

SPECIAL POINTS
OF INTEREST:

- Open meeting law and public records law materials and updates are available on our website under publications.
- Training opportunities and training videos are posted at <http://www.azleg.gov/ombudsman/presentations.asp>

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The Public Record

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A Prompt Review

The Arizona Public Records Law requires that public bodies promptly produce public records for examination or copying. Further, a request is statutorily denied if the public body fails to respond to the request or fails to provide an index of withheld records, if required.

The degree of promptness of the public body can vary greatly depending on the individual request. "Promptly" is not defined by statute. The court used a detailed analysis in *Lake v. City of Phoenix* to determine whether the public body statutorily denied the public records request for failing to promptly produce the records.

The court defined "promptly" as "quick to act" or to produce the

public records request "without delay." The court also acknowledged that the meaning of prompt may vary depending on the facts of the specific circumstances.

The public body has the burden of proving that they acted promptly in response to a request. Courts have identified four factors that are relevant to determining the promptness of the public body's response. These factors include:

- The agency's resources for filling public records requests,
- The nature of the records requested,
- The content of the records requested, and

- The location of the records requested.

Public employees that are concerned about their ability to respond promptly to a public records request have numerous options to ensure that they are offering a high quality of public service. Those options include maintaining responsive communication with the requestor, offering partial production of the records requested as they are ready, and communicating with the requestor about their interests to more accurately and efficiently retrieve the information sought.

Agency personnel should use their own ability to access the records as a barometer.

Recent Legislation



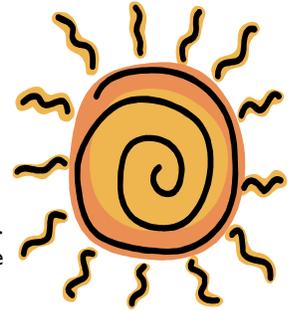
The Legislature amended the definition of a "public body" which carries both Arizona Public Records and Open Meeting Law implications.

HB2807: Amends A.R.S § 39-431 to include all commissions and public entities established by the state constitution or ballot initiative in the definition of

"public body." The Bill specifically names the Independent Redistricting Commission as a public body subject to both Open Meeting Law and Public Records Law.

To review the text and status of these bills, go to www.azleg.gov and enter the bill number.

Judges have Broad Discretion to Award Attorney's Fees



The Court of Appeals gave thorough consideration to A.R.S. § 39-121.02(B) in its decision on *Democratic Party of Pima County v. Beth Ford*. The case dealt with a public records request for records within ballot boxes. Although both parties prevailed in portions of the case, the Democratic Party appealed the trial court's denial of an award of attorney's fees and costs.

The Court opined that even when a party substantially prevails on a claim under Arizona Public Records Law, the court still has discretion to award attorney's fees. The Court rejected the Democratic Party's argument that if a court found that the requestor substantially prevailed on the merits that they were required to award attorney's fees. The plain meaning of the statutory language and the broad choice of language used in the statute indicates that the legislative intent is for award of attorney's fees to be discretionary not mandatory.

The Court further stated that due to the nature of case, the Democratic Party did not substantially prevail on the merits. In this case, each party prevailed in part. The Democratic Party prevailed in gaining access to the records and Pima County prevailed in the procedures required to open the ballot boxes. This case further clarifies that in order to be awarded attorney's fees in public records litigation, the court must find that you substantially prevailed on the merits of the case and that an award of attorney's fees is appropriate and consistent with the policy of the public records law.

Democratic Party of Pima County v. Beth Ford, 228 Ariz. 545 (Ct of Appeals, January 27, 2012).



Arizona Ombudsman – Citizens' Aide

Greetings!

I hope our Spring newsletter finds you doing well. 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 information you would like to share in an upcoming newsletter, or questions you want answered, please feel free to contact our office.

Sincerely,

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