



September 19, 2023

SENT VIA E-MAIL & U.S. MAIL

Fred DuVal, Chairman
Arizona Board of Regents
2700 North Central Avenue, Suite 400
Phoenix, Arizona 85004
Fred.duval@azregents.edu

Subj: Goldwater Institute Public Records Requests – #23-80, 23-275, 23-74

Dear Chairman DuVal:

The Goldwater Institute (“Institute”) submitted three public records requests to Arizona State University (“ASU”) seeking public records regarding student course and faculty training materials. Although the records exist and are readily available, they have still not been produced. As a result, we believe ASU, under the governance of the Arizona Board of Regents (“ABOR”), has not “promptly” produced public information as required by Arizona law. A.R.S. § 39-121.01(D).

On March 6, 2023, the Institute requested:

Copies of course syllabi for the “Diversity and Civility at Cronkite” course for the Fall 2022 and Spring 2023 semesters. Attachment 1.

ASU acknowledged receipt of the public records request on March 7, 2023 via the web portal, assigning the number #23-80 to the request. Attachment 2.

On March 20, 2023, Ms. Kris Schlott in our office emailed the ASU records custodian seeking an update regarding the status of the Institute’s request. Attachment 3. Ms. Schlott received no response from the records custodian. On March 24, 2023, Ms. Schlott again sought a status update regarding the Institute’s records request. Attachment 4. Again, Ms. Schlott received no response.

On April 7, 2023, attorney Jon Riches emailed Ms. Kimberly Demarchi at ASU General Counsel’s office for an update regarding the status of the Institute’s request. Attachment 5. Ms. Demarchi responded that some responsive records were gathered and would follow up in the next week with an update. *Id.* On April 17, 2023, Mr. Riches emailed Ms. Demarchi stating that the Institute had still not received any responsive records to its request. *Id.*

On April 19, 2023, Ms. Demarchi emailed Mr. Riches stating that ASU had assembled the syllabi responsive to the Institute's request but would not be providing copies purportedly because the copyright protection applied to the course syllabi. *Id.* Ms. Demarchi suggested an in-person inspection and note taking. *Id.* Mr. Riches responded reiterating that the Institute requested **copies** of public records pursuant to A.R.S. § 39-121.01. *Id.* On April 24, 2023, Ms. Demarchi wrote of ASU's concern of the copyrighted nature of the syllabi and stated that the responsive materials would be available for inspection only. *Id.*

On June 1, 2023, the Institute was permitted to review documents responsive to its request in-person and take notes. After reviewing the syllabi, on July 13, 2023, the Institute submitted a supplemental public records request seeking:

- 1. Copies of course syllabi for the “Diversity and Civility at Cronkite” course for the Fall 2022 and Spring 2023 semesters.**
- 2. Copies of all documents in the “assignment” pages of the Canvas program that were linked or referenced in the course syllabi for the “Diversity and Civility at Cronkite” courses for the Fall 2022 and Springs 2023 semesters.** Attachment 6.

ASU acknowledged receipt of the public records request on July 13, 2023, via the web portal, and assigned the number #23-275 to the request. Attachment 7.

On July 24, 2023, Mr. Riches emailed Ms. Demarchi seeking an update on the records request and whether ASU would be providing **copies** of the course syllabi.

On August 15, 2023, Ms. Schlott received an automated email that the Institute's records request # 23-80 was “closed” without the production of copies of the course syllabi. Attachment 8.

On August 18, 2023, Ms. Schlott made one final attempt to contact Ms. Demarchi at ASU, informing Ms. Demarchi that we had not received copies of the course syllabi. *Id.* That same day, Ms. Demarchi responded and indicated that copies of the syllabi would be provided “next week at the latest.” *Id.*

Mr. Riches also reminded Ms. Demarchi about the outstanding request for public records #23-275 and #23-74 (per below), but received no response. *Id.*

To date, the Institute has not received any copies of the course syllabi under request #23-80 nor has it received *any* documents responsive to # 23-275.

Additionally, on March 2, 2023, the Institute submitted a request for the following public records:

- 1. All slides, questions, answers, and other training and test materials for the “ASU Inclusive Communities” Staff Training.**

2. **Records that informed or relate to ASU's determination regarding what constitutes a "correct" answer to any question on the "ASU Inclusive Communities" Staff Training.**
3. **Records of any policy or procedure regarding an employee's failure to take or "pass" the "ASU Inclusive Communities" Staff Training.**
4. **Records of any disciplinary or other adverse action that has been taken against an ASU employee for failure to take or "pass" the "ASU Inclusive Communities" Staff Training.** Attachment 9.

ASU acknowledged receipt of the public records request on March 2, 2023 via the web portal, assigning the record request #23-74 to the request. *Id.*

On March 20, 2023 and March 24, 2023, Ms. Schlott in our office emailed the ASU records custodian seeking an update regarding the status of the Institute's request but received no response from her requests. Attachment 10. Subsequently, on April 6, 2023, attorney Jon Riches sent a demand to ASU for the requested documents and notified ASU of its violation of the requirement to "promptly" furnish responsive records under A.R.S. § 39-121.01(D)(1). Attachment 11.

On April 7, 2023, Ms. Demarchi emailed the Institute stating the Institute would receive responses to its request items 3 and 4 via ASU's public records portal. Attachment 5. As to items 1 and 2 of the Institute's request, Ms. Demarchi indicated it had responsive documents but due to technology and access restrictions, ASU had difficulty providing copies. *Id.* Ms. Demarchi stated if ASU was unable to provide the responsive documents within a week, the Institute would receive an update at that time. *Id.* The Institute did not receive any responsive records nor did it receive an update.

On April 17, 2023, Mr. Riches emailed Ms. Demarchi following up on the public records request. *Id.* Mr. Riches asked for clarification on the response received via ASU's public request portal. *Id.* The response received from ASU for request items 3 and 4 appeared to only address request item 4. *Id.* On April 19, 2023, Ms. Demarchi stated that there were no records responsive to request item 3. *Id.* Ms. Demarchi also stated that ASU was working to provide materials responsive to request items 1 and 2 and would provide an update by the end of the week. *Id.*

On May 24, 2023, Ms. Demarchi emailed Mr. Riches notifying him that ASU continued to work towards providing access to the responsive documents to request items 1 and 2. Attachment 12. ASU would be providing access to the responsive materials via a platform called Career Catalyst. *Id.*

On July 24, 2023, after reviewing the records responsive to request items 1 and 2 on the Career Catalyst platform, Mr. Riches emailed Ms. Demarchi, informing her that the records production did not include (1) "test materials" pertaining to the training; and (2) records recording "correct" answers to the test materials. Attachment 13. In other words, the records production did not include responsive records to portions of item 1 and 2. Mr. Riches asked whether or when this portion of the records request would be fulfilled. *Id.*

To date, the Institute has not received (1) “test materials” pertaining to the training; and (2) records recording “correct” answers to the test materials, as requested by the Institute in its public records request under records request #23-74.

Although all of these records were clearly described and should be easily obtained, and despite several follow-up communications regarding the status of the request, the Institute has yet to receive responsive records. As a result, we believe ASU and ABOR are in violation of the requirement to “promptly” furnish responsive records under A.R.S. § 39-121.01(D)(1).

As you know, Arizona law and public policy require open and transparent government. To that end, Arizona has broad public records laws favoring disclosure of records made and kept by local government agencies. *See* A.R.S. § 39-121.01(A)(2).

Pursuant to A.R.S. 39-121.01(D), “*Any person may request to examine or be furnished copies...of any public record... . The custodian of such records shall promptly furnish such copies... .*” (emphasis added). “Prompt” under Arizona’s statute means “‘quick to act’ or producing the requested records ‘without delay.’” *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 538, 177 P.3d 275, 280 (App. 2008). When records are “available for immediate production,” Arizona courts have required disclosure “at once.” *W. Valley View, Inc. v. Maricopa Cty. Sheriff’s Off.*, 216 Ariz. 225, 230, 165 P.3d 203, 208 (App. 2007).

To the extent an agency does not “promptly” furnish public records, “[a]ccess to a public record is deemed denied.” A.R.S. § 39-121.01(E).

The records the Goldwater Institute seeks are narrow, specific, and reasonably described. They are within the ASU’s possession and should be readily available for immediate production.

It has now been over **6 months** since ASU acknowledged receipt of records requests #23-80 and #23-74, and over **two months** since ASU acknowledged receipt of request #23-275.

Under these facts, ASU’s response to the Institute’s public records request has not been “prompt.” Consequently, ASU is in violation of A.R.S. 39-121.01(D), access to the records “is deemed denied,” A.R.S. § 29-121.01(E), and ASU is subject to a special action to compel production under A.R.S. § 39-121.02. Please note that statute calls for the award of attorney fees and costs if the party seeking records prevails.

Unfortunately, the Institute’s attempts to informally obtain records directly from ASU have been unsuccessful. Therefore, the Institute is demanding that ABOR produce the following public records immediately:

- (1) Copies of the course syllabi under request #23-80;**
- (2) All responsive records under request # 23-275; and**
- (3) “[T]est materials” pertaining to the “ASU Inclusive Communities” training and records regarding “correct” answers to the test materials under records request #23-74.**

If the records are not immediately produced, or we do not receive a response as to the status of production, we will seek to compel production under Arizona law.

I look forward to working with you to quickly resolve this matter. Should you have any questions in the meantime, please do not hesitate to contact me at (602) 462-5000 or sskankey@goldwaterinstitute.org.

Sincerely,



Stacy Skankey
Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute

Cc: Cecilia Mata, Cecilia.Mata@azregents.edu
Lyndel Manson, Lyndel.Manson@azregents.edu
Robert J. Herbold, Robert.Herbold@azregents.edu
Larry Edward Penley, Larry.Penley@azregents.edu
Jessica Pacheco, Jessica.Pacheco@azregents.edu
Doug Goodyear, doug.goodyear@azregents.edu
Gregg Brewster, Gregg.brewster@azregents.edu
Katelyn Reese, katelyn.reese@azregents.edu
David Zaragoza, David.Zaragoza@azregents.edu
Hon. Katie Hobbs (via regular mail)
Tom Horne (via regular mail)
John Arnold, john.arnold@azregents.edu
Kimberly Demarchi, Kimberly.demarchi@asu.edu



March 6, 2023

Via Email Only

Office of General Counsel
Arizona State University
publicrecords@asu.edu

Subj: Public Records Request: Diversity and Civility at Cronkite

Arizona law and public policy require open and transparent government. To that end, Arizona has broad public records laws favoring disclosure of records made and kept by government agencies. See ARIZ. REV. STAT. § 39-121.01(A)(2).

Pursuant to Arizona Revised Statutes § 39-121 et seq., we respectfully request the following public records in your custody:

Copies of course syllabi for the “Diversity and Civility at Cronkite” course for the Fall 2022 and Spring 2023 semesters.

Electronic production of records and information is preferable and acceptable. We request your response as soon as possible. If responsive records cannot be produced within ten (10) business days, please contact me with your progress and expected completion date.

This request is for non-commercial purposes.

We are willing to pay \$100.00 for copies of the public records requested. Please note, however, an agency may not charge a fee for any search costs incurred when producing public records. See A.R.S. 39-121.01(D)(1); *Hanania v. City of Tucson*, 128 Ariz. 135 (App. 1980).

Additionally, if some records are available prior to the production of other records, please provide on a rolling or continuing basis as the records are available.

Should you have any questions regarding this request, please do not hesitate to contact me at (602) 462-5000 or jriches@goldwaterinstitute.org.

Thank you for your prompt attention to this matter.

Office of General Counsel
March 6, 2023
Page 2 of 2

Sincerely,

A handwritten signature in cursive script that reads "Kris Schlott".

Kris Schlott
Paralegal
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

From: [Arizona State University Public Records](#)
To: [Kris Schlott](#)
Subject: Your Arizona State University public records request #23-80 has been opened.
Date: Tuesday, March 7, 2023 8:40:27 AM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

Arizona State University Public Records

Your record request #23-80 has been submitted. It is currently under review and is not available for the general public to view.

Thank you for submitting a public records request to Arizona State University.

We will begin reviewing your request now. If we need additional information to process it, or if we are unable to do so, we will be in touch with you shortly.

Otherwise, we will begin gathering any responsive records from the relevant departments and/or individuals at ASU. After the records have been gathered and individually reviewed to determine if they are responsive and whether any confidential information needs to be withheld or redacted, they will be provided to you. The amount of time necessary to complete this process varies depending on a variety of factors, including how extensive the request is, how responsive information is stored, and what kinds of review and redaction are necessary.

Please be aware that ASU receives a large number of records

requests and we may be occupied in processing requests received prior to yours. You are welcome to check on the status of your request at any time through the online portal you used to submit your request (https://link.edgepilot.com/s/bcf020e7/9-9QIR_Kl0WOB-36Q2u-fQ?u=https://asu.nextrequest.com/). When the responsive documents are ready for you, you may also use this portal to access them and to pay any charges associated with your request.

If you have additional questions regarding this process or the status of your request, you may submit them through the portal or by email to publicrecords@asu.edu.

The due date for your request may be later than usual because the office is closed on:

- May 29: Memorial Day

[View Request 23-80](https://link.edgepilot.com/s/df295f57/W2GoHUzqR0ukqkMVQBz1QA?u=https://asu.nextrequest.com/requests/23-80)

<https://link.edgepilot.com/s/df295f57/W2GoHUzqR0ukqkMVQBz1QA?u=https://asu.nextrequest.com/requests/23-80>

As the requester, you can always see the status of your request by signing in to the Arizona State University Public Records Request site [here](#). If you haven't already signed in to your account, you may need to [activate your account](#) to sign in.



The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at Arizona State University.

Technical support: See our [help page](#)

Too many emails? [Change your email settings here](#)

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Kris Schlott

From: Kris Schlott
Sent: Monday, March 20, 2023 1:15 PM
To: publicrecords@asu.edu
Subject: Request for status update

TimeMattersID: MDBD8AFEAF82F447
TM Matter No: 14-045
TM Matter Reference: FOIA - Public Records Requests

I would like to check on the status of Public Records Requests Numbers 23-74 & 23-80. Per the portal Tinkerbelle Dougherty is the point of contact. Can you please provide me with an ETA on the records?

Thank you for your assistance.

Kris Schlott

Paralegal

Goldwater Institute | www.GoldwaterInstitute.org | 602.462.5000

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Kris Schlott

From: Kris Schlott
Sent: Friday, March 24, 2023 3:12 PM
To: publicrecords@asu.edu
Subject: RE: Request for status update

TimeMattersID: MACBFAFEA116E484
TM Matter No: 14-045
TM Matter Reference: FOIA - Public Records Requests

I am once again requesting a status on Public Records Requests Numbers 23-74 (submitted March 1, 2023) and 23-80 (submitted March 6, 2023).

As you may be aware, A.R.S. 39-121.01(D)(1) provides that “[a]ny person may request to examine or be furnished copies ... of any public record The custodian of such records shall *promptly* furnish such copies...” (emphasis added). Further, “[a]ccess to a public record is deemed denied if a custodian fails to *promptly* respond to a request for production of a public record” A.R.S. 39-121.01(E) (emphasis added).

Please provide me the date on which you anticipate releasing the records requested or providing a response.

Sincerely,

Kris Schlott
Paralegal

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Kris Schlott

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Stacy Skankey

From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Sent: Monday, April 24, 2023 9:31 AM
To: Jonathan Riches
Cc: Kris Schlott
Subject: RE: Public Records Request - "Inclusive Communities" Training

Hi Jon,

I'm expecting some additional information later today about the training materials (request 23-74), and should have another update for you then.

With regard to the syllabi (23-80), the concern here is one of copyright, and this is the approach we routinely take to this kind of material – unless the instructor chooses to publish the materials publicly (in which case we strongly encourage them to include copyright markings), we make materials available for inspection only. We've historically done this as a way to provide more access, rather than just denying both inspection and copying.

Perhaps a good next step here would be to arrange a time for inspection, and then if there's something you think you can't capture with inspection and notetaking, we can discuss how best to proceed? This particular set of materials should be fairly straightforward to review – the page count is smaller than I had thought (only 6 documents – I erroneously looked at the set before de-duplication) and they are each only a few pages.

Take care,
Kim

Kim Demarchi
Vice President for Legal Affairs and Deputy General Counsel
Office of General Counsel
Arizona State University
office: [480-965-1247](tel:480-965-1247)
email: kimberly.demarchi@asu.edu

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Wednesday, April 19, 2023 11:48 AM
To: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: Re: Public Records Request - "Inclusive Communities" Training

Hi Kim,

No worries! Hope you're feeling better (if it's the bug that's been going around it's been claiming a lot of people, me included).

We will standby for items 1 and 2 on #23-74. Thanks for making sure these are produced promptly.

Regarding #23-80, as I am sure you know, the public records law allows for a requester to inspect a record or request a copy of it. A.R.S. § 39-121.01 (“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 website to the requesting person.”).

Additionally, during an inspection, a requester is permitted to make copies of the record with his or her personal device. See Op. Atty. Gen. No. I13-012 (“[A] public body cannot charge a copying fee when a member of the public inspects a record and makes a copy of the record using his or her own personal device.”).

Pursuant to A.R.S. § 39-121.01, we are specifically requesting copies of the public records. Please let us know if there is a fee for making the copies, and we will promptly provide it.

Best,

Jon

From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Date: Wednesday, April 19, 2023 at 10:18 AM
To: Jonathan Riches <jriches@goldwaterinstitute.org>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: RE: Public Records Request - "Inclusive Communities" Training

Hi Jon,

I’m so sorry – there was a miscommunication here about who was updating you last week, and then I came down with a stomach bug and have been out of the office.

On #23-74, we are still working on getting the materials responsive to items 1 and 2 into a format that permits review. I’ll touch base with you again by the end of the week to let you know the status.

Also on #23-74, there are no records responsive to item 3.

On #23-80, we have assembled the syllabi that are responsive to the request. Due to their copyrighted nature, these are documents that we make available for inspection but of which we do not provide copies. You are of course welcome to take notes during your inspection, but we would ask that you not photograph or otherwise copy them. We can schedule a time that is convenient for you to review the documents, so please let me know what would work best for you and I can assist in getting the logistics set up. For planning purposes, please be aware that we have identified 13 responsive documents, each of which is about 6 pages long.

Take care,
Kim

Kim Demarchi
Vice President for Legal Affairs and Deputy General Counsel
Office of General Counsel

Arizona State University
office: [480-965-1247](tel:480-965-1247)
email: kimberly.demarchi@asu.edu

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Monday, April 17, 2023 11:14 AM
To: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: RE: Public Records Request - "Inclusive Communities" Training

Hi Kim,

Following up on our public records requests #23-74 and #23-80.

For #23-74, we have not received any responsive records. The portal indicated that for requests (1) and (2), the custodian is gathering records and would have an update by April 14, but we didn't hear anything then. For requests (3) and (4), the portal indicated:

"With regard to requests 3 and 4, no disciplinary action has been taken against any university employee for failing to take the training or for their answers to the associated tests. This completes our response to requests 3 and 4."

That response appears to address request (4), but not request (3), which sought policies and procedures for an employee's refusal to take or failure of the Inclusive Communities training. Can you confirm whether responsive records exist for request (3)?

For #23-80, we have received no responsive records.

Thank you again for your assistance with this request.

Best,

Jon

Jon Riches
Vice President for Litigation
Goldwater Institute | goldwaterinstitute.org

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From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Sent: Friday, April 7, 2023 3:14 PM
To: Jonathan Riches <jriches@goldwaterinstitute.org>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: RE: Public Records Request - "Inclusive Communities" Training

You're very welcome. And you too.

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Friday, April 7, 2023 3:12 PM
To: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: RE: Public Records Request - "Inclusive Communities" Training

Thank you, Kim. Have a great weekend.

From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Sent: Friday, April 7, 2023 3:07 PM
To: Jonathan Riches <jriches@goldwaterinstitute.org>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: RE: Public Records Request - "Inclusive Communities" Training

Hi Jon,

Thanks so much – two letters did cause a bit of confusion on my desk.

On 23-80, I believe we have only some of the responsive records gathered, but I need to double-check with a person who is out of the office today. I'll follow up with her when she returns to the office next week and should be able to give you a more specific update then. I've also arranged for an update on that one through the portal so you have a record there of status as well.

Take care,
Kim

Kim Demarchi
Vice President for Legal Affairs and Deputy General Counsel
Office of General Counsel
Arizona State University
office: [480-965-1247](tel:480-965-1247)
email: kimberly.demarchi@asu.edu

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Friday, April 7, 2023 3:02 PM
To: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: Re: Public Records Request - "Inclusive Communities" Training

Hi Kim,

Thank you for getting these records out to us, and for tracking down a mechanism by which to produce records for items 1 and 2. We will keep an eye out for the production.

We have an additional outstanding request (#23-80) that we wrote separately about, but it may have got lost in the shuffle. I have attached here.

Feel free to reach out anytime if you have questions or if you would like to discuss.

Best,

Jon

Jon Riches

Vice President for Litigation

Goldwater Institute | goldwaterinstitute.org

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From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>

Sent: Friday, April 7, 2023 12:44 PM

To: Kris Schlott <kschlott@goldwaterinstitute.org>

Subject: RE: Public Records Request - "Inclusive Communities" Training

Ms. Schlott,

I am reaching out in response to the letter you sent yesterday afternoon on behalf of Mr. Riches. I apologize that we have not been able to respond to your status inquiries more quickly.

You will receive part of the information you have requested today (items 3 and 4 of your request), via our public records portal.

With regard to items 1 and 2, we are continuing to work to identify a mechanism to permit access to the training materials, which are not easily duplicated because of the technology used to create them and the access restrictions on the platform where they are hosted. While I cannot commit to a specific date on which those efforts will succeed, we can certainly provide you with regular updates on their status. Specifically, if we are not able to complete the response to your request within a week (by next Friday, April 14), we will provide you with another update at that time.

Should you or Mr. Riches have any other questions between now and next Friday, or at any point in the future, you are welcome to contact me directly.

Best wishes,

Kim

Kim Demarchi

Vice President for Legal Affairs and Deputy General Counsel

Office of General Counsel

Arizona State University

office: [480-965-1247](tel:480-965-1247)

email: kimberly.demarchi@asu.edu

From: Kris Schlott <kschlott@goldwaterinstitute.org>

Sent: Thursday, April 6, 2023 1:09 PM

To: Jose Cardenas <jcardenas@asu.edu>

Cc: publicrecords@asu.edu; 'ogcmail@asu.edu' <ogcmail@asu.edu>

Subject: Public Records Request - "Inclusive Communities" Training

Please see the attached letter from attorney Jonathan Riches regarding Public Records Request # 23-74 submitted on March 2, 2023.

Sincerely,

Kris Schlott

Paralegal

Goldwater Institute |

<https://link.edgepilot.com/s/d341ef51/m3YqfjEickacS4ozgfjHKA?u=http://www.goldwaterinstitute.org/>

| 602.462.5000

The Goldwater Institute accomplishes real results for liberty by working in state courts, legislatures, and communities nationwide to advance, defend, and strengthen the freedom guaranteed by the constitutions of the United States and the fifty states.

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Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

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July 13, 2023

SENT VIA ONLINE PORTAL

Arizona State University
Online FOIA Portal

Subj: Public Records Request: Diversity and Civility at Cronkite courses

Arizona law and public policy require open and transparent government. To that end, Arizona has broad public records laws favoring disclosure of records made and kept by government agencies. See ARIZ. REV. STAT. § 39-121.01(A)(2).

Pursuant to Arizona Revised Statutes § 39-121 et seq., we respectfully request the following public records in your custody:

- (1) Copies of assigned reading material for the “Diversity and Civility at Cronkite” courses for the Fall 2022 and Spring 2023 semesters as reflected in the course syllabi.**
- (2) Copies of all documents in the “assignment” pages of the Canvas program that were linked or referenced in the course syllabi for the “Diversity and Civility at Cronkite” courses for the Fall 2022 and Spring 2023 semesters.**

Electronic production of records and information is preferable and acceptable. We request your response as soon as possible. If responsive records cannot be produced within ten (10) business days, please contact me with your progress and expected completion date.

This request is for non-commercial purposes.

We are willing to pay \$100.00 for copies of the public records requested. Please note, however, an agency may not charge a fee for any search costs incurred when producing public records. See A.R.S. 39-121.01(D)(1); *Hanania v. City of Tucson*, 128 Ariz. 135 (App. 1980).

Additionally, if some records are available prior to the production of other records, please provide on a rolling or continuing basis as the records are available.

Should you have any questions regarding this request, please do not hesitate to contact me at (602) 462-5000 or kschlott@goldwaterinstitute.org.

Arizona State University
July 13, 2023
Page 2 of 2

Thank you for your prompt attention to this matter.

Sincerely,

Kris Schlott
ParalegalU
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

From: [Arizona State University Public Records](#)
To: [Kris Schlott](#)
Subject: Your Arizona State University public records request #23-275 has been opened.
Date: Thursday, July 13, 2023 9:01:27 AM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

Arizona State University Public Records

Your record request #23-275 has been submitted successfully.

Thank you for submitting a public records request to Arizona State University.

We will begin reviewing your request now. If we need additional information to process it, or if we are unable to do so, we will be in touch with you shortly.

Otherwise, we will begin gathering any responsive records from the relevant departments and/or individuals at ASU. After the records have been gathered and individually reviewed to determine if they are responsive and whether any confidential information needs to be withheld or redacted, they will be provided to you. The amount of time necessary to complete this process varies depending on a variety of factors, including how extensive the request is, how responsive information is stored, and what kinds of review and redaction are necessary.

Please be aware that ASU receives a large number of records requests and we may be occupied in processing requests received prior to yours. You are welcome to check on the status of your request at any time through the online portal

you used to submit your request (<https://link.edgepilot.com/s/a8f7e68b/FSJYAgeYfUKREs2G-rcEEQ?u=https://asu.nextrequest.com/>). When the responsive documents are ready for you, you may also use this portal to access them and to pay any charges associated with your request.

If you have additional questions regarding this process or the status of your request, you may submit them through the portal or by email to publicrecords@asu.edu.

[View Request 23-275](https://link.edgepilot.com/s/ffa26b05/6r663ui7aU6biPmXvEhww?u=https://asu.nextrequest.com/requests/23-275)

<https://link.edgepilot.com/s/ffa26b05/6r663ui7aU6biPmXvEhww?u=https://asu.nextrequest.com/requests/23-275>

As the requester, you can always see the status of your request by signing into the Arizona State University [portal](#).

If you haven't already signed in, you may need to [activate or setup your account](#) to get started. Once your account is activated, you can communicate directly with the Arizona State University through NextRequest.



Reply to this email or sign in to contact Arizona State University.

[Change your email settings](#) | [Visit our help center](#)

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will see a warning.

Stacy Skankey

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Friday, August 18, 2023 2:27 PM
To: Kimberly Demarchi; Kris Schlott
Subject: Re: Your Arizona State University public records request #23-80 has been closed.
Attachments: ASU - Diversity and Civility at Cronkite Courses 2022 - 2023 - PRR230713.pdf; Public Records Request - Inclusive Communities Training.pdf

Thank you, Kim. Very much appreciated.

I have attached the supplemental request we submitted after we inspected the course syllabi here. Looks like it was assigned a new public records request #23-275. But happy to handle those records however is convenient for you.

We are also still waiting on requests (1) and (2) for #23-74: the test materials, answers, and records regarding the answers for the ASU Inclusive Communities faculty training. Attached.

Thank you!

Jon

From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Date: Friday, August 18, 2023 at 9:34 AM
To: Kris Schlott <kschlott@goldwaterinstitute.org>
Cc: Jonathan Riches <jriches@goldwaterinstitute.org>
Subject: RE: Your Arizona State University public records request #23-80 has been closed.

Kris and Jon,

I apologize – this message was sent to you in error and I'm sure it was confusing and disconcerting. We've had some staff vacancies and changes in this area of our office's operations that I think likely led to this error, and I will get it unscrambled.

Your request is not closed, as your request for copies remains outstanding. We will be providing those copies to you and I will ask that it be done as soon as possible. You should expect them next week at the latest.

I know you've also asked for additional records on this topic, specifically course materials from the courses for which you've reviewed the syllabi. I have been considering that a follow up on this original request (and we are working on obtaining the documents), but if you'd prefer we can open a separate request file for that. Either option is fine, so just let me know if there's a preference on your part.

Sorry again for the confusion,
Kim

Kim Demarchi
Vice President for Legal Affairs and Deputy General Counsel
Office of General Counsel
Arizona State University

office: 480-965-1247
mobile: 602-214-7818
email: kimberly.demarchi@asu.edu

From: Kris Schlott <kschlott@goldwaterinstitute.org>
Sent: Friday, August 18, 2023 8:56 AM
To: 'asu_23-80-requester-notes@inbound.nextrequest.com' <asu_23-80-requester-notes@inbound.nextrequest.com>
Cc: Jonathan Riches <jriches@goldwaterinstitute.org>; Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Subject: RE: Your Arizona State University public records request #23-80 has been closed.

We have requested, but have not received “copies” of the course syllabi. As a result, we do not think this request is closed.

Sincerely,

Kris Schlott

Paralegal
Goldwater

Institute | <https://link.edgepilot.com/s/5de64fd9/HqXzhrH7FUj5VmTKwWRhow?u=http://www.goldwaterinstitute.org/> | 602.462.5000

Please join us in celebrating the Goldwater Institute's 35th Anniversary at our Annual Dinner

You're invited to be part of an inspiring evening featuring Senator Ted Cruz and a live recording of his hit podcast, *Verdict*, on Friday, November 3rd, 2023.

[Space is limited, so RSVP TODAY to guarantee the best seat!](#)

From: Arizona State University Public Records <messages@nextrequest.com>
Sent: Tuesday, August 15, 2023 8:56 PM
To: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: Your Arizona State University public records request #23-80 has been closed.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

Arizona State University Public Records

Record request #23-80 has been closed.

View Request 23-80

<https://link.edgepilot.com/s/71374402/V0yuBRh49EOu41Yotsd72g?u=https://asu.nextrequest.com/requests/23-80>



Questions about your request? Reply to this email or sign in to contact staff at Arizona State University.

Technical support: See our [help page](#)

▪

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Skip to main content

Public Record Requests

Arizona State University

Request Visibility:  Unpublished

  **Request 23-74**  Open



2 of 3

Dates

Received


March 2, 2023 via web


Requester

 Kris Schlott

 kschlott@goldwaterinstitute.org

 500 E Coronado Rd, Phoenix, AZ, 85004

 602-866-8971

 Goldwater Institute

Request

(1) All slides, questions, answers, and other training and test materials for the "ASU Inclusive Communities" Staff Training. (2) Records that informed or relate to ASU's determination regarding what constitutes a "correct" answer to any question on the "ASU Inclusive Communities" Staff Training. (3) Records of any policy or procedure regarding an employee's failure to take or "pass" the "ASU Inclusive Communities" Staff Training. (4) Records of any disciplinary or other adverse action that has been taken against an ASU employee for failure to take or "pass" the "ASU Inclusive Communities" Staff Training.

Timeline

Documents

Additional information

Is your request for a commercial purpose? A Yes or No response is REQUIRED. See description in side bar.

No

Staff Assigned

Departments

No departments assigned

Point of contact

Tinkerbelle Dougherty

External Message

Requester + Staff

Thank you for submitting a public records request to Arizona State University.

We will begin reviewing your request now. If we need additional information to process it, or if we are unable to do so, we will be in touch with you shortly.

Otherwise, we will begin gathering any responsive records from the relevant departments and/or individuals at ASU. After the records have been gathered and individually reviewed to determine if they are responsive and whether any confidential information needs to be withheld or redacted, they will be provided to you. The amount of time necessary to complete this process varies depending on a variety of factors, including how extensive the request

Kris Schlott

From: Kris Schlott
Sent: Friday, March 24, 2023 3:12 PM
To: publicrecords@asu.edu
Subject: RE: Request for status update

TimeMattersID: MACBFAFEA116E484
TM Matter No: 14-045
TM Matter Reference: FOIA - Public Records Requests

I am once again requesting a status on Public Records Requests Numbers 23-74 (submitted March 1, 2023) and 23-80 (submitted March 6, 2023).

As you may be aware, A.R.S. 39-121.01(D)(1) provides that “[a]ny person may request to examine or be furnished copies ... of any public record The custodian of such records shall *promptly* furnish such copies...” (emphasis added). Further, “[a]ccess to a public record is deemed denied if a custodian fails to *promptly* respond to a request for production of a public record” A.R.S. 39-121.01(E) (emphasis added).

Please provide me the date on which you anticipate releasing the records requested or providing a response.

Sincerely,

Kris Schlott
Paralegal

Goldwater Institute | www.GoldwaterInstitute.org | 602.462.5000

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From: Kris Schlott
Sent: Monday, March 20, 2023 1:15 PM
To: publicrecords@asu.edu
Subject: Request for status update

I would like to check on the status of Public Records Requests Numbers 23-74 & 23-80. Per the portal Tinkerbelle Dougherty is the point of contact. Can you please provide me with an ETA on the records?

Thank you for your assistance.

Kris Schlott

Paralegal

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April 6, 2023

SENT VIA E-MAIL & U.S. MAIL

Arizona State University
Office of General Counsel
Attn. Mr. Jose Cardenas
Fulton Center, 300 E. University Dr.
Tempe, AZ 85287-7405
jcardenas@asu.edu

Subj: Goldwater Institute Public Records Request – “Inclusive Communities” Training

Dear Mr. Cardenas:

We write to request that public records the Goldwater Institute (“Institute”) requested seeking public information pertaining to a training course on “Inclusive Communities” provided to Arizona State University (“ASU”) faculty, but have to date been withheld, be produced “promptly,” as state law requires. A.R.S. § 39-121.01(D).

The Institute submitted a public records request to ASU dated March 2, 2023 seeking:

- 1. All slides, questions, answers, and other training and test materials for the “ASU Inclusive Communities” Staff Training.**
- 2. Records that informed or relate to ASU’s determination regarding what constitutes a “correct” answer to any question on the “ASU Inclusive Communities” Staff Training.**
- 3. Records of any policy or procedure regarding an employee’s failure to take or “pass” the “ASU Inclusive Communities” Staff Training.**
- 4. Records of any disciplinary or other adverse action that has been taken against an ASU employee for failure to take or “pass” the “ASU Inclusive Communities” Staff Training. Attachment 1.**

ASU acknowledged receipt of the public records request on March 2, 2023 via the web portal, assigning record request # 23-74 to the request. *Id.*

On March 20, 2023, Ms. Kris Schlott in our office emailed the ASU records custodian seeking an update regarding the status of the Institute’s request. Attachment 2. Ms. Schlott received no response from the records custodian.

On March 24, 2023, she again sought a status update regarding the Institute's records request. Attachment 3. Again, Ms. Schlott received no response.

Although these records were clearly described and should be easily obtained, and despite our follow up communications with your records custodian, the Institute has yet to receive **any** responsive records. As a result, we believe ASU is in violation of the requirement to "promptly" furnish responsive records under A.R.S. § 39-121.01(D)(1).

As you know, Arizona law and public policy require open and transparent government. To that end, Arizona has broad public records laws favoring disclosure of records made and kept by government agencies. *See* A.R.S. § 39-121.01(A)(2).

Pursuant to A.R.S. § 39-121.01(D)(1), "*Any person* may request to examine or be furnished copies ... of any public record The custodian of such records shall *promptly* furnish such copies." (emphasis added). "Prompt" under Arizona's statute means "'quick to act' or producing the requested records 'without delay.'" *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 538 ¶ 14 (App. 2008) (citation omitted). When records are "available for immediate production," Arizona courts have required disclosure "at once." *W. Valley View, Inc. v. Maricopa Cnty. Sheriff's Off.*, 216 Ariz. 225, 230 ¶ 21 & n.8 (App. 2007).

To the extent an agency does not "promptly" furnish public records, "[a]ccess to a public record is deemed denied." A.R.S. § 39-121.01(E).

The records the Goldwater Institute seeks are narrow, specific, and reasonably described. They are within ASU's possession and should be readily available for immediate production.

It has now been **35 days** since ASU acknowledged receipt of the request, and no responsive records have been produced. Nor has ASU provided any satisfactory explanation for the delay.

Under these facts, ASU's response to the Institute's public records request has not been "prompt." Consequently, ASU is in violation of A.R.S. § 39-121.01(D), access to the records "is deemed denied," A.R.S. § 39-121.01(E), and ASU is subject to a special action to compel production under A.R.S. § 39-121.02. Please note that the statute calls for the award of attorney fees and costs if the party seeking records prevails. *Id.*

Based on the foregoing, please produce the requested records immediately, or provide an immediate response as to the status of production.

If the records are not immediately produced, or we do not receive a response as to the status of production, we will seek to compel production under Arizona law.

Mr. Jose Cardenas

April 6, 2023

Page 3 of 3

I look forward to working with you to quickly resolve this matter. Should you have any questions in the meantime, please do not hesitate to contact me at (602) 462-5000 or jriches@goldwaterinstitute.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Riches", written over a light blue horizontal line.

Jon Riches

Vice President for Litigation

Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

cc. publicrecords@asu.edu
ogcmail@asu.edu

Skip to main content

Public Record Requests

Arizona State University

Request Visibility:  Unpublished

  **Request 23-74**  Open



2 of 3

Dates

Received


March 2, 2023 via web

Requester

 Kris Schlott

 kschlott@goldwaterinstitute.org

 500 E Coronado Rd, Phoenix, AZ, 85004

 602-866-8971

 Goldwater Institute

Request

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No

Staff Assigned

Departments

No departments assigned

Point of contact

Tinkerbelle Dougherty

External Message

Requester + Staff

Thank you for submitting a public records request to Arizona State University.

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is, how responsive information is stored, and what kinds of review and redaction are necessary.

Please be aware that ASU receives a large number of records requests and we may be occupied in processing requests received prior to yours. You are welcome to check on the status of your request at any time through the online portal you used to submit your request (<https://asu.nextrequest.com/>). When the responsive documents are ready for you, you may also use this portal to access them and to pay any charges associated with your request.

If you have additional questions regarding this process or the status of your request, you may submit them through the portal or by email to publicrecords@asu.edu.

March 2, 2023, 11:01am



Request Opened

Public

Request received via web

March 2, 2023, 11:01am by the requester

Kris Schlott

From: Kris Schlott
Sent: Monday, March 20, 2023 1:15 PM
To: publicrecords@asu.edu
Subject: Request for status update

TimeMattersID: MDBD8AFEAF82F447
TM Matter No: 14-045
TM Matter Reference: FOIA - Public Records Requests

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Thank you for your assistance.

Kris Schlott

Paralegal

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Kris Schlott

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TM Matter No: 14-045
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Please provide me the date on which you anticipate releasing the records requested or providing a response.

Sincerely,

Kris Schlott
Paralegal

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Subject: Request for status update

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Stacy Skankey

From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Sent: Friday, May 26, 2023 1:59 PM
To: Jonathan Riches
Cc: Kris Schlott; Ivette Othon-Encinas
Subject: RE: PRR 23-80

Thanks, Jon – I appreciate it.

One additional piece of technical information, which I've just received. Apparently you will get a notification from the system that you have access, but it may not have instructions about how to login. Here are the instructions, just in case:

To login please visit [this page](#) and enter the following:
Email: [your email address]
Password: **Password123**

After you log in, you will be able to access the materials here:

Courses:
[Inclusive Communities: Faculty](#)
[Inclusive Communities: Staff](#)"

I'm heading off to the airport shortly, but others will be around if you need any additional help, and I'll be back in about a week.

Take care,
Kim

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Thursday, May 25, 2023 11:24 AM
To: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>; Ivette Othon-Encinas <Ivette.Othon-Encinas@asu.edu>
Subject: RE: PRR 23-80

Thank you, Kim. Hope you have a great trip.

Best,

Jon

From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Sent: Thursday, May 25, 2023 8:56 AM
To: Jonathan Riches <jriches@goldwaterinstitute.org>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>; Ivette Othon-Encinas <Ivette.Othon-Encinas@asu.edu>
Subject: RE: PRR 23-80

Jon,

I'll pass your email along, and appreciate the reminder regarding your practice of maintaining a file copy of records requested for inspection. I believe you'll receive the invitation shortly.

If you have any technical difficulties accessing the training, please let us know. I'll be out of the office for about a week starting tomorrow, but Ivette Othon-Encinas, who I've copied here, will be back in the office from her own trip on May 30 and will be able to assist. I'm also reachable in emergencies, if something happens during the days that we are both out.

Take care,
Kim

Kim Demarchi

Vice President for Legal Affairs and Deputy General Counsel
Office of General Counsel
Arizona State University
office: [480-965-1247](tel:480-965-1247)
email: kimberly.demarchi@asu.edu

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Wednesday, May 24, 2023 3:33 PM
To: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>
Cc: Kris Schlott <kschlott@goldwaterinstitute.org>
Subject: RE: PRR 23-80

Hi Kim,

Thank you kindly for all of your efforts in providing access to these platforms.

I reviewed the Terms of Use of Privacy Policies. Some of the provisions do not appear to conform to Arizona's Public Records Law.

For example, "Prohibited Use" #17 states:

Infringing upon the copyright, trademark, patent, or other intellectual property rights of others in computer programs or electronic information (including plagiarism and unauthorized use or reproduction) is prohibited. The unauthorized storing, copying, or use of audio files, images, graphics, computer software, data sets, bibliographic records, and other protected property is prohibited except as permitted by law.

I want to clarify that we are requesting copies of the records. And by accessing the system, we would intend to store and copy relevant public records. We do not believe that by doing so we would violate any copyright or trademark and such use would be permitted by Arizona law.

However, I wanted to make sure you knew the use we intend to make of these public records.

You can use this email: jriches@goldwaterinstitute.org for the access credentials.

Again, thank you for all very much for working through this with us.

Best,

Jon

Jon Riches

Vice President for Litigation

Goldwater Institute | goldwaterinstitute.org

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From: Kimberly Demarchi <Kimberly.Demarchi@asu.edu>

Sent: Wednesday, May 24, 2023 12:33 PM

To: Jonathan Riches <jriches@goldwaterinstitute.org>

Cc: Kris Schlott <kschlott@goldwaterinstitute.org>

Subject: PRR 23-80

Jon,

I'm writing with good news about PRR 23-80, which requested various materials related to ASU's Inclusive Communities training.

The work to convert the training from the platform on which it is delivered to ASU employees (which is restricted to employee-only access) to a platform that can be accessed by members of the public (such as those we use for course delivery) is almost complete, and I expect that the training will be available for inspection on the new platform within the next few days.

The process to get you that access is that you will receive an invitation by email, which will take you to a link to create an account with the platform (called Career Catalyst) so that you can review both the faculty and staff versions of the interactive training. Because you will be accessing an ASU computing resource to view the interactive training, your use of that platform is subject to ASU's [Terms of Use](#) and [Privacy](#) policies.

Could you please confirm the email address to which you want the invitation to be sent? In addition, please review the terms of use and privacy policies and confirm that you understand and will comply with them.

Once I receive your confirmation, I will provide the email address you supply to the instructional technology staff, who will send the invitation to you as soon as the course has been completely converted to the Career Catalyst platform.

If you have any questions or concerns, please don't hesitate to be in touch.

Take care,
Kim

Kim Demarchi

Vice President for Legal Affairs and Deputy General Counsel
Office of General Counsel

Arizona State University

office: [480-965-1247](tel:480-965-1247)

email: kimberly.demarchi@asu.edu

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Stacy Skankey

From: Jonathan Riches <jriches@goldwaterinstitute.org>
Sent: Monday, July 24, 2023 10:50 AM
To: Kimberly Demarchi
Cc: Kris Schlott
Subject: Outstanding Public Records Issues
Attachments: Pages from ASU - Demand Letter - Public Records Request - Inclusive Communities Training.pdf; ASU - Diversity & Civility at Cronkite - PRR.pdf; ASU - Diversity and Civility at Cronkite Courses 2022 - 2023 - PRR230713.PDF

Hi Kim,

Hope you're having a great summer.

I am following up on our outstanding public records requests.

(1) Regarding **#23-74**, we reviewed the materials through the web portal. Thank you for arranging the access to do so. However, access to the portal did not give us access to any tests associated with the faculty training. It is my understanding that faculty taking this training must also complete a test for it. As you may recall, our records request sought: (1) "test materials" pertaining to the training; and (2) records recording "correct" answers to the test materials. I have attached the original request here. **Can you please let me know whether or when this portion of the public records request will be fulfilled?**

(2) Regarding **#23-80**, we would like copies of the syllabi. **Can you please let me know whether the university will be providing copies of the course syllabi?** Original request is attached.

(3) Finally, after reviewing the course syllabi for in person for request number #23-80, we submitted a supplemental request for a narrow set of records. That request is attached and was provided request **#23-275**. **Can you please provide a status update on this request?**

Hopefully, we can resolve these few outstanding issues as quickly as possible. Otherwise, given the length of time that has elapsed since these requests, we may have no choice but to seek to compel production.

As always, happy to discuss anytime at your convenience.

Best,

Jon

Jon Riches

Vice President for Litigation

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