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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

BARRY GOLDWATER INSTITUTE FOR
PUBLIC POLICY RESEARCH,

Plaintiff,

vs.

CITY OF PHOENIX, a municipal
corporation; JEFF BARTON, in his official
capacity as City Manager for the City of
Phoenix; DENISE ARCHIBALD, in her
official capacity as City Clerk for the City of
Phoenix; and SHEREE RUCKER, in her
official capacity as Human Resources
Officer, Custodian of Records for the City of
Phoenix,

Defendants,

Case No. CV2023-003250

**MEMORANDUM OF LAW IN
SUPPORT OF STATUTORY
SPECIAL ACTION AND
INJUNCTIVE RELIEF**

**(Assigned to the
Honorable Danielle Viola)**

1 Pursuant to the Court’s briefing schedule and order dated March 29, 2023, Plaintiff
2 Barry Goldwater Institute for Public Policy Research (“GI”) respectfully submits this
3 memorandum of law in support of its Verified Complaint for Special Action and
4 Injunctive Relief and Application for Order to Show Cause filed on March 1, 2023, and its
5 Application for Order to Show Cause filed on March 10, 2023.

6 INTRODUCTION

7 Public access to public records—particularly records concerning the terms and
8 funding of basic public functions—is critical to our system of government of, by, and for
9 the people. Transparent government enables civic engagement and government
10 accountability; secrecy hinders both.

11 On February 3, 2023, the City of Phoenix (“City”) denied GI’s public records
12 request for “[a]ll proposals for [Memoranda of Understanding (“MOUs”)] currently being
13 negotiated—or set to be negotiated per City Code Section 2-218” between the City and
14 the Phoenix Law Enforcement Association (“PLEA”), eventually asserting the so-called
15 “best interests of the state” exception to Arizona’s Public Records Law. Compl. ¶¶ 36, 42,
16 47; Compl. Exs. 6, 11, 16. The City also suggested that any draft agreements received or
17 created before publication of a final agreement would not be subject to disclosure,
18 presumably under the same exception. Compl. ¶¶ 47, 50–51; Compl. Ex. 16.

19 Pursuant to A.R.S. § 39-121.02(A), GI appealed the City’s denial of the public
20 records request to this Court by filing its Verified Complaint for Statutory Special Action
21 and Injunctive Relief and Application for Order to Show Cause on March 1, 2023,
22 requesting declaratory, injunctive, and related relief.

23 The City’s concealment of the requested records has kept the public in the dark
24 during a critical period of meet and confer negotiations, and the public continues to be
25 harmed each day the records are withheld—records which are presumptively subject to
26 disclosure. The public has a right to know the City’s priorities, how it addressed PLEA’s
27 priorities, and what compromises may have been made in reaching an MOU. Because the
28 City’s interest in secrecy does not outweigh the public’s interest in disclosure,

1 Goldwater’s request for relief should be granted—including an order compelling
2 immediate production of the requested records.

3 **FACTUAL BACKGROUND**

4 Approximately every two years, the City engages in meet and confer negotiations
5 with several public-sector labor unions, including PLEA. MOUs governing key terms of
6 employment, such as compensation and disciplinary procedures, are drafted, negotiated,
7 and finalized during this process.

8 The City’s meet and confer ordinance—adopted and codified by the City
9 Council—requires PLEA to submit a proposed draft MOU by December 1 in the year
10 prior to the expiration of the operative MOU, a copy of which is to be filed with the City
11 Clerk as a public record. Phoenix City Code (“PCC”) § 2-218(B). After opportunities for
12 PLEA to present its proposed MOU to the City Council and for the public to comment on
13 the draft MOU, the City is required to submit written responses to PLEA’s proposed
14 MOU. PCC § 2-218(C)–(E). Copies of the City’s responses are likewise to be filed with
15 the City Clerk as public records. PCC § 2-218(E).

16 Despite past compliance with these requirements, (*see* Compl. ¶ 24; Decl. of Isabel
17 Garcia, attached as Exhibit 1, (“Garcia Decl.”) ¶ 8), on December 1, 2022, PLEA did not
18 submit a draft MOU by the deadline. Instead, PLEA submitted a “letter of intent to
19 negotiate.” Compl. ¶ 27; Compl. Ex. 3. No City Council presentation was made, and the
20 public was denied an opportunity to comment on any proposed MOU. Compl. ¶¶ 28–32;
21 Compl. Ex. 4 at 2; Garcia Decl. ¶¶ 19–20. Although the City acknowledged PLEA’s lack
22 of compliance, it did not take any action to prompt or require PLEA to submit a draft
23 MOU, nor did the City make its own draft MOU public or respond publicly to any union
24 proposals. *See* Compl. ¶ 33; Compl. Ex. 5.

25 Rather than enforcing its code provisions, (*see* Phoenix City Charter Ch. III §§
26 1(E); 2(A), (B)(2), & (B)(4) (charging the City Manager with properly administering city
27 affairs and enforcing city ordinances); *see also* Phoenix City Charter Ch. V § 1 (the
28 Mayor “shall see that the [City’s] ordinances ... are enforced)), the City skipped ahead

1 and held a public comment session at its December 14, 2022 City Council meeting,
2 ostensibly allowing the public to comment on the forthcoming negotiations between the
3 City and PLEA, but without the public knowing the positions of the parties regarding a
4 proposed MOU. Compl. ¶¶ 28–32. During the meeting, several speakers objected to the
5 lack of transparency and their inability to provide meaningful public comment without
6 seeing PLEA’s proposed MOU. Compl. ¶ 29 & n.2. When asked about the issue, Assistant
7 City Manager Lori Bays admitted: “The intent of the City Code is for each of the groups
8 to present their MOU at this point in the process today. However, they have elected not to
9 do so.” Compl. ¶ 30. She went on to explain that the public would likely have an
10 opportunity to comment on the *final* MOU after it was presented to the Council for
11 approval. Compl. ¶ 32.

12 At some point,¹ the City proceeded to conduct closed-door negotiations with
13 PLEA. *See* Compl. ¶¶ 33–34. During these negotiations, both the City and PLEA submit
14 written proposals to one another. These proposals are then reviewed and acted upon by
15 City negotiators and PLEA representatives.

16 On December 19, 2022, GI formally requested copies of (1) “[a]ll draft
17 Memoranda of Understanding (‘MOUs’)” between the City and PLEA contemplated for
18 the fiscal year(s) beginning July 1, 2023; (2) “[a]ll proposals for MOUs currently being
19 negotiated—or set to be negotiated per City Code Section 2-218” between those parties
20 for the same time period, and (3) “[a]ny communications to or from City officials
21 regarding PLEA’s failure to submit a draft MOU for the fiscal year(s) beginning July 1,
22 2023.” Compl. ¶ 36; Compl. Ex. 6.

23 In response, the City stated that no responsive records existed to GI’s first two
24 requests, and it provided only a single document in response to the third. Compl. ¶¶ 37–
25

26 ¹ Although the City’s January 3, 2023 letter to PLEA describes “the upcoming negotiation
27 process,” (*see* Compl. ¶¶ 33–34; Compl. Ex. 5), the City has indicated elsewhere that
28 negotiations may have started in December 2022. García Decl. ¶¶ 15–18 & Ex. A. When
negotiations began is significant because the City responded to GI’s initial public records
request on January 13, 2023, by issuing its “Certificate of No Record,” Compl. Ex. 9, the
veracity of which would seem improbable if negotiations began prior to that date.

1 38, 40–41; Compl. Exs. 5, 7, 9–10. The City also asserted that “any working drafts of
2 MOUs and any proposals submitted during negotiations are not disclosable until filed with
3 the City Clerk’s office.” Compl. ¶ 38; Compl. Ex. 7. The City continued, “Until filing,
4 these documents are intended as working material to establish a mutually agreed upon
5 product between the bargaining unit and the City: the final MOU that is available after
6 filing with the City Clerk’s office.” *Id.*

7 When further communication failed to result in additional disclosure, GI formally
8 renewed its request for the records on January 20, 2023. Compl. ¶ 42; Compl. Ex. 11.

9 On February 3, 2023, the City denied GI’s request, saying that it “does not produce
10 proposals exchanged during table discussions” because “[r]eleasing those types of
11 materials could create a chilling effect on the parties’ willingness to candidly engage with
12 each other and it would hinder the negotiations process.” Compl. ¶ 43; Compl. Ex. 12.

13 GI followed up with a letter. Compl. ¶ 44; Compl. Ex. 13. On February 23, 2023,
14 the City responded, claiming again that no *drafts* existed and implying that, even if they
15 did, only a “finalized” draft would be released to the public. Compl. ¶ 47; Compl. Ex. 16.
16 The City admitted, however, that it has in its possession—and is withholding—documents
17 responsive to the Institute’s request for MOU *proposals*. *Id.* One additional document
18 relating to GI’s third request was also produced, though it was already publicly available.
19 *Id.*

20 Regarding the withheld records, the City for the first time asserted the “best
21 interests of the state” exception to disclosure under Arizona’s Public Records Law,
22 reasoning that “[r]eleasing these types of materials would create a chilling effect on the
23 parties’ willingness to candidly engage with each other and would hinder the negotiations
24 process.” *Id.* The City explained that during negotiations, “the City does all it can to
25 ensure the confidentiality of what happens at the bargaining meetings, including entering
26 into confidentiality agreements with each bargaining unit.” *Id.* It concluded that “[w]hile
27 the negotiations are proceeding, the City believes that the best interests of the City protect
28 it from disclosing any draft proposals discussed at the bargaining table.” *Id.*

1 GI commenced this statutory special action on March 1, 2023.

2 The closed-door negotiation process appears to have concluded and produced a
3 tentative agreement with PLEA, which apparently has already been ratified by PLEA's
4 members and is pending final City Council approval. Garcia Decl. ¶ 20.

5 In past negotiation cycles, the public has been able to meaningfully comment on
6 MOU proposals and inform the negotiation process due to the timely disclosure of
7 proposed drafts and responses. *Id.* ¶¶ 9–12. This time, however, the combination of
8 PLEA's and the City's disregard for the meet and confer ordinance and, more importantly,
9 the City's unlawful denial of GI's public records requests, has kept the public in the dark
10 during the entire negotiation process. *Id.* ¶¶ 19–20. Harm to the public continues—and
11 will continue even after disclosure of the final agreement—each day the requested records
12 are withheld. *Id.* ¶¶ 5–7, 13, 19, 21–22. That is because the public has a right to know—
13 and a keen interest in—written proposal documents that are “reasonably necessary or
14 appropriate to maintain an accurate knowledge of ... official activities.” A.R.S. § 39-
15 121.01(B). That is especially true regarding MOU proposals because the proposals
16 themselves and the negotiations regarding the proposals are “supported in whole ... by
17 monies from ... [a] political subdivision of this state.” A.R.S. § 39-121.01(A)(2).

18 The City has not provided a legally sufficient justification for withholding all MOU
19 proposals and any records of draft MOUs. Because it has responsive records in its
20 possession that are available for disclosure, the City should be ordered to immediately
21 produce them.

22 LEGAL ARGUMENT

23 Public access to information about the operations of government is essential to a
24 free society and necessary so that citizens can hold government officials accountable.
25 *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 ¶ 33 (App. 2001). When the
26 government and its officials engage in the public's business and spend the public's
27 money, the public has a right to records regarding those activities. A.R.S. § 39-121.01.
28 Public records that are “available for immediate production” must be disclosed “at once.”

1 *W. Valley View, Inc. v. Maricopa Cnty. Sheriff's Off.*, 216 Ariz. 225, 230, ¶ 21 & n.8
2 (App. 2007) (emphasis added).

3 This public records dispute concerns records evidencing the exchange of proposals
4 between the City and a government labor union regarding the provision of police services
5 in the City. These are public records, and the law requires the City to produce them "at
6 once." Whether the City produces the documents is not a matter of discretion: the City
7 must produce them unless the City proves that an exception applies.

8 GI seeks to stop the City and its named officials from continuing to deny access to
9 these public records under Arizona's Public Records Law² because (1) the requested
10 records are presumed to be open to the public, (2) the City has failed to establish that the
11 "best interests of the state" exception to disclosure applies to the records at issue, and (3)
12 the public interest in the requested records heavily outweighs any valid City interest in
13 nondisclosure—and will continue to do so even once the City releases the finalized MOU.

14 **I. The requested public records are presumptively subject to disclosure.**

15 Arizona's Public Records Law "evinces a clear policy favoring disclosure."
16 *Carlson v. Pima Cnty*, 141 Ariz. 487, 490 (1984).

17 Officers and public bodies must maintain all records of their official activities and
18 all activities supported by public funds, and they must promptly furnish copies of public
19 records to any person upon request. A.R.S. § 39-121.01; *see also W. Valley View*, 216
20 Ariz. at 231 ¶ 21 & n.8. These include records defined in A.R.S. § 41-151(2), which
21 encompasses:

22 all books, papers, maps, photographs or other documentary materials,
23 regardless of physical form or characteristics, including prints or copies of
24 such items produced or reproduced on film or electronic media pursuant to §
25 41-151.16, *made or received by any governmental agency* in pursuance of
26 law or *in connection with the transaction of public business* and preserved or
27 appropriate for preservation by the agency or its legitimate successor as
28 *evidence of the organization, functions, policies, decisions, procedures,*

² A.R.S. Title 39.

1 *operations or other activities of the government, or because of the*
2 *informational and historical value of data contained in the record.*

3 (emphasis added).

4 Arizona courts likewise broadly define the term “public record.” *Lake v. City of*
5 *Phoenix*, 222 Ariz. 547, 549 ¶ 8 (2009). Public records are those:

6 [1] made by a public officer in pursuance of a duty, the immediate purpose
7 of which is to disseminate information to the public, or to serve as a memorial
8 of official transactions for public reference; [2] a record that is required to be
9 kept, or necessary to be kept in the discharge of a duty imposed by law or
10 directed by law to serve as a memorial and evidence of something written,
 said or done; or [3] any written record of transactions of a public officer in
 his office, which is a convenient and appropriate method of discharging his
 duties, and is kept by him as such.

11 *Griffis v. Pinal Cnty.*, 215 Ariz. 1, 4 ¶ 9 (2007) (quoting *Salt River Pima-Maricopa Indian*
12 *Cmty. v. Rogers*, 168 Ariz. 531, 538–39 (1991)) (cleaned up).

13 The City does not appear to dispute that GI seeks records within the scope of
14 Arizona’s Public Records Law. *See* Compl. Ex. 16. In fact, the City has affirmatively
15 stated that it possesses documents responsive to GI’s public records request. *Id.* The City
16 claims, however, that it is not required to produce the responsive records because of the
17 “best interests of the state” exception. *Id.*

18 The MOU proposals and records of draft MOUs between the City and PLEA are all
19 made or received by the City in connection with the transaction of public business. They
20 evidence the organization, functions, policies, decisions, procedures, operations, or other
21 activities of the City. They likewise contain data that is both informational and historical
22 in value. The records therefore fall within the express statutory definition of public
23 records.

24 The requested records similarly include records made by City officers in pursuance
25 of a legal duty and records which serve as a memorial of official transactions for public
26 reference. *See, e.g.*, PCC 2-218. Not only is the compensation that is authorized by the
27 MOU funded by taxpayers, but the MOU negotiations themselves are also publicly
28 funded: both City and PLEA officials who prepare draft MOUs, exchange MOU

1 proposals, and conduct MOU negotiations are paid government salaries funded by
2 taxpayers. The proposals exchanged during those publicly funded negotiations are written
3 records of transactions of public officers acting in their official capacity. The records
4 pertain to official City activities and involve matters of significant public concern,
5 including how police services will be provided and funded within the City as well as the
6 terms and conditions of employment for police officers. Records of draft MOUs and
7 MOU proposals exchanged between the City and PLEA are public records as defined by
8 Arizona courts for those reasons as well.

9 “If a document falls within the scope of the public records statute, then the
10 presumption favoring disclosure applies.” *Griffis*, 215 Ariz. at 5 ¶ 13; *see also Cox Ariz.*
11 *Publ’ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993) (holding that the “burden fell squarely
12 upon [the] public official, to overcome the legal presumption favoring disclosure.”)

13 Consequently, records of MOU proposals and draft MOUs between the City and
14 PLEA are public records that both are “required to be kept ... [and] are presumed open to
15 the public.” *Carlson*, 141 Ariz. at 491. Unless a specific exception applies, the public is
16 entitled to open access to the documents at issue in this matter, and the City must
17 promptly disclose them. *See id.* at 490.

18 **II. The City has failed to establish that the “best interests of the state” exception**
19 **applies to the requested records.**

20 The public’s right to inspect public records may only be curtailed if one of three
21 narrow exceptions apply: (1) the records are made confidential by statute, (2) the records
22 include privacy information, or (3) disclosure of the records would harm the best interests
23 of the state. *See Scottsdale Unified Sch. Dist. v. KPNX Broad. Co.*, 191 Ariz. 297, 300 ¶ 9
24 (1998). The only exception at issue here is the third one; namely, whether the best interest
25 of the state outweighs the public’s right to information about the operations of its
26 government.

27 The burden is squarely on the City to establish that a specific, enumerated
28 exception to the public records law applies to prevent disclosure of otherwise public

1 records. *See Mitchell v. Super. Ct.*, 142 Ariz. 332, 335 (1984) (the burden of
2 demonstrating that some harm will result to the state in disclosure “is on the party that
3 seeks non-disclosure rather than on the party that seeks access”).

4 Although the City did not initially cite a recognized public records exemption in
5 response to GI’s records requests, it eventually raised the “best interests of the state”
6 exception. “Discretionary refusal to disclose based on the best interests of the state is
7 subject to judicial scrutiny.” *Hodai v. City of Tucson*, 239 Ariz. 34, 38 ¶ 7 (App. 2016)
8 (citing *Carlson*, 141 Ariz. at 491). “[T]he court determines whether the government’s
9 proffered explanation of public harm outweighs the policy in favor of disclosure.” *Hodai*,
10 239 Ariz. at 39 ¶ 8.

11 Importantly, “[the] ‘best interests of the state’ standard is not confined to the
12 narrow interest of either the official who holds the records or the agency he or she serves.
13 It includes the overall interests of the government *and the people*.” *Id.* (emphasis added)
14 (quoting *Phoenix Newspapers*, 201 Ariz. at 348–49 ¶ 18). “The government has the
15 burden of specifically demonstrating how production of documents would be detrimental
16 to the best interests of the state.” *Id.*, at 38 ¶ 7 (citing *Cox Ariz. Publ’ns*, 175 Ariz. at 14).

17 Countervailing state interests to be weighed against the presumption of disclosure
18 must be considered on a case-by-case basis, not only for each request but for each
19 individual record. *Bolm v. Custodian of Records of Tucson Police Dep’t*, 193 Ariz. 35, 40
20 ¶ 13 (App. 1998). The government has the burden to “specifically demonstrate” how a
21 competing interest overcomes the presumption of disclosure. *Phoenix Newspapers, Inc. v.*
22 *Ellis*, 215 Ariz. 268, 273 ¶ 22 (App. 2007) (citation and marks omitted). The probability
23 of “specific, material harm” must be shown. *Mitchell v. Superior Court*, 142 Ariz. 332,
24 335 (1984). “[G]eneralized claims of broad state interest” are insufficient, and the Arizona
25 Supreme Court has rejected using a blanket rule exempting categories of documents from
26 disclosure. *Cox Ariz. Publ’ns*, 175 Ariz. at 11, 13–14. The Court alone has jurisdiction to
27 determine whether the government has met its burden of proving that the best interest of
28

1 the state outweighs the public’s right to public records. *Mathews v. Pyle*, 75 Ariz. 76, 81
2 (1952).

3 Here, there is no countervailing state interest that outweighs the presumption of
4 disclosure and the public’s statutory right to the requested records.

5 Long before this particular dispute arose, the City articulated through its meet
6 and confer ordinance that the best interests of the “state”—which includes the interests of
7 both the City and the public—require public access to draft MOUs and City responses
8 before the commencement of meet and confer negotiations. PCC § 2-218. Not only did the
9 City violate and disregard its own ordinances and processes for public dissemination of
10 information during the meet and confer process, but it also failed to weigh this expressly
11 codified interest in the context of the records dispute at issue here. Any interests belatedly
12 asserted by unelected City officials are outweighed by the policy of transparency adopted
13 and codified by the people’s elected representatives on the City Council.

14 Even if the meet and confer ordinance did not expressly require public disclosure
15 of MOU proposals and responses, the reasons proffered by the City for nondisclosure still
16 fail to demonstrate with specificity the probability of material harm to the City and its
17 residents sufficient to overcome the presumption of disclosure established by the state’s
18 public records laws.

19 In its February 23 letter explaining the denial of GI’s request, the City claimed that
20 “[r]eleasing these types of materials would create a chilling effect on the parties’
21 willingness to candidly engage with each other and would hinder the negotiations
22 process.” Compl. ¶ 47; Compl. Ex. 16. This purely speculative reason for denying public
23 access to these records is unconvincing.

24 First, the meet and confer ordinance already requires PLEA’s initial demands and
25 the City’s initial responses to be made available to the public. PCC § 2-218. If the City
26 genuinely believed that disclosure of proposed MOUs and the City’s responses thereto
27 would have any kind of detrimental effect on the parties’ willingness to negotiate, the City
28 could have—and should have—repealed its ordinance requiring transparency. GI’s public

1 records request included records covered by the plain language of the City's own
2 ordinance. Second, records of written proposals are prepared and exchanged by the City
3 and PLEA after each side's negotiators have *already deliberated* and determined what to
4 include in the written proposals. In other words, the proposals merely memorialize what
5 the parties are seeking from one another regarding "the organization, functions, policies,
6 decisions, procedures, operations or other activities of the government." A.R.S. § 41-
7 151(2). *Before* these written proposals are prepared, the parties privately deliberate among
8 themselves, and *after* they are prepared, the parties still negotiate in secret, per city code.
9 *See* PCC § 2-218.

10 The parties' proposals and counter-proposals reflect the City's priorities, how the
11 City addressed concerns of the Union, and which portions of the final MOU represent
12 compromises. In other words, the proposals provide the public with valuable information
13 about the conduct of their government and how the public's resources are being used,
14 precisely the type of information that Arizona law mandates be made open to public
15 inspection. A.R.S. § 39-121.01.

16 Even if any of the City's articulated interests here could credibly demonstrate a
17 threat of specific, material harm to the "best interests of the City," such speculative
18 harms are greatly outweighed by the public's interest in and right to know about the
19 operations of City government in this crucial area of labor relations and the provision
20 of law enforcement services to the City's citizens.

21 **III. The public has a strong interest in the requested records that outweighs any**
22 **potential City interest in nondisclosure.**

23 Publicly funded activities are "not meant to be clothed in secrecy, but to be
24 subject to open discussion and debate." *Moorehead v. Arnold*, 130 Ariz. 503, 505
25 (App. 1981). "The core purpose of the public records law is to allow the public
26 access to official records and other government information so that the public may
27 monitor the performance of government officials and their employees." *Phoenix*
28 *Newspapers*, 201 Ariz. at 351 ¶ 33 (citation and marks omitted). *See also Lake v.*

1 *City of Phoenix*, 222 Ariz. 547, 549 ¶ 7 (2009) (quoting *Griffis*, 215 Ariz. at 4 ¶ 11)
2 (“Arizona’s public records law serves to ‘open *government* activity to public
3 scrutiny.’”).

4 Union MOUs, their drafts, and MOU proposals are created to determine how to
5 conduct the city’s business via its employees and how to spend taxpayer money. They
6 provide information about crucial official activities and key public functions funded by
7 City taxpayers.

8 When the City negotiates an MOU with PLEA, City personnel conducting the
9 negotiations on behalf of the City are paid government salaries funded by taxpayers. As
10 public officials acting in a fiduciary capacity, the City’s negotiators act on behalf of
11 Phoenix residents. Like City negotiators, PLEA representatives conducting the
12 negotiations on behalf of PLEA are paid government salaries funded by taxpayers.

13 In addition to funding both sides of the negotiations, the public also has a
14 significant interest in how police services are provided and funded within the City.³ The
15 public’s tax burden is directly impacted by all city expenditures, particularly when they
16 concern core public functions such as law enforcement that consume significant portions
17 of public resources. City residents also are the direct recipients of law enforcement
18 services and therefore have a great interest in holding the City and its law enforcement
19 agents accountable regarding those services. The compensation, benefits, terms and
20 conditions of employment, disciplinary procedures, among many other public functions
21 that are outlined in MOU proposals are all matters of crucial and continuing public
22 concern.

23 Additionally, public engagement regarding MOU negotiations has impacted prior
24 rounds of negotiations. *See* Garcia Decl. ¶¶ 9–12. Without access to information regarding
25

26 ³ Indeed, such matters have already garnered significant public and media interest. *See*
27 Miguel Torres, *Phoenix Public Denied Advance Look at Police Union Contract*
28 *Proposals*, azcentral.com (Dec. 15, 2022)
<https://www.azcentral.com/story/news/local/phoenix/2022/12/15/phoenix-public-denied-advance-look-at-police-union-contract-proposals/69729856007/>.

1 MOU proposals, citizens cannot meaningfully petition their government for redress on
2 matters of critical public concern.

3 In order to “monitor the performance of government officials and their
4 employees,” *Phoenix Newspapers*, 201 Ariz. at 351 ¶ 33, City residents must be able to
5 find out what PLEA asked for, how their public officials responded, and what documents
6 were exchanged. *See* Garcia Decl. ¶¶ 13, 17–18. Each day the requested records are
7 withheld makes it more difficult for the public to perform its civic duties, from providing
8 comment on the proposals to scrutinizing each party’s behavior during the negotiations to
9 voting.⁴

10 CONCLUSION

11 By withholding the public records at issue in this case, the City has deprived the
12 public of valuable information about the conduct of its government and about significant
13 funding decisions made by the City. The City cannot meet its heavy burden to
14 demonstrate that the “best interest of the state” exception applies to the responsive
15 documents it possesses. Accordingly, Plaintiff respectfully requests that the Court (1)
16 issue an order compelling the City to immediately provide copies of the requested public
17 records; (2) issue a preliminary and permanent injunction enjoining the City from
18 withholding the requested records; (3) declare that the City may not withhold the
19 requested records under the Arizona Public Records Law; and (4) award attorney fees and
20 costs pursuant to A.R.S. §§ 12-341, 12-348, 12-2030, and 39-121.02; Rule 4(g), Ariz. R.
21 P. for Spec. Actions; and the private attorney general doctrine.

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26 ⁴ The City held a runoff election for two City Council positions on March 14, 2023. *See*
27 City of Phoenix, March 14, 2023 Runoff Election Information,
28 <https://www.phoenix.gov/cityclerk/elections/march-election-23>. By withholding the
records, the City deprived voters of an opportunity to decide whether they were relevant
to the ongoing election.

RESPECTFULLY SUBMITTED this 5th day of April, 2023.

GOLDWATER INSTITUTE

/s/ Parker Jackson

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CERTIFICATE OF SERVICE

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

BARRY GOLDWATER INSTITUTE FOR
PUBLIC POLICY RESEARCH,

Case No. CV2023-003250

Plaintiff,

**DECLARATION OF ISABEL
GARCIA**

vs.

CITY OF PHOENIX, a municipal
corporation; JEFF BARTON, in his official
capacity as City Manager for the City of
Phoenix; DENISE ARCHIBALD, in her
official capacity as City Clerk for the City of
Phoenix; and SHEREE RUCKER, in her
official capacity as Human Resources
Officer, Custodian of Records for the City of
Phoenix,

Defendants,

I, Isabel Garcia, hereby declare under penalty of perjury that my testimony set forth below
is true and correct:

1. I am over the age of 18, am of sound mind, and am competent to testify and
capable of making this declaration. I have personal knowledge of all matters asserted in
this declaration, except as to those matters stated upon information and belief, and as to
such matters, I reasonably believe them to be true.

2. I am currently a resident of the City of Phoenix.

3. I am also a Community Safety Strategist with the Phoenix-based non-profit
organization, Poder In Action ("Poder").

1 4. Since 2017, Poder has frequently engaged in community organizing and
2 political advocacy efforts with the public and with City officials to address and mitigate
3 police violence in the City of Phoenix, as well as increase the accountability of Phoenix
4 police to the public.

5 5. To increase law enforcement accountability, the public must have access to
6 employment contracts, draft memoranda of understanding (“MOUs”), and MOU
7 proposals exchanged between the City and the Phoenix Law Enforcement Association
8 (“PLEA”).

9 6. It is important for Poder and the public to have access to these public
10 records because, on information and belief, MOU proposals and draft agreements include
11 information pertaining to police compensation, which is a significant expense funded by
12 taxpayers. On information and belief, police salary and benefits comprise nearly forty
13 percent (40%) of the City’s discretionary budget. In 2022, this amounted to approximately
14 \$850 million. The public has a right to know and to provide input regarding how taxpayer
15 dollars are spent on the City’s law enforcement services.

16 7. Additionally, on information and belief, MOU proposals and draft
17 agreements often contain information regarding policies that relate to officer discipline
18 and investigatory procedures. Such policies directly impact the ability of city residents
19 and community groups—like Poder—to hold Phoenix police accountable to the public for
20 their actions.

21 8. PLEA submitted—and the City of Phoenix then released to the public—the
22 union’s proposed MOU drafts in both 2018 and 2020 prior to the start of each respective
23 round of meet and confer negotiations.

24 9. Poder submitted public comment to the City of Phoenix in both the 2018
25 and 2020 negotiation cycles regarding specific proposed provisions, both before
26 negotiations commenced and after they concluded.

27 10. In 2018, Poder advocated against a specific provision proposed by PLEA
28 that would have barred anonymous complaints against police officers. Without timely

1 disclosure of the proposal, Poder would not have been able to engage in this advocacy.
2 The provision ultimately was not included in the final version of the 2019–2021 MOU.

3 11. In 2020, Poder publicly opposed a PLEA proposal that would have given
4 police officers an unlimited amount of time to wait before they are interviewed after a
5 critical incident. Again, without timely disclosure of the proposal, Poder would not have
6 been able to meaningfully communicate with the public and with City officials about the
7 proposed provision, which likewise was not included in the final version of the 2021–
8 2023 MOU.

9 12. Timely disclosure of PLEA’s 2018 and 2020 proposals allowed Poder to
10 undertake public education and outreach efforts and engage in advocacy efforts regarding
11 specific union proposals prior to and during negotiations, not merely after negotiations
12 concluded. In other words, it was crucial for Poder—and other citizens and community
13 groups—to have information regarding MOU proposals. Poder’s public communication
14 efforts regarding these proposals informed the negotiation process as well as actions taken
15 by the Phoenix City Council.

16 13. Without access to MOU drafts and proposals, Poder and the public would
17 not be able to determine how PLEA and the City (and by extension, to its residents) arrive
18 at important decisions regarding law enforcement services in Phoenix. The final
19 agreements do not identify what proposals PLEA made to the City or how the City
20 responds to the union’s requests, whether through rejections, counteroffers, or proposals
21 of its own.

22 14. As an organizer for Poder, and as a concerned citizen, I was alarmed when
23 PLEA failed to submit—and the City failed to make publicly available—PLEA’s contract
24 proposals by December 1, 2022 for the MOU anticipated to take effect July 2023, as
25 required by the City’s meet and confer ordinance. The City also has not publicly
26 responded to any proposals submitted by PLEA, despite its stated policy—as reflected in
27 City code—about making draft proposals public.
28

1 15. On February 27, 2023, I contacted City Councilmember Carlos Garcia's
2 office by emailing Adriana Garcia Maximilliano, his office's Chief of Staff.

3 16. In my email to Ms. Maximilliano, I asked whether negotiations between the
4 City of Phoenix and PLEA had begun or if they were scheduled to commence.

5 17. Ms. Maximilliano responded that negotiations between the City and PLEA
6 "started in December [2022] and have been ongoing since then."

7 18. A copy of this email correspondence between myself and Ms. Maximilliano
8 is attached to this Declaration. *See* Exhibit A. This copy is a true and accurate
9 representation of my conversation with Ms. Maximilliano.

10 19. The withholding of the information contained in MOU proposals has
11 hampered Poder's and the public's ability to meaningfully engage in organizing and
12 advocacy efforts regarding the upcoming MOU anticipated to take effect July 2023.
13 Neither Poder nor the public know what PLEA requested in terms of compensation or
14 policy revisions, nor has the City provided a public response to any union proposals
15 regarding other important contract provisions.

16 20. The City's withholding of these records has limited public comment on the
17 upcoming MOU to an all-or-nothing discussion of the final draft alone. By the time Poder
18 or the public are able to comment on the agreement, the MOU will likely already be
19 finalized. Upon information and belief, I understand that as of the date of this declaration,
20 PLEA has already ratified the agreement and that City representatives have already
21 tentatively agreed to the final version of the MOU pending final City Council approval.

22 21. Even once the final draft is published by the City, which upon information
23 and belief will occur on or about April 13, 2023, Poder and the public still have an interest
24 in disclosure of all drafts and proposals exchanged during the negotiation process. This
25 information will provide information regarding the origin of any changes in the MOU,
26 identify any undisputed provisions, provide insight as to the respective bargaining strength
27 and influence of the parties, and inform future advocacy efforts, among other things.
28

22. The public has an interest in knowing who is influencing the City and its public officials, as well as how and why the City arrives at crucial public policy decisions in MOUs with City labor organizations. Poder has observed that PLEA is a highly influential special interest group, and that City officials frequently respond favorably to PLEA requests. Disclosure of the withheld records will shed light on the relationship between the City and PLEA, which greatly impacts the City's basic public functions.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 5th day of April, 2023.

Isabel Garcia
Isabel Garcia

Exhibit A

From: Isabel Garcia [REDACTED]
Subject: Fwd: Quest on about MOU negot at ons
Date: February 27, 2023 at 6:12 PM
To: [REDACTED]

IG

----- Forwarded message -----

From: Council District 8 PCC [REDACTED]
Date: Mon, Feb 27, 2023 at 5:56 PM
Subject: Re: Quest on about MOU negot at ons
To: Isabe Garc a [REDACTED], Adr ana Garc a Max m ano [REDACTED]

Hi Isabel, answering your questions below from what I know -

1. Did PLEA submit a proposal of their contract that is available to the public?
 - a. All labor contracts are currently being negotiated between city staff and labor leadership. Once negotiations end, contracts need to be ratified by members of the unit (labor group) and then are placed on a public city council agenda for a council vote and public comment.
2. Have negotiations between the City of Phoenix and PLEA begun or been scheduled?
 - a. Yes, they started in December and have been ongoing since then.

Let me know if you have further questions,

--

Adriana Garcia Maximiliano
Chief of Staff
[Office of Councilmember Carlos Garcia](#)
200 W. Washington St., 11th Floor
Phoenix, AZ 85003
[REDACTED]

From: Isabel Garcia [REDACTED]
Date: Monday, February 27, 2023 at 3:48 PM
To: Council District 8 PCC [REDACTED]
Subject: Question about MOU negotiations

Hello Councilmember Garcia,

We are wondering about two things regarding the MOU negotiations:

1. Did PLEA submit a proposal of their contract that is available to the public?

2. Have negotiations between the City of Phoenix and PLEA begun or been scheduled?

Thank you,

--

Isabel Diaz Garcia, MSW ([She/They/Ella/Elles](#)) [[pronouns.org](#)]

Community Safety Strategist

Poder In Action

PO Box 23406

Phoenix, AZ 85063

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@PoderinAction



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Isabel Diaz Garcia, MSW ([She/They/Ella/Elles](#))

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