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MESSAGE FROM
DANEE GARONE

SIDEBAR:

- The Ombudsman for Public Access is Staff Attorney Danee Garone.
- 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.
- Review past [Public Access Newsletters](#)
- Please visit our website for [more information on training](#).
- [Upcoming Training](#)

March 29: Murphy Elementary School District -- Open Meeting Law

March 30: Arizona Municipal Clerks Association -- Public Records Law

April 19: Maricopa Community Colleges -- Public Records Law

May 1: City of Phoenix -- Public Records Law

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The Public Record

State Ombudsman Dennis Wells

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Public Records Law: Index of Withheld Records

When a public agency or official denies a public records request, is the requester entitled to know why?

In some circumstances, public records law entitles those whose requests have been denied to request an index of records that have been withheld and the reasons why.

A.R.S. § 39-121.01(D)(2), reads, in part, "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."

At first glance, this seems like a very powerful provision that requires all agencies within the

State to provide indexes to those who are denied public records, but let us take a closer look.

The statute does not define "agency," but it explicitly incorporates the definition laid out in A.R.S. § 41-1001(1). Additionally, the statute specifies that "agency" 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."

A.R.S. § 41-1001(1) defines "agency" so that it does NOT include "the legislature, the courts or the governor." Additionally, "[a]gency does not include a political subdivision of this state or any of the administrative units of a political subdivision. . . ."

Because of the restrictions within the definition of "agency," the index requirement applies to most State agencies, but it does not apply to the judicial or legislative branches of State government or local government such as counties or municipalities.

In a footnote, the Arizona Court of Appeals supported this reading when it held that a city is not an agency and, thus, not subject to the index requirement. See [Judicial Watch, Inc. v. City of Phoenix](#), 228 Ariz. 393, 267 P.3d 1185 (App. 2011).



Open Calls to the Public: Requirements and Restrictions

One of the more common open meeting law topics that comes before our office is calls to the public and the restrictions that public bodies can place on speakers. A.R.S. § 38-431.01(H) gives public bodies discretion to make an open call to the public during public meetings. It further states that, at an open call to the public, members of the public may "address the public body on any issue within the jurisdiction of the public body." The public body, however, has authority to subject speakers to "reasonable time, place and manner restrictions." Well, what constitutes a "reasonable time, place and manner" restriction?

Arizona courts have not weighed in on this issue; however the Attorney General's office (AG) has. In *Ariz. Op. Atty. Gen. No. 199-006* (Mar. 5, 1999), an opinion issued before the open call to the public provision was added to the statute, the AG concluded that a call to the public creates a "limited public forum." As a result, limiting speech at open calls to the public triggers fairly serious First Amendment standards. Restrictions placed on speakers must be "reasonable and viewpoint neutral." [Pleasant Grove City, Utah v. Summum](#), 555 U.S. 460, 470, 2009). As the AG notes, federal courts have approved setting time limits, banning repetition, and prohibiting disruptive behavior as reasonable, time, place manner restrictions. We suggest exercising caution when instituting any further limits on speakers at open calls to the public. Consult your attorney for more guidance.

Pending Legislation

SB 1019 would amend A.R.S. § 39-121.02. Most notably, the bill would make it a defense to any special action filed under public records law “that the request for access to public records is unduly burdensome or harassing.” The bill would also amend the statute so that someone denied records could file a special action if they identified the records they sought with “reasonable particularity.” The bill has not advanced beyond second read in the Senate and was not acted on by any committees. As a result, it is unlikely that this bill will pass into law.

HB 2101 would add A.R.S. § 41-1609.07. This bill would require private entities that contract with any government entity to “provide detention or incarceration services for offenders in this state” to provide, on request, “all records relating to the contractor’s costs, operations, staff and inmates to the same extent that is required of state, county or municipally operated prisons or jails.” This bill has not advanced beyond second read in the House and was not acted on by any committees. As a result, it is unlikely that this bill will pass into law.

SB 1059 would, in part, amend several statutes so as to restrict disclosure of information concerning Adult Protective Services employees. Disclosure of certain information concerning eligible persons is currently restricted by various statutes. SB 1059 would amend several statutes, including A.R.S. §§ 39-123 and -124, so that the definition for “eligible person” would now include Adult Protective Services employees “who [have] direct contact with families in the course of employment.” This bill passed the Senate and has been second-read in the House; however, no House committees have acted on the bill in the month since it was second read in the House. There is nothing scheduled for the bill as of March 28. As a result, this bill seems unlikely to pass into law.

Arizona Ombudsman – Citizens’ Aide

Greetings!

In our spring newsletter, we discuss the public records index requirement, restrictions on public speakers during open calls to the public, and pending legislation.



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.

Additionally, we recently made some minor updates to our public records and open meeting law handbooks. We are in the process of making additional updates. As always, you can find the most up-to-date versions of our handbooks on our website.

Sincerely,

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