 5 U.S.C. § 552. Although Arizona courts will look to federal case law concerning FOIA to assist them in resolving questions under the Arizona Public Records Law, *see Salt River Pima-Maricopa Indian Cmty. v. Rogers*, 168 Ariz. 531, 540-41, 815 P.2d 900, 909-10 (1991), FOIA does not apply to officers and public bodies as defined by Arizona's Public Records Law. However, public records custodians that receive a record request citing FOIA should, to the extent applicable, disclose information as required.

6.3 Types of Public Records.

The following are examples of records considered to be "public records and other matters" and therefore available for inspection upon request to the public unless otherwise protected from disclosure (discussed in Section 6.5.3 *infra*):

1. Permits and application forms for permits, Ariz. Att'y Gen. Op. I80-097;

2. Documents indicating the number of applicants for personnel positions by race and national origin, where no personal identification of the applicant is sought, Ariz. Att'y Gen. Op. I80-044;

3. Official records of proceedings of state boards and commissions, such as the Arizona Board of Tax Appeals, Ariz. Att'y Gen. Op. I79-316, and the Industrial Commission, *Indus. Comm'n v. Holohan*, 97 Ariz. 122, 126, 397 P.2d 624, 627 (1964);

4. Taxpayers' property tax valuations and the Board of Tax Appeals' records on appeals of property tax valuations, Ariz. Att'y Gen. Op. I78-234;

5. Probate files, *Henderson v. Las Cruces Prod. Credit Ass'n*, 6 Ariz. App. 549, 554, 435 P.2d 56, 61 (1967);

6. Budgets of both houses of the Legislature, Ariz. Att'y Gen. Op. 78-76;

7. Records of expenditures of public monies, Ariz. Att'y Gen. Op. 70-1;

8. Annual reports filed by corporations with the Arizona Corporation Commission, *State v. Betts*, 71 Ariz. 362, 366-67, 227 P.2d 749, 752 (1951); Ariz. Att'y Gen. Op. 61-114-L;

9. Books of accounts of municipalities, Ariz. Att'y Gen. Op. 56-8;

10. A county sheriff's "offense report" of an assault by a prisoner in the county jail, *Carlson v. Pima Cty*., 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984);

11. A draft or unfinished police report, *Lake v. City of Phoenix*, 220 Ariz. 472, 483, ¶ 36, 207 P.3d 725, 736 (2009), vacated in part on other grounds, 222 Ariz. 547, 218 P.3d 1004 (2009);

12. Petitions for land annexation by cities, *Moorehead v. Arnold*, 130 Ariz. 503, 505, 637 P.2d 305, 307 (App. 1981);

13. Autopsy reports prepared by county medical examiners, *Schoeneweis v. Hamner*, 223 Ariz. 169, 173, ¶¶ 10-11, 221 P.3d 48, 52 (App. 2009); *Star Publ'g Co. v. Parks*, 178 Ariz. 604, 605, 875 P.2d 837, 838 (App. 1993); Ariz. Att'y Gen. Op. I88-130;

14. Reports of industrial injuries, Ariz. Att'y Gen. Op. I86-090;

15. Notice of claim that high school student's attorney filed with the school district, where student's identity and medical history could be redacted. *Phoenix Newspapers, Inc. v. Ellis*, 215 Ariz. 268, 272, ¶ 17, 159 P.3d 578, 582 (App. 2007);

16. Disciplinary records of public employees, including the employee responses to disciplinary actions, A.R.S. § 39-128(A); 17. E-mail communications and computer backup tapes containing all documents for a county attorney's office may be public records, *see Star Publ'g Co. v. Pima Cty*. Attorney's Office, 181 Ariz. 432, 434, 891 P.2d 899, 901 (App. 1994) (County failed to provide specific factual basis to support argument that records were protected from disclosure);

18. Metadata embedded within electronically-maintained records. *Lake v. City of Phoenix*, 222 Ariz. 547, 551, ¶ 12, 218 P.3d 1004, 1008 (2009);

19. Crime scene videotapes. *KPNX-TV v. Superior Court*, 183 Ariz. 589, 592-93, 905 P.2d 598, 601-02 (App. 1995).

6.4 Denying Public Inspection.

Although there is a presumption in favor of access to public records, this presumption may be outweighed by legitimate government considerations of privacy and the best interests of the State. *See Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 300, ¶ 9, 955 P.2d 534, 537 (1998)

(confidentiality, privacy, or other "best interests of the state" can outweigh the public's right of inspection under the Public Records Law, but the State has the burden of overcoming the legal presumption favoring disclosure); *United States v. Loughner*, 807 F.Supp.2d 828, 835 (D. Ariz. 2011) (criminal defendant's Sixth Amendment right to fair trial may overcome duty to disclose otherwise public documents under Arizona public records law). A public body or public officer may seek a declaratory judgment in cases in which it is unclear whether or not disclosure is appropriate. *See Arpaio v. Citizens Publ'g Co.*, 221 Ariz. 130, 211 P.3d 8 (App. 2008). Below are the three exemptions that may shield certain public records from disclosure.

6.4.1 Records Confidential by Statute.

Over 300 Arizona statutes address the confidentiality of records. Appendix 6.1 provides a list of Arizona statutes that may require that all or a portion of governmental records be withheld from public disclosure. Please note that there may be changes to relevant statutes after the date this chapter was last updated, so agencies are advised to consult with their counsel. Rules or regulations also may limit disclosure of certain information. *See, e.g.*, A.A.C. R2-5A-105 (limiting public access to information in personnel files to the following: name of employee; date of employment; current and previous class title and dates of employment to class; current and previous agencies to which the employee has been assigned; current and previous salaries and dates of each change; name of employee's current or last known supervisor; certain records related to the employee's disciplinary action). In addition, federal law may require confidential treatment of certain information. *See, e.g.*, 42 U.S.C. § 405(c)(2)(C)((viii)(I) (prohibiting disclosure of social security numbers to unauthorized persons); *Loughner*, 807 F. Supp. 2d at 835-36 (finding authorization for prohibiting the release of the sheriff's investigative file under Local Crim. R. of Practice for the Dist. of Ariz. 57.2(f) because release would pose a substantial threat to the defendant's Sixth Amendment right to a fair trial). Public officials and employees should review the confidentiality provisions that affect their areas of responsibility to avoid disclosure of confidential information.

6.4.2 Records Involving Privacy Interests.

The Arizona courts have long recognized that protecting personal privacy may justify an exception to the general presumption of access to public records. *See Scottsdale Unified Sch. Dist.*, 191 Ariz. at 300, ¶ 9, 955 P.2d at 537; *Carlson v. Pima Cty.*, 141 Ariz. 487, 490-91, 687 P.2d 1242, 1245-46 (1984). An exception is warranted when the disclosure would invade privacy and that invasion outweighs the public's right to inspection. *See id*. A custodian evaluating whether this exception is warranted also should consider "whether the

information in question is available through alternative means." *A.H. Belo Corp v. Mesa Police Dep't*, 202 Ariz. 184,186, ¶ 6, 42 P.3d 615, 617 (App. 2002) (holding that the city appropriately refused to disclose the audiotape of a 911 call in light of the family's privacy interests because the city disclosed the transcript, which was all that was necessary to inform the citizens about the government's actions).

"Privacy" is not defined under the Public Records Law. The Arizona Supreme Court relied on the United States Supreme Court's definition of privacy under the federal Freedom of Information Act in finding that "information is 'private if it is intended for or restricted to the use of a particular person or group or class of persons: not freely available to the public'" and "the privacy interest encompasses 'the individual's control of information concerning his or her person.'" *Scottsdale Unified Sch. Dist.*, 191 Ariz. at 301, ¶ 14, 955 P.2d at 538 (quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989)).

For example, a person has a privacy interest in his or her birth date. Id. at 301-02, 955 P.2d at 538-39. State employees have a privacy interest in their home addresses and phone numbers. Ariz. Att'y Gen. Op. I91-004. Although autopsy reports are subject to the Public Records Law, the privacy interests of survivors "must be weighed against the need for public awareness of the government's performance of its law enforcement functions" to determine if some of the records are not appropriately subject to public inspection. *Schoeneweis v. Hammer*, 223 Ariz. 169, 175-76 ¶ 23, 221 P.3d 48, 54-55 (App. 2009). The "records of the Industrial Commission's proceedings, orders and awards" are public but "information which is not collected to serve as a memorial of an official transaction or for the dissemination of information is private[.]" *Indus. Comm'n v. Holohan*, 97 Ariz. 122, 126, 397 P.2d 624, 627 (1964). The public's right to information about the disposition of offenders generally outweighs the convicted offender's privacy interests. *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984) (affirming disclosure of a presentence report).

When a government entity withholds documents generated or maintained on a government-owned computer system on the grounds that the documents are personal records and not public records, the requesting party may ask the trial court to perform an in camera inspection to determine whether the documents are public records. *Griffis v. Pinal Cty.*, 215 Ariz. 1, 5, ¶ 16, 156 P.3d 418, 422 (2007).

6.4.3 Restricting Access to Records Based Upon the Best Interests of the State.

An officer or custodian of public records may refuse inspection of public records to protect the best interests of the State where "inspection might lead to

substantial and irreparable private or public harm." *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246.

As early as 1952, the Arizona Supreme Court recognized an exception to public disclosure for records the disclosure of which would be "detrimental to the best interests of the [S]tate." *Mathews v. Pyle*, 75 Ariz. 76, 81, 251 P.2d 893, 897 (1952). The standard "detrimental to the best interests of the state" permits a public body to designate a record as confidential only when the "release of information would have an important and harmful effect on the duties of the officials or agency in question." *Ariz. Bd. of Regents v. Phoenix Newspapers Inc.*, 167 Ariz. 254, 257-58, 806 P.2d 348, 351-52 (1991). Public officers must balance the possible adverse impact on the operation of the public body if the information in question is disclosed against the public's right to be informed about the operations of its government. Id. A public officer who determines that the harm to the State outweighs the public right to disclosure of a document has the burden of specifically demonstrating the harm if the decision is challenged in superior court. Cox Ariz. Publ'n, Inc. v. Collins, 175 Ariz. 11, 14, 852 P.2d 1194, 1198 (1993).

In *Arizona Board of Regents v. Phoenix Newspapers Inc.*, the Arizona Supreme Court applied a balancing test and held that the public's interest in ensuring the State's ability to secure the most qualified candidate for university president is more compelling than its interest in knowing the names of all of the "prospects" for the position. 167 Ariz. at 258, 806 P.2d at 352. When a "prospect" is seriously considered and interviewed, the "prospect" becomes a candidate. The court held that the public's interest in knowing which candidates are being considered for the job outweighs "countervailing interests of confidentiality, privacy and the best interest of the state." *Id*. (quoting *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246); *see also Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351, ¶ 33, 35 P.3d 105, 112 (App. 2001) (superior court did not abuse its discretion in ordering the State to disclose most of the test questions in a statewide academic test that students must pass to graduate from high school because the public interest in disclosure outweighed "the State's cost and inconvenience in remedying that disclosure"); *KPNX-TV v. Superior Court*, 183 Ariz. 589, 593, 905 P.2d 598, 602 (App. 1995) (State was justified in withholding surveillance camera videotape due to its "security concerns about public disclosure of a videotape showing undercover officers, the evidence locker, and the location of the surveillance camera").

A public officer or public body may refuse to disclose documents that contain information protected by a common law privilege where release of the documents would be harmful to the best interests of the State. *See, e.g.*, the informant's privilege, *Grimm v. Ariz. Bd. of Pardons & Paroles*, 115 Ariz. 260, 268-69, 564 P.2d 1227, 1235-36 (1977) (recognizing the "informant's privilege

which, with certain exceptions, protects the identity of the informant but not generally the contents of the communication"); *State v. Celaya*, 27 Ariz. App. 564, 567, 556 P.2d 1167, 1170 (1976) ("The state may withhold from disclosure the identity of persons who furnish information of violations of law to law enforcement officers in furtherance of the public interest in effective law enforcement.")

This exception may not be used, however, to save an officer or public body from inconvenience or embarrassment. *Dunwell v. Univ. of Ariz.*, 134 Ariz. 504, 508, 657 P.2d 917, 921 (App. 1982); Ariz. Att'y Gen. Op. 76-43. Nor may officials deny access simply because the records might be used to establish tort liability on the part of the State. Ariz. Att'y Gen. Op. I89-022. And "[t]he promise of confidentiality standing alone is not sufficient to preclude disclosure." *Moorehead v. Arnold*, 130 Ariz. 503, 505, 637 P.2d 305, 307.

6.4.4 Requests by Litigants.

The foregoing guidelines on refusing public inspection may not apply when the person requesting access to the records is a party to litigation with the State. In those cases, the party may have a greater right to access than the public generally. *See Grimm*, 115 Ariz. at 269, 564 P.2d at 1235. If a party to litigation against the State requests records under the Public Records Law, the party need not demonstrate that the "documents are relevant to anything" and therefore may obtain records that would not be discoverable in litigation. *Bolm v. Custodian of Records of Tucson Police Dep't*, 193 Ariz. 35, 39, ¶ 10, 969 P.2d 200, 204 (App. 1998). However, if the State or other public entity refuses to disclose a document to a litigant who requests it under the public records law, the court balances the government's interest in nondisclosure with the public's, not the litigant's, interest in disclosure. *Cf. London v. Broderick*, 206 Ariz. 490, 495, ¶ 17, 80 P.3d 769, 774 (2003) (holding that the government employer's interest in not disclosing its investigatory file before a pre-disciplinary interview outweighed the public's interest in "disclosure of the preliminary investigation of a low-level probation department employee at the initial stage of the investigation").

6.5 Procedure for Handling Requests for Access to Public Records or Other Matters.

6.5.1 Inspection and Copying of Public Records.

The right to inspect documents is not unqualified. *See* A.R.S. § 39-121.01(D)(1) ("Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours[.]") Records may not be inspected at times, or in ways, that disrupt public business. *See* Ariz. Att'y Gen. Ops. I80-097, 78-234, 70-1. Records must be provided if they are in

the custody of the public officer or public body, even if they are also available elsewhere. *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 540, ¶ 22, 177 P.3d 275, 282 (App. 2008).

If the custodian of public records does not promptly respond to record requests and promptly furnish records that are subject to disclosure, access will be deemed denied. A.R.S. § 39-121.01(E). "'Prompt,' . . . mean[s] 'quick to act or to do what is required,' or 'done, spoken, etc. at once or without delay.'" *W. Valley View, Inc. v. Maricopa County Sheriff's Office*, 216 Ariz. 225, 230, ¶ 21, 165 P.3d 203, 208 (App. 2007) (quoting Webster's New World Dictionary 1137 (2d ed. 1980)). In Phoenix New Times, the Arizona Court of Appeals found that the Maricopa County Sheriff's Office had wrongfully denied records requests because it had delayed in providing the requested documents and failed to offer a legally sufficient reason for the delay. *Phoenix New Times*, 217 Ariz. at 547, ¶ 49, 177 P.3d at 289.

The governmental entity has the burden in proving that its response to records request was prompt in light of the circumstances surrounding each request. *Id*. at 538-39, ¶ 15, 177 P.3d at 280-81. Promptness must in all cases be a factual determination, depending upon the accessibility and volume of the material. If the information requested is on microfilm and thus requires use of a reader/printer to view it, the time for inspection would depend upon the availability of the necessary equipment. If the requested material has been stored off the premises of the agency, additional time might be necessary to retrieve the document requested. Should this occur, the requesting party should be advised, in writing, of the delay and the reason for it. Similarly, if the requested material contains confidential information that must be redacted, the custodian should inform the requesting party that the response will be delayed and the reason for the delay. *See Judicial Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 398, 267 P.3d 1185, 1190 (App. 2011) (noting that because "[t]he promptness of a production of public records for inspection varies with the circumstances," the government "can expend time reasonably necessary to make redactions").

If the custodian of the record does not have the facilities for making copies, the person requesting the record must be granted access to it for the purpose of making copies. *See* A.R.S. § 39-121.01(D)(3). However, the copies must be made while the document remains in the possession, custody, and control of the custodian. *Id*.

6.5.2 Ongoing Requests.

In *W. Valley View Inc.*, 216 Ariz. at 228, ¶ 14, 165 P.3d at 206, the Arizona Court of Appeals held that the sheriff's office must comply with a newspaper's ongoing public records request for copies of its press releases. The court found

the request justified because the request only sought copies of "a single easily defined and identifiable category of documents that the public agency admittedly regularly generates"; the newspaper needed to receive timely press releases to meet its deadlines; and the sheriff's office provided timely press releases to many other media outlets. *Id*. at 229, ¶ 14, 230, ¶ 19.

6.5.3 Duty to Redact.

When confidential and public information are commingled in a single document, a copy of the document may be made available for public inspection with the confidential material excised. *Carlson v. Pima Cty.*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984); *see also KPNX-TV v. Superior Court*,, 183 Ariz. 589, 594, 905 P.2d 598, 603 (App. 1995) (custodian must demonstrate specific reasons and a good faith basis for denying access to entire record rather than redacting confidential portions). If confidential material has been attached to an otherwise disclosable document, the material so attached may simply be removed. *See id*.; Ariz. Att'y Gen. Ops. I86-090, I85-097. The public body should note in its records precisely which material has been excised and which has been released.

If requested, the custodian of the records of an agency (as prescribed under A.R.S. § 41-1001) shall also furnish an index of records or categories of records that have been withheld and state the reasons that each record or category has been withheld. A.R.S. § 39-121.01(D)(2). "The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order." *Id*. Records may be grouped by categories for the purposes of this index. *Id*. The Department of Public Safety, the Motor Vehicle Division of the Department of Transportation, the Department of Juvenile Corrections, and the State Department of Corrections are specifically exempt from this indexing requirement. *Id*.

6.5.4 Charges for Copies.

The Legislature has distinguished between the fees an agency may impose for commercial and non-commercial requests for copies of public records. A.R.S. §§ 39-121.01(D)(1), -121.03(A); *see* also Section 6.5.5 and 6.5.6. The custodian may require the person requesting the public record to pay in advance for any copying and postage charges. A.R.S. § 39-121.01(D)(1). If records are available on the web site, the public body or public officer may direct the requestor to obtain copies there. *See* A.R.S. § 39-121.01(D)(1).

6.5.5 Non-Commercial Use.

A person requesting copies, printouts, digital copies, or photographs of public records for a non-commercial purpose may be charged a fee for the records.

A.R.S. § 39-121.01. *But see* Section 6.5.7 *infra*. An agency may charge a fee it deems appropriate for copying records, including a reasonable amount for the cost of time, equipment, and personnel used in producing copies of records, but not for costs of searching for the records. A.R.S. § 39-121.01(D)(1); *Hanania v. City of Tucson*, 128 Ariz. 135, 136, 624 P.2d 332, 333 (App. 1980); Ariz. Att'y Gen. Op. I86-090. When the requester only wants to inspect the record, the agency may not charge a copying fee incurred, for example, to make redactions before public inspection. Ariz. Att'y Gen. Op. I13-012. Further, if the requester makes copies of public records using his or her own personal device, the agency may not charge a copying fee. *Id*. If an agency is producing documents pursuant to a subpoena in a civil action to which the agency is not a party, the fee is prescribed by A.R.S. § 12-351.

6.5.6 Commercial Use.

Persons requesting reproductions of public records for a commercial purpose must provide a statement setting forth the commercial purpose for which the records will be used. A.R.S. § 39-121.03(A).

Commercial purpose is defined as:

> [T]he use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

A.R.S. § 39-121.03(D). Commercial uses include: 1) use of the public records for sale or resale; 2) obtaining names and addresses from public records for the purposes of solicitation; and 3) the sale of names and addresses to another for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. *Primary Consultants, LLC v. Maricopa County Recorder*, 210 Ariz. 393, 400, 111 P.3d 435, 442 (App. 2005). The use of public records for one's trade or business is not a commercial purpose. *Id*. at 400, ¶ 28, 111 P.3d at 442. Gathering newsworthy facts from public records to include in a newspaper or other publication is not a commercial purpose. *Star Publ'g Co. v. Parks*, 178 Ariz. 604, 605, 875 P.2d 837, 838 (App. 1993).

If the records are to be used as evidence or as research for evidence in an action in any judicial or quasi-judicial body, they are not for a commercial purpose and there is no requirement that the action is pending at the time of the request, or that the records must be admissible. *LaWall v. R.R. Robertson, L.L.C.*, 237 Ariz. 495, 501 (App. 2015).

Upon being furnished a statement of the commercial purpose, the custodian may assess a charge that includes the following:

> 1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
>
> 2. A reasonable fee for the cost of time, materials, equipment and personnel [used] in producing such reproduction.
>
> 3. The value of the reproduction on the commercial market as best determined by the public body.

A.R.S. § 39-121.03(A).

As with non-commercial requests, the determination of the fee to be charged is made in the first instance by the public body. Among the factors to be considered in making this determination are 1) the time expended in retrieving the records; 2) transportation costs, if any; and 3) the actual cost to the public body in terms of special equipment or processing required in preparing the record for release.

In addition to the reasons for withholding records discussed in Section 6.4, public bodies may withhold records sought through a commercial request as follows:

> If the custodian of a public record determines that the [requester's] commercial purpose . . . is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the [G]overnor requesting that the [G]overnor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose.

A.R.S. § 39-121.03(B).

The public body may pursue damages in the following circumstances:

- A person obtained a public record for a commercial purpose without indicating the commercial purpose.
- A person obtained a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose.

- A person obtained a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose.
- A person obtained a public record from anyone other than the custodian of such records and uses it for a commercial purpose.

Id. § (C).

Requests that are for a non-commercial purpose do not require an explanation for the use of the records, or even a statement that the request is for a non-commercial purpose. *LaWall v. R.R. Robertson, L.L.C.*, 237 Ariz. 495 (App. 2015).

6.5.7 Free Copies.

Certain public records must be provided without charge, namely certified copies of those "to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which [are] to be presented to the United States or a bureau or department thereof." A.R.S. § 39-122(A). Victims of certain crimes also have rights to obtain copies of some records at no cost. A.R.S. § 39-127.

6.6 Consequences of Wrongful Refusal to Disclose.

6.6.1 Attorney's Fees.

In lawsuits alleging the denial of requested public records, a court may award attorneys' fees and other legal costs to requesters who substantially prevail. A.R.S. § 39-121.02(B). This does not limit the rights of any party to recover attorney's fees, expenses, and double damages that are authorized by other statutes. *Id.*

6.6.2 Damages.

A public officer or agency may also be liable for damages that result from wrongfully denying a person access to public records. A.R.S. § 39-121.02(C).

6.7 Preservation, Maintenance, Reproduction, and Disposition of Public Records.

6.7.1 Preservation and Maintenance Generally.

"All records made or received by public officials or employees of this state or the counties and incorporated cities and towns of this state in the course of their public duties are the property of the state." A.R.S. § 41-151.15(A). Each public body and officer is responsible for preserving, maintaining, and caring for the public records within their offices. A.R.S. § 39-121.01(C). Each officer and

public body is required by statute to carefully secure, protect, and preserve public records from deterioration, mutilation, loss, or destruction, unless the records are disposed of pursuant to A.R.S. §§ 41-151.15 and 41.151.19. *See* A.R.S. § 39-121.01(C); *see* also Section 6.7.5 *infra*.

The head of each state agency must perform the following duties:

> 1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.
>
> 2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.
>
> 3. Submit to the director [of the Arizona State Library, Archives and Public Records], in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.
>
> 4. Once every five years submit to the director lists of all essential public records in the custody of the agency.
>
> 5. Cooperate with the director in the conduct of surveys.
>
> 6. Designate an individual within the agency to manage the records management program of the agency. The agency shall reconfirm the identity of this individual to the state library every other year. The designated individual: (a) Must be at a level of management sufficient to direct the records management program in an efficient and effective manner. (b) Shall act as coordinator and liaison for the agency with the state library.
>
> 7. Comply with rules, standards and procedures adopted by the director.

A.R.S. § 41-151.14(A).

Governing bodies of counties, cities, towns, and other political subdivisions are also required, as far as practicable, to follow the program established for the management of state records. A.R.S. § 41-151.14(B). A state or local agency

head who fails to comply with these requirements is guilty of a class 2 misdemeanor. A.R.S. § 41-151.14(C).

The Director of the State Library, Archives and Public Records is responsible for (a) establishing "standards, procedures, and techniques for effective management of public records," A.R.S. § 41-151.12(A)(1), and (b) establishing standards and procedures for preparing schedules for retaining records of continuing value and promptly and efficiently disposing of records "no longer possessing sufficient administrative, legal, fiscal, research or historical value" to warrant their retention, *id*. § (A)(3). The Director of the State Library, Archives and Public Records is also responsible for the preservation and management of records and for authorizing the destruction or disposal of records. A.R.S. §§ 41-151.12(A), -151.15, and -151.19. Additional information regarding the standards and procedures currently established by the Director of the State Library, Archives and Public Records is available on that entity's website.

6.7.2 Quality and Storage Requirements.

All permanent public records must be "transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona state library, archives and public records." A.R.S. § 39-101(A). These public records must also be stored and maintained according to the Director's standards. *Id*. § (B). A public officer who fails to keep permanent public records in accordance with the Director's standards is guilty of a class 2 misdemeanor. *Id*. § (C).

6.7.3 Size Requirements.

All public records must conform to the standard letter size of eight and one-half inches by eleven inches, within standard paper manufacturing tolerances, unless they are "engineering drawings, architectural drawings, maps, computer generated printout, output from test measurement and diagnostic equipment, machine generated paper tapes," or public records required by law to be a different size or otherwise exempt by law from the standard size requirement. A.R.S. § 39-103(B). In addition, the Director of the Arizona State Library, Archives and Public Records may exempt documents from the standard size "requirement" if "the director finds that the cost of producing a particular type of public record [in the standard size] is so great as to not be in the best interests of this state." *Id*.

6.7.4 Reproduction of Public Records.

Each state agency may implement a program for the reproduction by photography or other method of reproduction on film, microfiche, digital imaging, or other electronic media of records in its custody. A.R.S. § 41-

151.16(A). However, prior to instituting the program, the agency must obtain approval from the Director of the Arizona State Library, Archives and Public Records. *Id*.

6.7.5 Disposition of Public Records.

The disposition of public records by the State or any of its political subdivisions is governed by A.R.S. §§ 41-151.15, -151.17, -151.19, 44-7601. A state agency may destroy records when the State Library concludes "that the record has no further administrative, legal, fiscal, research or historical value." A.R.S. § 41-151.15(B). The agency may obtain approval to destroy records from the Records Management Division of the State Library on a continuing basis pursuant to a records retention and disposition schedule or, for records not on a retention schedule, pursuant to single request form. A report of records destruction that includes a list of all records disposed of shall be filed at least annually with the State Library on a form prescribed by the State Library. A.R.S. § 41-151.19. The forms are available on the State Library website.

A public officer or other person having custody or possession of any record for any purpose, "who steals, or knowingly and without lawful authority destroys, mutilates, defaces, alters, falsifies, removes or secretes" all or part of a public record, or who permits any other person to do so, is guilty of a class 4 felony. A.R.S. § 38-421; *see also* A.R.S. § 13-2407 (making it a class 6 felony to tamper with a public record). *See* Section 2.15(3), (19), (22).

Part III

Frequently Asked Questions

Last Amended 2018

Frequently Asked Questions

1. What is a public record?

"Public record" is not defined in the public records law; however, it includes "records" as defined in A.R.S. § 41-151.18.

Officers and public bodies are required to "maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state." A.R.S. § 39-121.01(B).

"Records" includes "all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to section 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute." A.R.S. § 41-151.18.

The Arizona Supreme Court has said, "only those documents having a 'substantial nexus' with a government agency's activities qualify as public records." Griffis v. Pinal County, 215 Ariz. 1, 4, ¶ 10, 156 P.3d 418, 421 (2007). It is "the nature and purpose of the document determine its status . . . ." Id. at 4, ¶ 11, 156 P.3d at 421. In Griffis, the court held that records of a purely private nature were not public records subject to disclosure even if created and/or maintained on government equipment/accounts.

In the years following the Griffis decision, many operated under the assumption that the Griffis standard applied similarly to records of a public nature created and/or maintained on private equipment and accounts – such records would be public records subject to disclosure because of their public nature. In 2017, the Attorney General issued a formal opinion casting doubt on this view. The Attorney General concluded that "[m]essages sent or received by a private electronic device or through a private social media account implicate the public official's duty to provide a reasonable account of official conduct, but do not themselves harbor public records. Ariz. Att'y Gen. Op. I17-004. The Attorney General concluded that a record sent or received using a public official's

personal electronic device or account is not a public record, the implication being that it is not subject to disclosure. Id.

In December of 2017, the Arizona Court of Appeals issued a ruling in which it held that the phone records for a law enforcement officer's private phone may be public records subject to disclosure if the officer uses the personal phone for public business. In essence, the court disagreed with the Attorney General and held that the standard laid out in Griffis should be applied in deciding whether a record created on a private device is a public record subject to disclosure. *See* Lunney v. State, 244 Ariz. 170, ¶¶ 27-28, 418 P.3d 943, 952 (App. 2017). It is the nature of the record – whether it has a substantial nexus to public activity – that determines whether it is a public record subject to disclosure, not whether it was created on or with government resources. Id. at ¶ 8, 418 P.3d at 947.

2. Who is required to disclose public records?

Public bodies and certain individuals related to public bodies are required to maintain public records. These records are subject to inspection and, pursuant to requests for records, the custodian of particular public records must make them available for examination or provide copies.

"All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state." A.R.S. § 39-121.01(B). "Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records." A.R.S. § 39-121.01(C).

Officers and public bodies are required to maintain public records.

A "public body" includes the "state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state" A.R.S. § 39-121.01(A)(2).

An "officer" includes "any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body." A.R.S. § 39-121.01(A)(1).

The public records law entitles anyone to inspect "[p]ublic records and other matters in the custody of any officer. . . ." A.R.S. § 39-121. Further, "Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person." A.R.S. § 39-121(D)(1).

3. Can a public body charge a fee for public records?

For requests for copies of records for a non-commercial purpose, agencies and officials to charge reasonable fees for the cost of time, equipment, and personnel in making copies of records. Agencies and officials may not charge for search time and time spent redacting. *See* Hanania v. City of Tucson, 128 Ariz. 135, 624 P.2d 332 (App.1980) and Ariz. Att'y Gen. Op. I86-090.

An agency may not charge someone in order to inspect public records. *See* Ariz. Att'y Gen. Op. I13-012.

For a request for copies of records for a commercial purpose, agencies and officials may also charge for "[a] portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs" and "[t]he value of the reproduction on the commercial market as best determined by the public body." A.R.S. § 39-121.03(A).

4. What should a public body do if a member of the public requests electronic documents?

If a public entity maintains a public record in an electronic format, then the electronic version, including any embedded metadata, is subject to disclosure in the particular electronic format in which it is maintained. *See* Lake v. City of Phoenix, 222 Ariz. 547, 218 P.3d 1004 (2009).

5. How long is a public body required to keep records?

Pursuant to Title 41, Article 2.1 of the Arizona Revised Statutes, Arizona State Library, Archives and Public Records of the office of the Secretary of State is

tasked with deciding which records must be kept and for how long. State and local agencies are required to comply with the various rules, standards, and procedures adopted by the director of Arizona State Library, Archives and Public Records as well as various other related record management responsibilities.

6. Can a public body or officer require that the public to fill out a specific form or put a request in writing in order to obtain access to public records?

No. The public records law does not require requesters to fill out specific forms or make written requests in order to access public records. Similarly, the public records law does not grant public bodies or officers the authority to restrict access to public records by requiring a request be made via a specific form or in writing.

Absent any specific statute or rule to the contrary, a public body or officer cannot require a requester to make a request via particular form or in writing. A public body *may* ask the requestor for additional information (eg. name, phone number, email address, home address, or reason for the request); however, if the requestor refuses to provide this information, it cannot be used as grounds to deny the request. If the requestor refuses to make a written request and insists on making a verbal request, the absences of a written request cannot be the basis for denial.

7. How much time does a public body have to respond promptly to a public records request?

An agency is required to promptly furnish public records to the requestor. "Promptly" is not defined by statute. The courts have held that defining promptness depends on what is reasonable under the circumstances. The relevant factors to consider are the agency's resources, the nature of the request, the content of the records, and the location of the records.

8. Does a public body have to provide an index of withheld records?

Generally, only state agencies (with a few exceptions) are required, upon request, to provide an index of withheld records or categories of records that have been withheld and the reasons they were withheld. A.R.S. § 39-121.01(D)(2).

9. Are emails sent from a personal email account public records?

In short, public records are evaluated based on their content, not their location. Emails discussing public business sent from personal email accounts may be considered public records subject to disclosure. *See* question 1 for more discussion.

10. What are the penalties for failure to comply with the Arizona Public Records Law?

There are civil penalties for failure to produce public records when requested. The court may award legal costs and attorney's fees to the requester. The public officer or agency may also be liable for damages that result from wrongfully denying a person access to public records. A.R.S. § 39-121.02(C).

There are criminal penalties for failure to comply with your agency's records retention schedule. An officer "who steals, or knowingly and without lawful authority destroys, mutilates, defaces, alters, falsifies, removes or secretes the whole or any part thereof, or who permits any other person so to do, is guilty of a class 4 felony." A.R.S. § 38-421(A). Non-officers who do any of the above are guilty of a class 6 felony. A.R.S. § 38-421(B).

11. What does the Ombudsman recommend that the custodian of records do when they receive a public records request?

1. When a custodian receives a public records request, the custodian should send out an acknowledgement or receipt for the request. 2. The custodian should identify all of the records that must be reviewed for production. 3. The custodian should give the requestor an anticipated date of production based on the agency's resources, nature of request, content of the records, and location of the records. 4. The custodian should review the records to determine whether the conduct is related to public business or purely personal in nature. 5. The custodian should review the records for content that is required, by law, to be withheld or redacted. 6. The custodian should review the index in the Arizona Agency Handbook published by the Arizona Attorney General's Office for state statutes that require confidentiality and apply those statutes to the requested records. 7. The custodian should review the records for material that is private in nature or would interfere with completion of a specific duty of the agency. These interests must be weighed against the public's right to access. 8. The custodian should contact the requestor and produce the records. 9. The custodian should provide an explanation for the grounds of any withheld records or redactions. *Not all of these recommendations are required by law.*

12. Do homeowners' associations follow the public records law?

Homeowners associations are not governmental entities. As a result, they are not public bodies within the meaning of A.R.S. § 39-121.01(A)(2) and are not required to follow the public records law. Homeowners associations do, however, have some record responsibilities and may be required to provide records to members. *See* A.R.S. § 33-1805.

13. Are Arizona courts required to follow the public records law?

Arizona courts are not required to follow the public records law. They are required to follow Supreme Court Rule 123, which is similar in many ways to the public records law.

14. Where can I find a list of public records that are confidential by statute?

A non-comprehensive list of state statutes that require records be kept confidential is located in the index of the Arizona Agency Handbook published by the Arizona Attorney General.

15. Does the Department of Child Safety have to provide information regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality?

Yes. The Department is required to produce the facts relating to the fatality or near fatality including the age, gender, county, general location of the residence, the general location of the residence of the alleged perpetrator, history of reports of the child and alleged perpetrator, actions taken by the department in response to the fatality or near fatality, and a detailed synopsis of prior reports or cases of abuse, abandonment, or neglect involving the child or the alleged perpetrator and the actions taken by the department in response. A.R.S. § 8-807.01.

16. How does a person request public records?

Public Record Requests 101: The 7 steps to obtaining public records.

Step 1: First, determine what records you want to inspect. Remember, you are requesting specific documents rather than general information. It is helpful to make your request as specific as possible.

Step 2: Determine who maintains custody of the records you want to inspect. Requests to inspect public records should be directed to the public "officer" who maintains custody of the records. It is wise to first check the agency's web site and look for a request form or contact the public body directly.

Step 3: Do your research. Collect as much information as you can from search engines and web sites. Our website might be helpful. If you do not have access to a computer or the Internet, look in the front of the phone book for government listings.

Step 4: Once you have determined what records you want to inspect and where they are located, you must request the public records. The Arizona Public Records Law does not require the submission of a written request for "non-commercial" matters, however, if an oral request is denied, however, you should submit a written request for access to the documents to the head of the public body involved. The request should be drafted narrowly, identifying the documents to be inspected with as much precision as possible.

Step 5: Wait for a response. The custodian of the public record is obligated to promptly furnish the requested records. What constitutes prompt will depend on what is reasonable under the circumstances. Some requests will require greater time for the custodian of the records to review and determine whether certain information should be deleted from the records. If the turnaround time is not set forth on the public records request form, ask how long it is anticipated to take. Regardless, call after a week to verify that they did in fact receive and process your request.

Step 6: Should your request be denied, you may appeal the denial through a special action in the superior court. But first, you might consider contacting the Arizona Ombudsman – Citizens' Aide for assistance. The Ombudsman is statutorily authorized to investigate complaints relating to public access laws, request testimony or evidence, issue subpoenas, conduct hearings, make recommendations, and report misconduct.

Step 7: Last resort. You decide to take it to court and lose. If that's the case, the denial of access through a special action may be pursued in the Court of Appeals or Arizona Supreme Court in the appropriate circumstances.

Part IV

Legal Authority

Last Amended 2018

Legal Authority

Public Bodies and Public Records

Arizona Public Records Law is a state statute and the Freedom of Information Act is a federal statute. Federal Freedom of Information Act, 5 U.S.C.A. § 552 et seq., does not apply to state agencies. An Arizona public body cannot use an exception contained in the Freedom of Information Act. Ariz. Att'y Gen. Op. R75-721, p. 47, 1976-77.

When Arizona law does not directly address an issue regarding disclosure of public records, Arizona courts may look to Federal Freedom of Information Act for guidance. *See* Scottsdale Unified Sch. Dist. No. 48 of Maricopa County v. KPNX Broad. Co., 191 Ariz. 297, 300–01, ¶ 10, 955 P.2d 534, 537–38 (1998).

The courts have laid out three definitions for "public records":

> (1) a record "made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public;" (2) a record "required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done;" or (3) any "written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by ... law or not." *Mathews v. Pyle*, 75 Ariz. 76, 78–79, 251 P.2d 893 (1952) (citations omitted).

Lunney v. State, 244 Ariz. 170, ¶ 8, 418 P.3d 943, 947 (App. 2017).

Arizona law defines "public records" broadly; however, "[t]hat definition does not encompass documents of a purely private or personal nature. Instead, only those documents having a 'substantial nexus' with a government agency's activities qualify as public records." Griffis v. Pinal County, 215 Ariz. 1, 4, ¶ 10, 156 P.3d 418, 421 (2007). "Because the nature and purpose of the document determine its status, mere possession of a document by a public officer or agency does not by itself make that document a public record, nor does expenditure of public funds in creating the document." Id. at 4, ¶ 11, 156 P.3d at 421 (2007) (citations omitted).

"If a document is a public record, Arizona's presumption in favor of disclosure applies. . . ." Lunney v. State, 244 Ariz. 170, ¶ 29, 418 P.3d 943, 952 (App. 2017).

In the years following the Griffis decision, many operated under the assumption that the Griffis standard applied similarly to records of a public nature created and/or maintained on private equipment and accounts – such records would be public records subject to disclosure because of their public nature. In 2017, the Attorney General issued a formal opinion casting doubt on this view. The Attorney General concluded that "[m]essages sent or received by a private electronic device or through a private social media account implicate the public official's duty to provide a reasonable account of official conduct, but do not themselves harbor public records. Ariz. Att'y Gen. Op. I17-004. The Attorney General concluded that a record sent or received using a public official's personal electronic device or account is not a public record, the implication being that it is not subject to disclosure. Id.

In December of 2017, the Arizona Court of Appeals issued a ruling in which it held that the phone records for a law enforcement officer's private phone may be public records subject to disclosure if the officer uses the personal phone for public business. In essence, the court disagreed with the Attorney General and held that the standard laid out in Griffis should be applied in deciding whether a record created on a private device is a public record subject to disclosure. *See* Lunney v. State, 244 Ariz. 170, ¶¶ 27-28, 418 P.3d 943, 952 (App. 2017). It is the nature of the record – whether it has a substantial nexus to public activity – that determines whether it is a public record subject to disclosure, not whether it was created on or with government resources. Id. at ¶ 8, 418 P.3d at 947.

When an agency finds that part of a document should be withheld, the agency is required to redact the withheld portion of the public record and produce the remainder of the public record. Public inspection should not be denied entirely since other alternatives exist such as deletion of specific personal identifying information. Agencies should produce a redacted copy of the document rather than withholding the entire document. *See* Carlson v. Pima County, 141 Ariz. 487, 687 P.2d 1242 (1984).

The evaluation of a public records request involves a two-step process: first determine whether the requested record is a public record. If so, the presumption favoring disclosure applies. Second, determine whether an exception to disclosure applies and overcomes the presumption favoring disclosure: Determine whether the record made confidential by statute or determine whether privacy or state interest outweighs the public's interest in the record. Griffis v. Pinal County 215 Ariz. 1, 156 P.3d 418 (2007).

Determination that a record is a public record or other matter and available for public scrutiny must first be made by the officer or agency who is the custodian

of the records sought to be obtained, and damages and attorney's fees may be assessed if the officer or agency wrongfully withholds copies of the record. Ariz. Att'y Gen. Op. R75-781, p. 141, 1975-76, p. 50, 1976-77

Examples of Public Records Determinations

The release of names of signers of annexation petitions was not against the public interest as the annexation process is not meant to be clothed in secrecy but rather to be subject to open discussion and debate. Moorehead v. Arnold 130 Ariz. 503, 637 P.2d 305 (App. 1981).

Application forms used for native plant removal and transportation permits must be made available for public inspection within a reasonable time after a request is made and at a time and in a way which will not cause disruption of public business. Ariz. Att'y Gen. Op. I80-97.

The sheriff who prepared an offense report stating that an inmate had been accused of forcible oral sex upon a fellow jail inmate, was required to prepare such report pursuant to statute requiring sheriff to keep county jail and prisoners therein. Law enforcement officers are required to keep peace. Therefore, such a report was a "public record" which was required to be kept and made available to public on request. Carlson v. Pima County 141 Ariz. 487, 687 P.2d 1242 (1984).

Written information which had been voluntarily given to a legislator by a private party, accompanied by a cover letter asking that the documents remain confidential, could be made public pursuant to this section relating to the inspection of public records. Ariz. Att'y Gen. Op. I79-292.

A public records request may be made in the absence of or in advance of any litigation or anticipated claim. Bolm v. Custodian of Records of Tucson Police Dept., 193 Ariz. 35, 39–40, ¶ 11, 969 P.2d 200, 204–05 (App. 1998).

An example of a record or information which is subject to disclosure as a matter of right to the public is a record of the actual expenditure of public monies. Ariz. Att'y Gen. Op. 70-1.

If one agency transfers a public document to another, the receiving agency must also exert control over document before disclosure could be compelled. Agency has "control" over documents for purposes of public disclosure if documents come into agency's possession in legitimate conduct of official duties; mere physical possession does not impart control. Salt River Pima-Maricopa Indian Community v. Rogers, 168 Ariz. 531, 815 P.2d 900 (1991).

Examples of Withholding Public Records Based on Confidentiality

A promise of confidentiality, standing alone, is not sufficient to withhold government records. Moorehead v. Arnold 130 Ariz. 503, 637 P.2d 305 (App. 1981).

The fact that a member of the public submitting information under hazardous waste regulations designates material as "confidential" or "trade secret" does not determine whether the department of health services should protect the material from disclosure, but it may be a factor in a department's determination. Ariz. Att'y Gen. Op. I80-217.

Information noted on an accident report, such as citations or arrests made in connection with the accident being investigated, is a public record available for inspection. If the arrest record notations are from confidential Department of Public Safety criminal history data, they should be redacted before the report is made available. Ariz. Att'y Gen. Op. I89-022.

Accident reports of Arizona department of public safety are public records and should not include arrest information, since disclosure of criminal history record information would be a violation of § 41-1750 relating to criminal identification. Ariz. Att'y Gen. Op. I81-088.

Financial statements filed by contractors are confidential and are not required to be disclosed by this section relating to the inspection of public records. Ariz. Att'y Gen. Op. I79-140.

Prison authorities lawfully denied prisoner access to his master record file and Public Records Law, § 39-121 et seq., did not apply to the master record file as § 31-221 specifically limits access to master record files to employees of Department of Corrections. Berry v. State, Dept. of Corrections, 145 Ariz. 12, 699 P.2d 387 (App. 1985).

Trade secrets are protected by the confidentiality exception to disclosure under the public records law. Phoenix Newspapers, Inc. v. Keegan, 201 Ariz. 344, 348, ¶ 16, 35 P.3d 105, 109 (App. 2001).

Examples of Balancing Privacy Interest against the Public Benefit

The names and resumes of persons in the final candidate pool for appointment to presidency of a state university were subject to disclosure because the final candidates knew they were being considered for the position, had expressed desire for it and the public had legitimate interest in names of persons being seriously considered for an important position. Arizona Bd. of Regents v. Phoenix Newspapers, Inc., 167 Ariz. 254, 806 P.2d 348 (1991).

In balancing considerations such as privacy against the general public interest in disclosure, it is relevant to examine whether the information in question is available through alternative means. A.H. Belo Corp. v. Mesa Police Dept., 202 Ariz. 184, 42 P.3d 615 (App. 2002).

Due to the family's privacy concerns, the city police department was not required to release audiotape of emergency assistance call in which child was heard crying and whimpering. A transcript of the call was provided and the there was not evidence that disclosure of the audiotape advanced the purpose of the Public Records Act in any way. A.H. Belo Corp. v. Mesa Police Dept., 202 Ariz. 184, 42 P.3d 615 (App. 2002).

While state employees' home addresses and telephone numbers are public records because they are necessarily maintained in the course of official duties, they may not be disclosed in response to a request by the American Federation of State, County, and Municipal Employees. The privacy interest of state employees in their home addresses and telephone numbers and the harm that disclosure would cause state agencies' ability to hire and retain quality employees outweighed the public's interest in such access. Ariz. Att'y Gen. Op. I91-004.

A school district properly withheld teachers' birthdates from a broadcasting company and a reporter, who intended to run criminal background checks on public school teachers to see if any of them had criminal records. The public interest in disclosure did not override privacy interest of teachers, when the broadcaster and reporter were unable to provide any basis for believing that any of the thousands of teachers posed a threat to public school children. Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co., 191 Ariz. 297, 955 P.2d 534 (1998).

Examples of Withholding Public Records Based on a Determination that Disclosure is Detrimental to the Best Interest of the State

The standard "detrimental to the best interest of the state" permits an agency to designate a record as confidential only when effectiveness of the agency in the performance of its duties will be significantly impaired if disclosure of the information is made. A public body may not use a cloak of confidentiality to save an officer or agency from inconvenience or embarrassment. Ariz. Att'y Gen. Op. I83-006 (Addendum).

The public records disclosure exception for the best interest of the state does not support withholding of accident reports because they may be adverse to the state's litigation interests. Ariz. Att'y Gen. Op. I89-022.

Allegations concerning suspension or revocation of a license to hold, operate, or conduct a bingo game may be withheld from disclosure under § 39-121 upon a determination that disclosure would seriously impair a civil or criminal tax investigation Ariz. Att'y Gen. Op. I85-022.

The test for determining whether police investigatory reports should be disclosed is whether a release of a record would have important and harmful effect upon official duties of official or agency. Little v. Gilkinson, 130 Ariz. 415, 636 P.2d 663 (App. 1981).

Disclosure of public records relating to an investigation was appropriate where documents in the possession of police department were all over 20 years old. There was no ongoing investigation to which they pertained nor was any further investigation contemplated, and the police department did not explain any specific harm that would be incurred by disclosure of the requested documents. The police department contended that investigative files, and particularly inter- and intra-agency communications, originally intended to be confidential, should remain confidential indefinitely and that efficient functioning of law enforcement agencies would be undermined by any disclosure of investigatory materials no matter how stale. The court determined that disclosure was required. Church of Scientology v. City of Phoenix Police Dept., 122 Ariz. 338, 594 P.2d 1034 (App. 1979).

City police department could refuse access to files of on-going investigations if release of the information would hinder an investigation or interfere with official duties. Ariz. Att'y Gen. Op. I79-296.

If only a small portion of the information contained in a records requested to be made available for public scrutiny would be important and have a harmful effect upon the official duties of the official or agency involved, then only that portion of the record should be redacted and the remainder released for public inspection. A notation should be made in the released information indicating that portions have been deleted. Ariz. Att'y Gen. Op. R75-781, p. 141, 1975-76, p. 50, 1976-77.

Unless the government puts forward an interest that justifies withholding access to a public record, it does not matter that the information contained within the record is available by alternative means. A.H. Belo Corp. v. Mesa Police Dept., 202 Ariz. 184, 42 P.3d 615 (App. Div.1 2002).

An agency can deny a request for records when the burden of producing public records outweighs the public interest in the records. Judicial Watch, Inc. v. City of Phoenix, 228 Ariz. 393, 397, ¶ 17, 267 P.3d 1185, 1189 (App. 2011). A court should consider the following factor when weighing the burden of producing the records against the public interest: "(1) the resources and time it will take to locate, compile, and redact the requested materials; (2) the volume of materials requested; and, (3) the extent to which compliance with the request will disrupt the agency's ability to perform its core functions." Hodai v. City of Tucson, 239 Ariz. 34, 43, ¶ 27, 365 P.3d 959, 968 (App. 2016).

Examples of Redacting and Producing a Public Record

Even if portions of a public document merit confidentiality, a practical alternative to the complete denial of access would be deleting specific personal identifying information, such as names. Phoenix Newspapers, Inc. v. Ellis, 215 Ariz. 268, 159 P.3d 578 (App. 2007).

A school district must furnish contract and salary information regarding school district employees to a newspaper reporter so long as appropriate precautions are taken to insure that social security numbers and payroll deductions other than those required by law are not revealed. Ariz. Att'y Gen. Op. I85-023.

Reports of industrial injuries filed with the Industrial Commission are open to public inspection, but the personal identifying information should be redacted from the claim forms, leaving just the name of the employer and nature and cause of the injury. Ariz. Att'y Gen. Op. I86-090.

Discussion of Requirements for Denial of a Public Records Request

Party arguing against disclosure of documents that qualify as public records must specifically demonstrate how production of the documents would violate rights of privacy or confidentiality, or would be detrimental to the best interests of the state. Phoenix Newspapers, Inc. v. Ellis, 215 Ariz. 268, 159 P.3d 578 (App. 2007).

Public records law does not require that public records be furnished within a specific number of days after receipt of the request; rather, in the context of statute providing that access to a public record is deemed denied if a custodian fails to promptly respond to a request, the word "prompt" means quick to act, or requires production of the requested records without delay. Lake v. City of Phoenix, 220 Ariz. 472, 478, ¶ 16, 207 P.3d 725, 731 (App.), vacated in part, 222 Ariz. 547, ¶ 16, 218 P.3d 1004 (2009).

In assessing the promptness of a public agency's response to a request for records under the public records statute, a court looks to the time that the original request was made, and not to the time that the special action seeking access to the records was filed. Phoenix New Times, L.L.C. v. Arpaio, 217 Ariz. 533, 177 P.3d 275 (App. 2008).

Attorneys' fees may be awarded where access to public records is denied if two requirements are met: first, the entity requesting access to the records must be entitled to them, and access must have been wrongfully denied; second, custodian of records must have acted in bad faith or in arbitrary or capricious manner by withholding access to the records. Scottsdale Unified Sch. Dist. No. 48 of Maricopa County v. KPNX Broad. Co., 188 Ariz. 499, 937 P.2d 689 (App. 1997), as amended (Jan. 16, 1997), vacated, 191 Ariz. 297, 955 P.2d 534 (1998).

The board of regents did not act in bad faith in refusing to disclose to media either names and resumes of persons who were in prospect pool for appointment to presidency of state university or names and resumes of persons who were final candidates. The newspapers could not recover attorney fees and costs after they obtained disclosure of final candidates' names and resumes. Arizona Bd. of Regents v. Phoenix Newspapers, Inc., 167 Ariz. 254, 806 P.2d 348 (1991).

Litigation and Penalties

Under the public records statute, the public official from whom records have been requested has the burden of establishing that its responses to the requests were prompt given the circumstances surrounding each request. Phoenix New Times, L.L.C. v. Arpaio,217 Ariz. 533, 177 P.3d 275 (App. Div.1 2008).

Where a record is a public record or other matter available for public scrutiny, damages and attorney's fees may be assessed if the officer or agency having custody of the record wrongfully withholds copies of the record. Ariz. Att'y Gen. Op. R75-781, p. 141, 1975-76, p. 50, 1976-77.

The newspaper was not entitled to attorney fees incurred at the trial court level and on appeal in special action under public records law that resulted in an order compelling the state to disclose most of the questions from the first administration of the state academic test for high school students. The state did not act in bad faith or in an arbitrary or capricious manner in denying newspaper's request, but had colorable reasons for its limited access policy. Phoenix Newspapers, Inc. v. Keegan,) 201 Ariz. 344, 35 P.3d 105 (App. 2001).

The city was not liable for attorney fees for denial of a request for police department hiring records, official commendations, and official reprimands for two police officers who were defendants in a civil lawsuit because the denial was not arbitrary and capricious. The city had disclosed records that it considered relevant and the city's duty to disclose remaining records involved previously unresolved legal issues. Bolm v. Custodian of Records of Tucson Police Dept., 193 Ariz. 35, 39–40, ¶ 11, 969 P.2d 200, 204–05 (App. 1998).