

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-003266

08/11/2010

HONORABLE J. KENNETH MANGUM

CLERK OF THE COURT
D. Glab
Deputy

GOLDWATER INSTITUTE

CARRIE ANN SITREN

v.

CITY OF PHOENIX, et al.

WILLIAM F BOCK

MINUTE ENTRY

The Court has reviewed Plaintiff's Motion for Attorneys' Fees and Costs, Defendants' Response to Motion for Attorney's Fees and Costs, and Plaintiff's Reply on Attorneys' Fees and Costs.

Plaintiff Goldwater Institute ("Goldwater") contends that it is entitled to reasonable attorneys' fees and costs because it "substantially prevailed" in attaining the public records. Defendant City of Phoenix ("City") responds that Goldwater did not "substantially prevail," that the City had a reasonable basis in law to assert its privilege, and that Goldwater is not entitled to fees because the action did not significantly benefit the public.

The relevant Arizona statute allows courts to award attorney's fees and costs to any person who has been denied access to public records and has "substantially prevailed" in attaining the records, but the statute does not define the term "substantially prevailed." A.R.S. § 39-121.02B. Both parties recognize that it is appropriate for Arizona courts to look to federal public records law for guidance. *Scottsdale Unified Sch. Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297, 955 P.2d 534 (1998). A federal law provides that a party has "substantially prevailed" if there has been "a judicial order, or an enforceable written agreement or consent decree; or a voluntary or unilateral change of position by the agency, if the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-003266

08/11/2010

complainant's claim is not unsubstantial." 5 U.S.C. § 552(a)(4)(E)(ii). In the instant case, this Court ordered the City to provide Goldwater with all documents which it realized were disclosable and to provide the Court with any documents for which it claimed a privilege. City later disclosed documents directly to Goldwater, which were responsive to Goldwater's initial request of public records. The Court declined to grant attorneys' fees in its March 29, 2010 minute entry but expressly reserved the right to do so at the close of the litigation. City argues that Goldwater did not "substantially prevail" because it eventually produced responsive documents directly to Goldwater voluntarily per the stipulation. While the City did not "unilaterally" change its position, it "voluntarily" changed its position so it meets the standard of "substantially prevailed." It would be unreasonable to allow a public entity to withhold public records, compel litigation, and only then voluntarily release the records and avoid having to pay attorney's fees and costs. This would have a chilling effect on public record requests. Furthermore, Goldwater has shown that it made a reasonable attempt to gain access to the documents before proceeding with litigation by exchanging emails with the City and waiting to file a complaint until the City summarily denied the request by citing a privilege to withhold the records.

City asserted that it had a privilege to withhold the records based upon a theory that release of the records would be detrimental to the best interests of that state. *Mathews v. Pyle*, 75 Ariz. 76, 80, 251 P.2d 893, 896 (1952). In this case, the City avers that release of the records in question would jeopardize pending negotiations. Goldwater points out that the public needs to be able to access the public records to make an informed opinion regarding the potential deal. That would not be possible if the City was allowed to withhold the documents until the deal had already been completed. Simply asserting a general threat to negotiations is not enough to overcome the presumption that public records are accessible to the public. City later argues that no public good came of releasing the responsive public records involved because the information contained therein merely duplicated the information which was already available and in Goldwater's possession. Even if this is true, it is unlikely that releasing information that is already public knowledge could harm negotiations and undercuts the City's reasonable basis to deny the request. Thus, the City did not have a reasonable basis to deny the request.

Goldwater has "substantially prevailed" under A.R.S. § 39-121.02B and City has not shown that it had a reasonable basis in law to withhold the public records. Therefore, the Court awards attorneys' fees and costs to Goldwater.

IT IS HEREBY ORDERED granting Plaintiff's Motion for Attorneys' Fees and Costs.

The Court finds that the amount claimed by Plaintiff is reasonable and meets the statutory and judicial requirements for approval. Accordingly,

IT IS FURTHER ORDERED awarding Plaintiff the sum of \$7,202.50 as attorney's fees

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-003266

08/11/2010

and the sum of \$468.75 as costs.