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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-020757 07/21/2009

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

GOLDWATER INSTITUTE CARRIE ANN SITREN

v.

CITY OF GLENDALE, et al. NICHOLAS C DIPIAZZA

MINUTE ENTRY

The Court has had the issues raised in Plaintiff, Goldwater Institute's Complaint for Statutory Special Action and Injunctive Relief Against the City of Glendale (the "City") under advisement and, having received and reviewed the City's Brief on Order to Show Cause and the Institute's Response thereto, enters the following ruling.

Ruling

The Institute's request that the City immediately provide copies of all drafts, correspondence, notes, emails, memoranda, proposals and other records of negotiation with new potential owners of the Phoenix Coyotes Hockey Team (the "Team") from May 11, 2009, and on a continuing basis to send records as they are created is GRANTED IN PART as follows:

1. The City shall immediately produce all records requested by the Institute which, in the City's good faith opinion, do not reflect its negotiating strategy, bargaining chips, and other information which should remain confidential.

2. On the earlier of the dates the City makes public and/or places an item on a proposed agenda for consideration by the Glendale City Council of any tentative agreement that involves the City, or the date on which a bid is submitted to the United States Bankruptcy Court to acquire the Team the City shall make available to the Institute all correspondence, drafts, emails, memoranda, proposals and other records of

negotiation with potential new owner(s) of the Phoenix Coyotes who have submitted a bid to the United States Bankruptcy Court to acquire the Team with the intent to keep it in Glendale, from May 11, 2009, to the date thereof, including, but not limited to, any such documentation which evidences concessions made and incentives proposed to be given by the City to a proposed new owner of the Team.

3. Notes kept by the City's negotiators do not need to be produced.

4. No records pertaining to potential bidders who have not submitted an actual bid to the United States Bankruptcy Court shall be produced.

5. No records of proprietary financial information of a bidder who actually submits a bid shall be included in any disclosure.

6. No records which deal with what alternatives the City may be considering in subsequent rounds of negotiations with a bidder shall be included in any disclosure.

7. No records which indicate how far the City is willing to go in granting incentives or concessions to a bidder shall be included in any disclosure.

8. No records which have been placed under seal by the Hon. Redfield T. Baum in the Team's United States Bankruptcy Court proceedings shall be included until the seal has been lifted or the information is made public and/or placed on a proposed agenda for consideration by the Glendale City Council.

9. No records which are protected by the City's attorney client privilege shall be disclosed.

10. Any requested item which the City, in good faith, believes should remain confidential shall be submitted to this Court under seal for an in camera inspection. The court will rule promptly on the disclosure or non-disclosure of such item(s).

11. The City's obligation shall be continuing until either a decision has been made by the United States Bankruptcy Court on the sale of the Team or the interested parties involved in the Bankruptcy proceedings have reached a settlement.

Discussion

A.R.S. § 39-121.01(B) requires all officers and public bodies to maintain all records 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 of any political subdivision of the State. The core purpose of Arizona's public records law is to allow the public to monitor the performance of government officials and their employees. Phoenix Newspapers, Inc. v. Keegan, 201 Ariz. 344, 351, 35 P.3d 105 (App. 2001); Griffis v. Pinal County, 215 Ariz. 1, 4, 156 P.3d 418 (2007). There is "a statutory policy favoring disclosure," and records "are presumed open to the public for inspection." Carlson v. Pima County, 141 Ariz. 487, 491, 687 P.2d 1242 (1984).

Our Supreme Court has set forth a two-part test for disclosure under the public records laws. The first step is to determine whether a document is a public record. If so, the presumption favoring disclosure applies. The second step is to determine whether one of the three recognized countervailing interests justifies withholding records over the presumption of disclosure. Restrictions on disclosure are limited to privacy, confidentiality, and the best interests of the state. Mathews v. Pyle, 75 Ariz. 76, 81, 251 P.2d 893 (1952) and Carlson v. Pima County, 141 Ariz. 487, 491, 687 P.2d 1242 (1984). It is incumbent on the party arguing against disclosure to "specifically demonstrate how production of the documents would violate rights of privacy, or confidentiality, or would be 'detrimental to the best interests of the state.'" Phoenix Newspapers, Inc. v. Ellis, 215 Ariz. 268, 273, 159 P.3d 578, 583 (App. 2007).

However, the scope of the public records law is not unlimited. The legislature recognized this by providing for executive sessions, i.e. closed meetings with confidential minutes to discuss certain matters which may be kept confidential, including the following matters:

1. Legal advice;
2. Contracts that are the subject of negotiations, pending or contemplated litigation and settlement discussions; and
3. Negotiations for the purchase, sale or lease of real property. A.R.S. §38-431.03 (A) (3), (4), and (7).

Arizona courts follow the balancing test set forth in Mathews v. Pyle, 75 Ariz. 76, 251 P.2d 893 (1952) in deciding whether privacy, confidentiality, or the best interests of the state outweigh the policy in favor of disclosure. Griffis v. Pinal County, 215 Ariz. 1, 5, 156 P.3d 418 (2007). The timing of disclosure can often be important. In Arizona Board of Regents v. Phoenix Newspapers, Inc., 167 Ariz. 254, 258, 806 P.2d 348 (1991) our Supreme Court said that "When the release of information would have an important and harmful effect on the duties of the officials or agency in question, there is discretion not to release the requested documents."

Gary Bettman, the Commissioner of the National Hockey League's, Declaration filed in the Bankruptcy Court and the Asset Purchase Summary of Terms suggested by Mr. Reinsdorf's

group each illustrate the importance of the disclosure of concessions and incentives to be offered by the City at the earliest practical opportunity. The Bettman Declaration states in part:

> "… and the City of Glendale's willingness to participate in enhanced partnership initiatives designed to improve the team's financial performance in the state-of-the-art Jobing.com Arena, all indicate that relocation may be unnecessary and it is certainly premature for the 2009-2010 season." (Institute's Response, Exhibit 6, Debtors' Statement Of Position And Limited Objection With Respect to Discovery Requests, Exhibit B, para. 34).

The term sheet states that the buyer would negotiate the withdrawal of claims by third parties, including:

> "$3.0 million owed to the City of Glendale (Buyer expects to enter into a new Arena Management, Use and Lease Agreement (and related agreements) with the City of Glendale, and to satisfy amounts owed to the City of Glendale through such new agreements)." (Institute's Response, Exhibit 7, Declaration of Kelly Singer Regarding Receipt of Summary Term Sheet, Exhibit A, p. 2).

Notwithstanding the importance of whatever information the City may currently have regarding negotiations, the Court finds that disclosing the records of negotiations with prospective bidders for the Team would have an important and harmful effect on the City and the application process in the Bankruptcy Court. The proceedings in the Bankruptcy Court strongly suggest that compelled disclosure of negotiations now could have a chilling effect on and unduly influence the bidding process. The debtors in the bankruptcy action argue: "It is axiomatic that bankruptcy sales processes must be open and transparent. It is the cornerstone of bankruptcy law." (Debtors' Statement of Position, Institute's Response to Glendale's Brief, Exhibit 6, p.4). Once the initial bids have been made and/or the City is prepared to present a proposal to the City Council for revised agreements the Institute will have sufficient time to analyze and bring to the attention of the public and the Bankruptcy Court any proposed changes to the lease of Jobing.com Arena and its management agreement and comment on any proposed concessions and incentives offered.

Because the City initially categorically refused to comply with the Institute's request, the Institute may submit an application to recover its attorneys' fees.