

SPECIAL POINTS
OF INTEREST:

- Two new Ombudsmen for Public Access: Staff Attorneys Liz Hill and Danee Garone.
- Sunshine Week March 13-19: Nationwide celebration of access to public information.
- Open meeting law and public records law materials and updates are [available on our website](#).
- [Click here](#) to view our open meeting law booklet.
- [Click here](#) to view our public records law booklet.
- Please visit our website for [more information on training](#).
- Upcoming training: (see website for more details)

March 17: Mayer Water District—open meeting law

March 31: Peoria City Hall—open meeting law



The Public Record

MARCH 2016

Recent Opinion: Hodai v. City of Tucson

A reporter sued the Tucson Police Department (TPD) for records on the surveillance equipment it uses to collect data from cellphones. Hodai submitted his first records request for records concerning TPD's purchase and use of Stingray and Stingray II cell phone tracking equipment. In response, TPD provided him with four closed investigation reports, but redacted them, citing exemptions in the Freedom of Information Act and a nondisclosure agreement with Stingray's manufacturer, Harris Corporation and the Federal Bureau of Investigation. It failed to provide work product resulting from the use of Stingray or Stingray II, requests or authorizations of Harris Corp. products in any police operations, training materials, and internal policies.

TPD also failed to produce memos describing when to use Stingray and external correspondence concerning the program. Hodai filed additional related record requests in November and December, but no additional documents were produced.

After conducting an in camera review the trial court ruled that the Department properly withheld the remaining documents.

The Court of Appeals affirmed in part and reversed in part. The Court agreed that most of the training materials, the open investigation report, and "data dump" contained sensitive information which outweighed the presumption in favor of disclosure. However, the Court determined that the trial court erred when it found that all of the training documents contained

sensitive information. The Court found that one of the documents contained both sensitive and non-sensitive information, and that the sensitive information could be redacted without compromising the government's ability to keep technological information about Stingray secret.

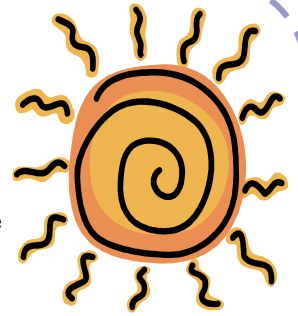
The Court also agreed with Hodai's argument that the Department failed to promptly provide the four closed investigation reports and thus wrongfully denied him the records. The Court noted that there was no evidence the records would have been difficult to locate and promptly disclose and thus the eight to 10 month delay without explanation from the Department was not prompt.

Bills To Watch: Pending Legislation



- HB 2383 amends Title 39 and addresses the release of information from law enforcement records related to victims and witnesses.
- SB 1282 amends ARS 39-121.02 establishing a defense to any action related to a request for access to public records, that the request is unduly burdensome or harassing.
- HB 2583 sought to amend ARS to require all public bodies to provide a complete audiovisual recording of all meetings except for executive sessions. The bill failed on third read in the House. It was reconsidered the same day after an amendment was made to exempt special taxing districts from the requirement. This time, the bill narrowly failed 31-28.

Arizona Revised Statutes Title 39 versus Freedom of Information Act: Do you know the difference?



The Arizona Public Records Law applies to state agencies and political subdivisions of the state, including counties, cities, schools, fire districts and water districts. The Freedom of Information Act applies to federal agencies. The Freedom of Information Act has several provisions that are not included in the Arizona Public Records Law. For example, FOIA has a general time limit of one month to respond to requests, FOIA allows a federal agency to charge for search time and FOIA allows a public records requestor to request a waiver of the fee. Conversely, Arizona's public records law requires furnishing records promptly, which ultimately depends on the facts and circumstances surrounding each request, permits a reasonable copying fee, which excludes search time and redaction, and contains no provisions for an individual to request a waiver of fees for copying records or obtaining records for a commercial purpose.

Did you know?

In order to properly hold an executive session, a public body must include it on its meeting notice and agenda. A.R.S. § 38-431.02(B) provides, "[if] an executive session is scheduled, a notice of the executive session shall state the provision of law authorizing the executive session" and the notice must be provided to the public body members and public.

Statute also provides, "The agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege." A.R.S. § 38-431.02(I).

Therefore, the notice must indicate that an executive session may be held pursuant to [insert applicable statutory provision] and the agenda must provide a general description of the matters to be discussed.

Arizona Ombudsman – Citizens' Aide



Greetings!

We hope our Spring newsletter finds you doing well and embracing **Sunshine Week**. Take some time this week to reflect on transparency and accessibility to government—maybe even do some spring cleaning: Review and destroy records that have reached the end of their retention periods; evaluate policies, processes and procedures related to access; and ensure compliance with Arizona's public record and open meeting laws.

As always, our goal is to provide you with timely and informative information related to Arizona's Public Record and Open Meeting Laws. If you have suggestions and ideas for an upcoming newsletter, or questions you want answered, please feel free to contact our office. Public records law and open meeting law training is also available upon request.

Sincerely,

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