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Message from the Arizona Ombudsman

Secrecy and a free, democratic government don't mix.

– President Harry Truman

Arizona public policy favors open government. Statute specifically requires all officers and public bodies to maintain, and make available for inspection by any person at all times during office hours, all records reasonably necessary to maintain an accurate knowledge of their official activities.

Effective January 1, 2007, in an effort to increase government awareness and provide the citizens of Arizona an effective and efficient means to get answers and resolve public access disputes, new legislation expanded the Ombudsman-Citizens' Aide Office to provide free services to citizens and public officials to help untangle the public access web. The duties of the Ombudsman include: preparing materials on public access laws, providing training to public bodies, coaching and assisting citizens, investigating complaints, requesting testimony or evidence, conducting hearings, making recommendations, and reporting misconduct.

This pamphlet contains information relating to the Arizona Public Records Law and is provided to serve as a quick reference for you. Part I of the pamphlet contains the text of the Public Record Law Statutes. Part II contains a copy of Chapter 6 of the Arizona Agency Handbook, which explains the Public Records Laws.¹ Part III provides a summary of recent statutory changes, recent case law, and recent Attorney General Opinions.² Part IV provides the Ombudsman's statutory authority to educate and investigate matters relating to public access laws.

For more information, or to schedule training, please call the Ombudsman's Office at 602-277-7292 or 800-872-2879. You can also send a letter to Arizona Ombudsman-Citizens' Aide 3737 N. 7th St. Suite 209 Phoenix, AZ 85014, fax a letter to 602-277-7312, send an e-mail to ombuds@azoca.gov, or come into the office. Of course, you can always visit the Ombudsman's website at www.azoca.gov.

Patrick Shannahan
Arizona Ombudsman – Citizens' Aide

¹ Please note that the Arizona Agency Handbook was last revised in May 2001. For a summary of recent activity, please see Part III.

² Part III is not an exhaustive list of recent activity.

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Part I

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

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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. Upon written application the director of the Arizona state library, archives and public records may approve additional exemptions from this section if based upon such application the director finds that the cost of producing a particular type of public record in accordance with subsection A is so great as to not be in the best interests of this state.

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 the state, any county, city, town, school district, political subdivision or tax-supported district in the 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 the state or any political subdivision of the state, or expending monies provided by the state or any political subdivision of the state.
- B. All officers and public bodies shall maintain all records, including records as defined in section 41-1350, 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 the state or any political subdivision of the 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 41-1347 and 41-1351.
- 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 web site 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 paragraph shall limit the rights of any party to recover attorney fees pursuant to section 12-341.01, subsection C, or 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 gov-

ernor 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 peace officer, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections of-

ficer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, 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. "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.
6. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.
7. "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.
8. "Peace officer" has the same meaning prescribed in section 13-105.
9. "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.
10. "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.

39-124. 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 build-

ings, 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 peace officer, 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, 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. “Judge” means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.
6. “Justice” means a justice of the United States or Arizona supreme court or a justice of the peace.
7. “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.
8. “Peace officer” has the same meaning prescribed in section 13-105.
9. “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.
10. “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.

39-127. 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 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.
- B. For the purposes of this section, "criminal offense," "immediate family" and "victim" have the same meanings prescribed in section 13-4401.

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.

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.

Part II

Arizona Agency Handbook Chapter 6 Public Records

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6.1 Scope of this Chapter.

This Chapter presents guidelines for agencies to use in determining which documents are subject to public scrutiny under the Arizona public record law, A.R.S. §§ 39-101 to -161, and discusses the procedure for handling requests for access to public records. It also discusses the preservation and disposition of records.

6.2 Scope of Public Records Requirements.

6.2.1 Arizona's Policy of Public Disclosure. Section 39-121, A.R.S., sets forth the general policy of this State with respect to public inspection of governmental 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." The public records statute seeks to increase public access to government information and to make government agencies accountable to the public.

6.2.1.1 What is a Public Record. 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 County*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984). Section 39-121.01(B), A.R.S., requires all officers and public bodies to maintain records, including records defined in A.R.S. § 41-1350, reasonably necessary to provide an accurate accounting of their official activities and of any government-funded activities. Section 41-1350, A.R.S., defines "records" 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 § 41-1348, 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 therein.

Section 39-121 also requires public officers to disclose "other matters." "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 Community 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.* The Court of Appeals has therefore endorsed the Attorney General's opinion that:

the proper way to view all requests for information is not to determine whether or not a record is technically a public record or other matter, but instead to determine if release of the information would have an impor-

tant and harmful effect upon the official duties of the official or agency.

Church of Scientology v. City of Phoenix Police Dep't, 122 Ariz. 338, 339, 594 P.2d 1034, 1035 (Ct. App. 1979) (quoting Ariz. Att'y Gen. Op. 76-43 (1976)). Few, if any, records in the possession or control of a public officer will not be "public records." *Carlson*, 141 Ariz. at 490, 687 P.2d at 1245. For examples of documents that have been found to be "public records" and "other matters," see Section 6.3 *infra*.

6.2.1.2 Persons Subject to the Public Records Laws. The laws governing public records apply 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 "the state, any county, city, town, school district, political subdivision or tax-supported district in the 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 funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof." *Id.*, § (A)(2). This definition differs from and is more inclusive than the term "public body" defined in the State's Open Meeting Law. A.R.S. § 38-431(5). 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 public records laws.

6.3 Types of Public Records.

The following are examples of types of documents that have been found to be "public records and other matters" and thus are available upon request to the public except for any portions of the document that may be protected from disclosure (discussed in Section 6.5 below):

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, *Industrial 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 County*, 141 Ariz. 487, 687 P.2d 1242 (1984);
11. Petitions for land annexation by cities, *Moorehead v. Arnold*, 130 Ariz. 503, 505, 637 P.2d 305, 307 (Ct. App. 1981);
12. Autopsy reports prepared by county medical examiners, *Star Publ'g Co. v. Parks*, 178 Ariz. 604, 875 P.2d 837 (Ct. App. 1993); Ariz. Att'y Gen. Op. I88-130;
13. Reports of industrial injuries, Ariz. Att'y Gen. Op. I86-090;
14. Computer backup tapes containing all documents for County Attorney's Office including e-mail communications of employees, *Star Publ'g Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (Ct. App. 1994) (County failed to provide specific factual basis to support argument that records were protected from disclosure); and
15. Videotapes held by the Yuma County Police Department, *KPNX-TV v. Superior Court*, 183 Ariz. 589, 905 P.2d 598 (Ct. App. 1995) (but holding that the State properly withheld disclosure of one of two videotapes because of safety and security concerns).

6.4 Denying Public Inspection.

The custodian of public records may deny inspection when:

1. The record is made confidential by statute, *Berry v. State*, 145 Ariz. 12, 13, 699 P.2d 387, 388 (Ct. App. 1985);
2. The record involves the privacy interests of persons, *Scottsdale Unified School Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 537 (1998); or
3. Disclosure would be detrimental to the best interests of the State, *Board of Regents v. Phoenix Newspapers, Inc.*, 167 Ariz. 254, 258, 806 P.2d 348, 351 (1991); *KPNX-TV*, 183 Ariz. at 592, 905 P.2d at 601.

6.4.1 Records Confidential by Statute. There are over 300 Arizona statutes that address the confidentiality of records. A comprehensive list of the Arizona statutes that may require that all or a portion of governmental records be protected from public disclosure is included at the end of this chapter. Appendix 6.1. Arizona rules may also limit disclosure of certain information. *See, e.g.*, A.A.C. R2-5-105 (limiting public access to information in personnel files to the following: name of employee;

date of employment; current and previous class title; name and location of 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). In addition, federal law may require confidential treatment of certain information. *See, e.g.*, 42 U.S.C. § 405(c)(2)(c)(ii), (viii)(I) (prohibiting disclosure of social security numbers to unauthorized persons). 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 personal privacy as an exception to the general rule requiring access to government records. *See Scottsdale Unified School Dist.*, 191 Ariz. at 300, 955 P.2d at 537; *Carlson*, 141 Ariz. At 490, 687 P.2d 1245 (1984). Under this exception, the custodian has discretion to deny public inspection when the disclosure would invade privacy and that invasion outweighs the public's right to know. *See id.*

Because privacy is not defined under the Public Records Law, the Arizona Supreme Court relied on 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 School Dist.*, 101 Ariz. at 301, 955 P.2d at 538 (quoting *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763-64 (1989)).

A person has a privacy interest in his or her birthdate. *Id.* at 302, 955 P.2d at 538. 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 may justify nondisclosure in some circumstances. Ariz. Att'y Gen. Op. I88-130. 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 ...". *Industrial Comm'n*, 97 Ariz. at 126, 397 P.2d at 627. The public's right to know generally outweighs the privacy concerns of a convicted offender. *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 53 (1984).

6.4.3 Discretionary Refusal to Disclose. The Arizona Supreme Court has also recognized that 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 State. *Mathews v. Pyle*, 75 Ariz. 76, 251 P.2d 893 (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.” *Board of Regents*, 167 Ariz. at 257-58, 806 P.2d at 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.* at 258, 806 P.2d at 352. When a public officer determines that the harm to the State outweighs the public right to disclosure of a document, he has the burden of specifically demonstrating the harm if his decision is challenged in superior court. *Cox Arizona Publications, Inc. v. Collins*, 175 Ariz. 11, 14, 852 P.2d 1194, 1198 (1993).

Applying the balancing test in *Board of Regents*, the Supreme Court 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. *Board of Regents*, 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 and privacy and the best interests of the State.” *Id.*; *see also KPNX-TV*, 183 Ariz. at 593, 905 P.2d at 602 (State justified the withholding of 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. Arizona Board 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”); and the deliberative process privilege, *Grimm*, 115 Ariz. at 269, 564 P.2d at 1235 (agreeing with the reasoning in *United States v. Morgan*, 313 U.S. 409 (1941) and holding that the mental processes of an administrative decision-maker were protected from disclosure including the manner and extent of his study of the administrative record and his consultation with subordinates).

The cloak of confidentiality may not be used, however, to save an officer or public body from inconvenience or embarrassment. *Dunwell v. University of Arizona*, 134 Ariz. 504, 508, 657 P.2d 917, 921 (Ct. 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.

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. On the other hand, 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, 969 P.2d 200, 204 (Ct. App. 1998).

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

6.5.1 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*, 141 Ariz. at 491, 687 P.2d at 1246; *see also KPNX-TV*, 183 Ariz. at 594, 905 P.2d at 603 (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.

6.5.2 Inspection of Public Records. The right to inspect documents is not unqualified. Records may not be inspected at such times and in such manner as to disrupt public business. *See Ariz. Att’y Gen. Ops. I80-097, 78-234, 70-1*; 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.”) The public is entitled to inspect information within a reasonable time after a request is made. Ariz. Att’y Gen. Ops. I80-097, 78-234, 70-1.

Whether time and manner are reasonable must in all cases be a factual determination, depending upon the accessibility 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. 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)(2)*. However, the copies must be made while the document remains in possession, custody, and control of the custodian. *Id.*

6.5.3 Charges for Copies. The Legislature has distinguished between the fees an agency may require for commercial and non-commercial requests for copies of public records. A.R.S. §§ 39-121.01(D)(1), -121.03(A) *infra*.

6.5.4 Non-Commercial Use. A person requesting copies, printouts, 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 6.5.6 *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, 624 P.2d 332 (Ct. App. 1980); Ariz. Att’y Gen. Op. I86-090. 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.

6.5.5 Commercial Use. Persons requesting reproductions for a commercial purpose must provide a statement setting forth the commercial purpose for which the records are requested. A.R.S. § 39-121.03(A).

As used in this Section, commercial purpose is defined as:

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.

A.R.S. § 39-121.03(D).

Gathering newsworthy facts from public records to include in a newspaper or other publication is not a commercial purpose. *Parks*, 178 Ariz. at 605, 875 P.2d at 838. Upon being furnished a signed statement, 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 [document or] 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.

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 [G]overnor requesting that the [G]overnor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose.

Id. § (B).

6.5.6. Free Copies. Certain public records must be provided without charge, namely those concerning “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).

6.6 Consequences of Wrongful Refusal to Disclose.

6.6.1 Attorney’s Fees. If a custodian acts arbitrarily, capriciously, or in bad faith in denying access to a public record, the court may award legal costs, including attorney’s fees, to the requester. A.R.S. § 39-121.02(B). A court will not find denial of access to be arbitrary or capricious if taken honestly and upon due consideration, even though the requesting party may believe that the custodian was wrong to deny access. *Board of Regents*, 167 Ariz. at 259, 806 P.2d at 353 (citing *Tucson Public Schs., Dist. No. 1 v. Green*, 17 Ariz. App. 91, 94, 495 P.2d 861, 864 (1972)). However, where the custodian refused to disclose an entire file based on a general objection without redacting confidential portions or submitting a redacted version to the court for *in camera* review, the court found that the custodian abused his discretion. *Cox*, 175 Ariz. at 15, 852 P.2d at 1199.

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 in the course of their public duties are the property of the state.” A.R.S. § 41-1347(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. §§ 41-1347 and -1351. A.R.S. § 39-121.01(C); *see* 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 the 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. 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. 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 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.

A.R.S. § 41-1346(A).

The Director of the State Library, Archives and Public Records is responsible for (a) establishing standards, procedures, and techniques for effectively managing public records 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. A.R.S. § 41-1345(A)(1) and (3). This statute also makes the Director of the State Library, Archives and Public Records responsible for the preservation and management of records and for authorizing the destruction or disposal of records. A.R.S. §§ 41-1345(A), -1345.01, and -1347.

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 standards established by the Director. *Id.* § (B). A public officer who fails to keep permanent public records in accordance with the standards established by the director 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 8-1/2 inches by 11 inches, unless they are “engineering drawings, architectural drawings, maps, computer generated printout[s], 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. 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.* § (B).

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 or electronic media of records in its custody. A.R.S. § 41-1348(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. §§ 41-1347, -1349, and -1351. 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. § 41-1347(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. (The forms are in Appendix 6.2.)

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 public record, or 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); Section 2.15(3), (19), (22).

Appendix 6.1, Records Made Confidential/Non-Disclosable by Arizona Statute (numerical order by title/statute), and Appendix 6.1.2, Records Made Confidential/Non-Disclosable by Arizona Statute (alphabetical order by subject matter) may be downloaded as PDFs at:

www.azag.gov/Agency_Handbook/Agency_Handbook.html

Record Management forms and manuals may be found at:

www.lib.az.us/records/forms.cfm

Part III

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STATUTORY CHANGES

ARS section 39-121.01 amended by:

Laws 2002, Ch. 211, §§ 1, 2

- ◆ Allows public records that are not otherwise available on the public bodies' web site to be released through the mail.
- ◆ Requires the custodian responsible to promptly furnish the records.
- ◆ Specifies that access is deemed denied if custodian fails to promptly respond to a request for production of a public record.
- ◆ Allows the custodian to require the person requesting the public records to pay in advance for any copying and postage charges.
- ◆ Expands the definition of a seal when used in reference to a paper issuing from a court or public office to include a stamped seal, a printed seal, a screened seal, and a computer generated seal.

Laws 2004, Ch. 158, § 1

- ◆ Requires a custodian of records of a state agency to provide an index of records that have been withheld from the requesting person stating the reason each record is being withheld.
- ◆ Allows records to be grouped by categories for the purposes of the index.
- ◆ Provides that the term agency shall have the same meaning prescribed in section 41-1001.
- ◆ Specifically exempts the Department of Public Safety, the Motor Vehicles Division of the Department of Transportation, the Department of Juvenile Corrections, and the Department of Corrections.
- ◆ Provides that this does not prevent or require an order compelling a public body other than an agency to furnish an index.
- ◆ Specifies that access is deemed denied if the custodian fails to provide an index of records withheld to the requesting person.

Laws 2006, Ch. 167, § 1

- ◆ Clarifies that public records for purposes listed in section 39-122 OR 39-127 shall be furnished without charge.

ARS section 39-121.02 amended by *Laws 2006, Ch. 249, § 1*:

- ◆ Allows the court to award attorney fees to a requestor of public records if the requestor substantially prevails in a court action for denial of access to records.
- ◆ Removes the limitation that attorney fees only be awarded if the court determines that the custodian of such public record acted in bad faith, or in an arbitrary or capricious manner, in denying access to public records.
- ◆ Specifies that this act does not limit the rights of any party to recover attorney fees, expenses, and double damages that are authorized by other statutes.

ARS section 39-123 amended by:

Laws 2003, Ch. 106, § 6

- ◆ Grants justices, judges, commissioners, and public defenders the same protection granted peace officers from disclosure of their home address or home telephone number contained in a personnel file.
- ◆ “Commissioner” means a commissioner of the superior court.
- ◆ “Judge” means a judge of the United States District Court, the United States Court of Appeals, the United States Magistrate Court, the United States Bankruptcy Court, the Arizona Court of Appeals, the superior court, or a municipal court.
- ◆ “Justice” means a justice of the United States or Arizona Supreme Court or a justice of the peace.
- ◆ “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.

Laws 2004, Ch. 180, § 1

- ◆ Prohibits the disclosure of a peace officer’s photograph from his or her personnel file with the following exceptions:
 - A law enforcement agency may release a peace officer’s photograph from the officer’s personnel file if that officer is charged by complaint, information, or indictment of a misdemeanor or felony;
 - A police agency may use the officer’s personnel photograph to assist a person with a complaint against an officer for the purpose of identifying an officer;
 - A photograph may be used if it was obtained from any source other than a law enforcement agency; or
 - A representative of a newspaper requests the photograph for a specific newsworthy event, unless the peace officer is undercover or scheduled to be undercover within sixty days; the release of the photograph is not in the best interest of this state; or a peace officer or prosecutor files an affidavit with the presiding judge of the superior court in the county in which the affiant resides, requesting to prohibit the release of the photograph, pursuant to A.R.S § 28-454.

Laws 2006, Ch. 298, § 4

- ◆ Grants code enforcement officers the same protection granted peace officers from disclosure of their home address or home telephone number contained in a personnel file.
- ◆ Defines a code enforcement officer as 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.

Laws 2007, Ch. 141, §7

- ◆ Grants adult or juvenile corrections officers, corrections support staff members, probation officers, members of the board of executive clemency, law enforcement support staff members, national guard members acting in support of a law enforcement agency, persons protected under an order of protection or injunction against harassment, firefighters assigned to the Arizona counterterrorism center in the department of public safety, and victims of domestic violence or stalking who are protected under an order of protection or injunction against harassment the same protection granted peace officers, justices, judges, commissioners, public defenders, prosecutors, and code enforcement officers.
- ◆ Defines corrections support staff member, eligible person, law enforcement support staff member, and peace officer.

ARS section 39-124 amended by:

Laws 2003, Ch. 106, §7

- ◆ Makes the knowing release of the home address or home telephone number of a peace officer, justice, judge, commissioner, public defender, or prosecutor by any person employed by a state or local government entity with intent to hinder an investigation, cause physical injury, or cause property damage a class 6 felony.

Laws 2004, Ch.180, §2

- ◆ No longer requires that a peace officer be serving in an undercover capacity or be scheduled to serve in an undercover capacity within sixty days as a prerequisite to prohibit the release of 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 police officer's immediate family.

Laws 2006, Ch. 298, §5

- ◆ Includes code enforcement officer.
- ◆ Defines code enforcement officer as 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 force national, state and local laws, ordinances, and codes.

Laws 2007, Ch. 141, §8

- ◆ Grants adult or juvenile corrections officers, corrections support staff members, probation officers, members of the board of executive clemency, law enforcement support staff members, national guard members acting in support of a law enforcement agency, persons protected under an order of protection or injunction against harassment, firefighters assigned to the Arizona counterterrorism center in the department of public safety, and victims of domestic violence or stalking who are protected under an order of protection or injunction against harassment the same protection granted peace officers, justices,

judges, commissioners, public defenders, prosecutors, and code enforcement officers.

- ◆ Defines corrections support staff member, eligible person, law enforcement support staff member, and peace officer.

ARS 39-126: Federal risk assessments of infrastructure; confidentiality

Added by *Laws 2003, Ch. 118, § 1*

- ◆ Excludes from public inspection risk assessments 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.

ARS section 39-127: Free copies of police reports and transcripts for crime victims; definitions

Added by *Laws 2006, Ch. 167, §2*

- ◆ Expands victim's rights to public records by allowing the victim or family member one free copy of the police report and prescribes that criminal offense, immediate family, and victim have the same meaning as outlines under Crime Victims' Right Statutes.

Amended by *Laws 2007, Ch. 290, §11*

- ◆ Requires, on request of the victim, the court to provide to the victim or immediate family member, if the victim is killed or incapacitated, a free copy of a case transcript arising out of the offense committed against the victim for the purposes of litigation or representation of a victim's right.

RECENT CASE LAW

Phoenix Newspapers, Inc. v. Keegan, 201 Ariz. 344, 35 P.3d 105 (App. Div.1 2001)

- ◆ Core purpose of the public records law is to allow the public access to official records and other government information so that the public may monitor the performance of government officials and their employees.
- ◆ Trade secrets are protected by the confidentiality exception to disclosure under public records law.
- ◆ Test-related documents that qualify as public records are subject to the public records law. Questions from first administration of statewide academic test to high school students were not trade secrets because they did not reveal the methodology for engineering the test. Did not compel disclosure of anchor questions that would reappear on subsequent tests.
- ◆ Best interests of the state is not confined to the narrow interest of the either the official who holds the records or the agency he or she serves, but includes the overall interests of the government and the people.
- ◆ Public interest determination includes consideration of how disclosure would adversely affect the agency's mission as well as other ways in which the pub-

lic would be affected.

- ◆ Court must evaluate carefully the public interest that plaintiff seeks to vindicate in requesting the documents.
- ◆ To justify withholding documents, state's interest must outweigh the policy of open access as stated in public records law.

A.H. Belo Corp. v. Mesa Police Department, 202 Ariz. 184, 42 P.3d 615 (App. Div.1 2002)

- ◆ 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.
- ◆ Arizona imposes a presumption in favor of disclosure of public records; to defend a refusal to release a public record, the government must demonstrate that the policy in favor of public disclosure and access is outweighed by considerations of confidentiality, privacy, or the best interests of the state.
- ◆ Family's privacy concerns outweighed the presumption favoring disclosure of public records, and thus city police department was not required to release audiotape of emergency assistance call in which child was heard crying and whimpering; information regarding the call was provided through a transcript of the call, and there was not evidence that disclosure of the audiotape advanced the purpose of the Public Records Act in any way.
- ◆ Unless the government puts forth an interest that justifies withholding access to a public record, a person or entity seeking access to the record need not demonstrate what purpose such access would serve.
- ◆ Unless the government puts forth 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.
- ◆ Unless the government puts forward an interest that justifies withholding access to a public record, a person or entity seeking access to the record need not demonstrate what purpose such access would serve.

Primary Consultants, LLC v. Maricopa County Recorder, 210 Ariz. 393, 111 P.3d 435 (App. Div.1 2003):

- ◆ Access to public records may be limited when a statute restricts access or when the custodian of the records appropriately determines that countervailing interests such as confidentiality, privacy, or the best interests of the state warrant denial of the records request.
- ◆ Request by political consulting firm for copies of requests of others for voter data did not constitute a request for voter records, but constituted a request for standard public records.
- ◆ Voter records constitute public records, but are subject to greater restrictions than other public records.
- ◆ Political consulting firm's status as a for-profit business and its use of voter in-

formation obtained from public records in furtherance of its business did not constitute a commercial use of voter information so as to preclude firm from obtaining such records under public records laws; under the public records statute, the denial of records requests for commercial purposes was aimed at the direct economic exploitation of public records, not at the use of information gathered from such records for one's trade or business.

Griffis v. Pinal County, 215 Ariz. 1, 156 P.3d 418 (Ariz. 2007)

- ◆ The Arizona Supreme Court held that e-mails generated or maintained on a government-owned computer system are not automatically public records.
- ◆ E-mail messages that relate solely to personal matters that have no relation to official duties do not qualify as public records or other matters under the public records law.
- ◆ When a government entity withholds documents generated or maintained on a government-owned computer system on the grounds that the documents are personal, the requesting party may ask the trial court to perform an in camera inspection to determine whether the documents fall within the public records law.

Phoenix Newspapers, Inc. v. Ellis, 215 Ariz. 268, 159 P.3d 578 (App. Div. 1 2007)

- ◆ The Arizona Court of Appeals held that under the public records law, notice of claim that high-school student's attorneys filed with the school district regarding alleged sexual assault of student by janitor was "public record," although notice was submitted in confidence, and although notice was deemed denied by school district; district's potential liability was of concern to public, and amount that student would have settled for could have been of great interest to public if amount actually awarded or paid were much higher.
- ◆ The Arizona Court of Appeals ordered the trial judge to review the claim to determine whether any information in the notice of claim, in addition to the student's name, should be redacted.

West Valley View, Inc. v. Maricopa County Sheriff's Office, No. CV-06-0549, ___ P.3d ___, 2007 WL 2325602 (Ariz. App. Div. 1, August 16, 2007)

- ◆ Arizona Court of Appeals held that A.R.S. § 39-121.01(D) requires the Sheriff's Office to comply with the newspaper's ongoing request for copies of news releases as they are issued. Nothing in the statute precludes an ongoing request for disclosure of a narrowly defined, clearly identifiable category of to-be-created documents that the public agency concedes are public records.
- ◆ The court applied the common definition of "prompt," which means "quick to act or to do what is required," or "done, spoken, etc. at once or without delay." Webster's New World Dictionary 1137 (2d ed. 1980).
- ◆ Press releases must be made available to the newspaper on the same day that it distributes them to other news media.

- ◆ Sheriff's Office's refusal to respond to the newspaper's ongoing requests for copies of news releases and its stubborn persistence in its position that it need not comply with the requests was arbitrary and capricious and made in bad faith.
- ◆ Court determined that newspaper was entitled to attorney fees.

ATTORNEY GENERAL OPINIONS ISSUED SINCE 2001

Opinion 104-001: As a public body created by statute, the Joint Underwriting Association is subject to all the public process laws applicable to the Department of Insurance, including state procurement, public records, open meeting, personnel code, fiscal controls, and governmental immunity provisions.

Part IV

Arizona Revised Statutes
Title 41. State Government
Chapter 8 Agencies of the Legislative Department

Article 5 Office of Ombudsman–Citizens’ Aide

41-1376.01. Additional powers and duties; definitions 34

41-1376.01. Additional powers and duties; definitions

- A. In addition to the powers and duties prescribed in section 41-1376, the ombudsman-citizens aide shall appoint two assistants, one of whom shall be an attorney, to help the ombudsman-citizens aide investigate complaints relating to public access laws involving an agency. The assistants shall train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. The assistants shall prepare interpretive and educational materials and programs in cooperation with the ombudsman-citizens aide and shall distribute to elected or appointed public officials the public access laws and educational materials concerning the public access laws.
- B. The annual report of the ombudsman-citizens aide shall include the following information about public access:
 - 1. The number of inquiries that are received from the public, the media and government agencies.
 - 2. The number of inquiries that are received about state agencies, county agencies, city or town agencies, school districts and other local jurisdictions.
 - 3. The number of requests that are received concerning public records and public meetings.
 - 4. The number of investigations that are conducted and the results of the investigations.
- C. For investigations made pursuant to this section, the ombudsman-citizens aide may:
 - 1. Make inquiries and obtain information considered necessary subject to the restrictions in section 41-1377.
 - 2. Enter without notice to inspect agency premises with agency staff on the premises.
 - 3. Hold hearings.
 - 4. Notwithstanding any other law, have access to all agency records, including confidential records, except:
 - (a) Sealed court records without a subpoena.
 - (b) Active criminal investigation records.
 - (c) Records that could lead to the identity of confidential police informants.
 - (d) Attorney work product and communications that are protected under attorney-client privilege.
 - (e) Confidential information as defined in section 42-2001, except as provided in section 42-2003, subsection M.
 - (f) Information protected by section 6103(d), 6103(p) or 7213 of the internal revenue code.
 - (g) Confidential information relating to section 36-2903, subsection I, section 36-2917, section 36-2932, subsection F or section 36-2972.
 - (h) Confidential information relating to sections 36-507, 36-509 and 36-2220.
 - (i) Documents that are protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section 133a) or by 49

Code of Federal Regulations Part 1520.

- (j) Information that is protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section 133a) or 49 Code of Federal Regulations part 1520 or critical infrastructure information as defined by section 41-1801 on government owned facilities that are classified as critical infrastructure by the federal government or as defined by section 41-1801.
- 5. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence to which the ombudsman-citizens aide may have access pursuant to paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a subpoena if the ombudsman-citizens aide has previously requested testimony or evidence and the person or agency to which the request was made has failed to comply with the request in a reasonable amount of time.
- D. It is contrary to the public policy of this state for any agency or any individual acting for an agency to take any adverse action against an individual in retaliation because the individual cooperated with or provided information to the ombudsman-citizens aide or the ombudsman-citizens aide's staff.
- E. For the purposes of this section:
 - 1. "Agency" has the same meaning prescribed in section 41-1371 but includes a public body as defined in section 39-121.01, subsection A, paragraph 2.
 - 2. "Public access laws" means:
 - (a) Title 39, chapter 1.
 - (b) Title 38, chapter 3, article 3.1.
 - (c) Any other state statute or rule governing access to public meetings or public records.

