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ARIZONA OPINION

Arizona opinion: State Supreme Court should protect access to public records

Parker Jackson Special to the Arizona Daily Star

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***T**he following is the opinion and analysis of the writer:*

Award-winning investigative journalist Amy Silverman has exposed numerous problems at Arizona's Department of Economic Security. She's done it through a series of reports documenting the delays and denials faced by citizens who seek services from the agency's Division of Developmental Disabilities. But recently, when Silverman sought some public records from the department to find out how it treats vulnerable adults under its care, she ran into a wall: the agency refused to turn over the records, citing a state law that makes certain information gathered by the department confidential. That particular law has over a dozen exceptions — some of which have their own exceptions! — but the Department of Economic Security said she didn't fit under any of them.

So Silverman sued the agency under Arizona’s open-records laws, and the Goldwater Institute filed a brief in the Arizona Supreme Court last month supporting her argument that the agency must hand over the documents. The Court heard oral arguments in the case on April 9.

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There are few things government should hide from the public. That’s why Arizona law broadly requires the disclosure of public records, with limited exceptions. And when the legislature creates exceptions to those exceptions, courts should interpret them to allow broad disclosure so the public can keep an eye on what government officials and employees are up to.

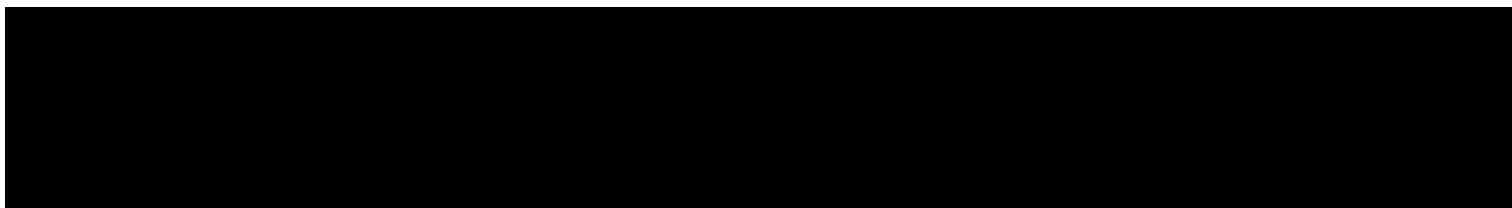
True, these laws include exceptions, designed to protect people’s privacy. But those exceptions must be carefully limited, to serve Arizona’s policy of openness. The exception at issue in Silverman’s case says that the Department of Economic Security is not required to turn over documents containing certain personal information. But that exception contains its own exception, which requires disclosure to “[a]ny person engaged in bona fide research, if no

personally identifying information is made available.” Since Silverman didn’t seek personal identifying information (like names or phone numbers), the department should have given her the records she requested.

But the agency refused, claiming that Silverman did not count as a “person engaged in bona fide research.” Fortunately for Silverman, the Arizona State University First Amendment Clinic stepped up to represent her in court. But although she won in the trial court, the Court of Appeals issued a mixed ruling that imposed additional qualifications on what counts as “research,” and created a burdensome preapproval process for researchers. Now the state’s high court is reviewing the case.

Goldwater’s brief emphasizes that the “bona fide research” exception must be viewed in light of the strong public policy of disclosure found in Arizona’s Public Records Law — and that the preapproval requirements created by the Court of Appeals may violate freedom of speech because they let the government pick and choose which types of research are deserving of access to public information. This type of “prior restraint” is frowned upon in the law.

Goldwater is hopeful that the Supreme Court of Arizona will recognize that the exceptions to transparency are few and narrow, and that the Department of Economic Security must release the anonymized records sought by Silverman. The Goldwater Institute will always step up to defend the public’s right to access information about government operations and expenditures. Transparency is the rule — and must be for our form of self-government to succeed.





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