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IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

CONGRESS ELEMENTARY SCHOOL DISTRICT NO. 17 OF YAVAPAI COUNTY, Plaintiff, vs. JEAN WARREN, JENNIFER RENEE HOGE, CYNDI REGIS, AND BARBARA REJON, Defendants.	Case No. P1300 CV 201000162 **MOTION FOR SUMMARY JUDGMENT** *Hon. David L. Mackey*

Plaintiff Congress Elementary School District sued three mothers and a grandmother for requesting public records. On April 15, 2010, this Court granted Defendants' motion to dismiss the complaint as to each claim and each defendant except as to the declaratory judgment claim against Defendant Jean Warren on whether the District is required to produce records in response to her January 13, 2010 public records request for the complete stewardship list and other public records requested in 2009. The District appealed the dismissal, and this Court denied the District's motion to stay a ruling on the January 13 public records request. Counsel for the District indicated that the District does not intend to produce any records in response to the pending request but rather intends to conduct discovery in an attempt to demonstrate that it is against the best interests of the District to produce the records. Such a

claim is impossible to prove, and conducting discovery unnecessarily wastes the parties' resources and imposes needless delays in resolving the claim. Therefore, Plaintiffs move for summary judgment pursuant to Ariz. R. Civ. P. 56. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The motion is supported by the following Memorandum of Points and Authorities, and by Defendants' Statement of Facts ("SOF").

Memorandum of Points and Authorities

Officers and public bodies must maintain all records of their official activities and all activities supported by public funds, and they must promptly furnish copies of public records to any person upon request. A.R.S. § 39-121.01. The District is independently required to maintain a stewardship list (an inventory of its assets and equipment) pursuant to the Arizona Department of Education's Uniform System of Financial Records (USFR) (SOF 2), which the District recently violated (SOF 3). "The 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." *Phoenix News., Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (App. 2001) (citation omitted). Defendant Jean Warren, a resident and taxpayer in the Congress School District, has a financial stake in the District's assets and an interest in its compliance with State laws (SOF 4). Even if she did not, she (and every member of the public) has a right to obtain the records. She requested access to the District's stewardship list and other records (SOF 1), and the District has refused (SOF 9).

Under Arizona Public Records Laws, "all records required to be kept . . . are presumed open to the public," and there is "a clear policy favoring disclosure." *Carlson v. Pima County*, 141 Ariz. 487, 490-91, 687 P.2d 1242, 1245-46 (1984). Some government documents are excepted from disclosure. The Arizona Supreme Court has articulated a two-part test for determining whether a document must be

disclosed. *Griffis v. Pinal County*, 215 Ariz. 1, 5, 156 P.3d 418, 422 (2007). The first step is to determine whether the document is a public record. *Id.* If so, the presumption favoring disclosure applies. *Id.* The second step is to determine whether one of three recognized countervailing interests justifies withholding the record. *Id.* Countervailing interests are limited to privacy, confidentiality, and best interests of the state. *Id.* Here, the District does not allege that the requested documents are not public records. It alleges only that it is against the best interests of the state to give Mrs. Warren access to them (Compl. ¶ 140; SOF 10).[1] But the District's basis for that assertion is essentially the same as the rejected harassment argument. The District asserts that because it has received (though not necessarily responded to) numerous public records requests from Mrs. Warren in the past, this Court should declare that it is in the best interest for the District not respond to her January 13, 2010 request (*see* Compl. ¶¶ 137-145; SOF 10). This claim must fail as a matter of law.

The District has the burden to "specifically demonstrate" how its interest overcomes the presumption of disclosure. *Phoenix News., Inc. v. Ellis*, 215 Ariz. 268, 273, 159 P.3d 578, 583 (App. 2007). The District must show a probability of "specific, material harm." *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984). For example, the best interest exception was met because a police department's surveillance camera videotape could be photographed or manipulated to provide a graphic study of the faces of undercover police officers and the contents, construction and security of the department's evidence locker. *KPNX-TV v. Superior Court*, 183 Ariz. 589, 593, 905 P.2d 598, 602 (App. 1995). This created a serious risk of potential harm or security threat that justified withholding the videotape. *Id.* Here, the District complains only generally about the volume of public records requests received (*see* Compl. ¶¶ 137-145). Even if the District attempted to detail specifically a

[1] The District also continues to assert (SOF 10) that Mrs. Warren's public records request constitutes harassment, but this Court has already rejected that claim (April 15, 2010, p. 2).

resulting harm, its claim must fail as a matter of law because the Arizona Supreme Court has already rejected a similar assertion by the State, that fulfilling a public records request would "burden prosecutors to an unreasonable extent." *Cox Ariz. Publications, Inc. v. Collins*, 175 Ariz. 11, 13, 852 P.2d 1194, 1197 (1993). Such "generalized claims of broad state interest," the Court found, are insufficient to justify withholding public records. *Id.*

Notably, the District does not allege that the requested records themselves are not public or otherwise should not be released *to anyone*. Instead, the District alleges only that they should not be released to one particular person, Mrs. Warren. This argument fails as a matter of law. First, Public Records Laws place no limitations on the quantity of records that an individual can request. To insert this criterion or consideration is inconsistent with the purpose of Public Records Laws, to allow people to monitor the performance of their public employees and "scrutinize" government activity. *See Keegan*, 201 Ariz. at 351, 35 P.3d at 112; *Griffis v. Pinal County*, 215 Ariz. 1, 4, 156 P.3d 418, 421 (2007). Second, it is established that the exceptions for disclosing records are based on the record itself, not the person requesting it. A public entity may not refuse to release a record to some individuals but not others. When there is a genuine legal dispute about whether a record must be released, a court inspects the record *in camera* to determine whether a countervailing interest overcomes the presumption of disclosure. *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246. The court decides based upon the "circumstances" of the information, and the "nature of the documents produced." *Bolm v. Custodian of Records of the Tucson Police Dep't*, 193 Ariz. 35, 40, 969 P.2d 200, 205 (App. 1998) (quotation omitted). Thus, the Court's determination is *not* based upon who the requestor is or how many requests she previously submitted. Here, an *in camera* inspection would be irrelevant to the declaratory relief the District requests, which is contrary to Public Records jurisprudence.

In reality, the District's complaint about the quantity of records requests it receives, or any possible lack of ability or resources to fulfill them, is a complaint for the Legislature; it is not a countervailing interest that can overcome the mandatory duty of disclosure. This Court has already held (April 15, 2010, pp. 1-2), "Arizona statutes and case law do not provide for any type of relief from the Court as to future public records requests." If the District is correct that receiving numerous public records requests in the past creates a legal justification for the Court to declare that it need not respond to Mrs. Warren's January 13, 2010 public records request, then it would appear that the District would be required to file a declaratory action against Mrs. Warren each time she made a new specific request in the future. In that case, resolution requires precisely the "screening process for multiple and unreasonable public records requests" that this Court has already stated "is a legislative function not within the jurisdiction of the Court" (April 15, 2010, p. 2).

Finally, allowing the District to proceed with discovery would subject Mrs. Warren to undue delay and burden. If such conduct is allowed, it would deter other members of the public from rightfully seeking public records, knowing that they could be subject to costly and burdensome legal procedures. Mrs. Warren does not have to state her reasons for seeking the documents. *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 544, 177 P.3d 275, 286 (App. 2008) ("It is well-established that the requestor's need, good faith, or purpose is entirely irrelevant to the disclosure of public records.") (citing *Bolm*, 193 Ariz. at 39, 969 P.2d at 204). She has nothing to prove to the District. As a matter of law, she is entitled to the requested records. There is no material fact in dispute and summary judgment for Defendants is appropriate because as a matter of law, the District is required to promptly produce public records in response to Mrs. Warren's July 13, 2010 request.

Conclusion

The sole remaining substantive issue in this case is as straightforward as legal issues get. The District's complete, electronic inventory list and other requested public records, which the District is obligated to maintain, are clearly subject to disclosure. To allow the District to further delay their release would violate the purpose and public policy embodied in Arizona Public Records Laws. Subjecting Mrs. Warren to extended and unnecessary legal processes eviscerates the requirement that records be produced "promptly" upon request. *See* A.R.S. § 39-121.01. For members of the public wishing to take action based on a public record, delays may stifle their ability to do so. Already the District has delayed nearly two years, which violates A.R.S. § 39-121.01 as a matter of law. The District should not be permitted to disregard its legal obligations any longer. The remaining claim for declaratory judgment should be resolved on summary judgment in Mrs. Warren's favor, and the District should be required to immediately produce the requested public records.

RESPECTFULLY SUBMITTED this 17th day of August, 2010 by:

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