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

15 BARRY GOLDWATER INSTITUTE FOR
16 PUBLIC POLICY RESEARCH,

17 Petitioner,

18 v.

19 STATE OF ARIZONA ex rel. ARIZONA
20 ATTORNEY GENERAL'S OFFICE, a body
21 politic; KRIS MAYES, in her official
capacity as Arizona Attorney General,

22 Respondents.
23

No. CV2025-061461

PETITIONER'S HEARING BRIEF

Assigned to the Hon. Quintin Cushner

24 Pursuant to this Court's Minute Entry dated March 3, 2026, Petitioner Goldwater
25 Institute ("Petitioner") submits this hearing brief in support of judgment in its favor. The
26 Court should (a) declare that Respondents violated Arizona Public Records Law, A.R.S.
27 § 39-121.01, by withholding public records, (b) compel Respondents to produce the
28

1 requested public records, and (c) permanently enjoin Respondents from withholding the
2 requested public records.

3 This hearing brief is supported by the following memorandum of points and
4 authorities.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 INTRODUCTION

7 Arizona’s public records law exists to allow citizens to see what their government is
8 up to and to hold officials accountable for their actions. *Phoenix Newspapers, Inc. v.*
9 *Keegan*, 201 Ariz. 344, 351 ¶ 33 (App. 2001). The public is entitled to records when the
10 government conducts public business and spends public money. A.R.S. § 39-121.01.

11 On February 28, 2024, Arizona Attorney General Mayes announced a high-profile
12 antitrust lawsuit against RealPage, Inc.,¹ alleging that RealPage and landlords were engaged
13 in a conspiracy to drive up rents in Phoenix and Tucson, directly contributing to Arizona’s
14 affordable housing crisis. The RealPage lawsuit looked almost identical to other price-
15 fixing class-action lawsuits filed by a private law firm whom Respondents hired as outside
16 counsel in this matter, Hagens Berman Sobol Shapiro LLP.

17 In order to learn more about this case, Petitioner submitted a public records request
18 to help determine how many consumer complaints the Arizona Attorney General’s Office
19 (“AGO”) received against RealPage. The AGO produced one document and withheld all
20 other documents claiming statutory confidentiality. But the statute it relies upon does not
21 create a categorical bar from disclosure, and does not exempt the records Petitioner seeks
22 that identify the total number of consumer complaints the AGO received.

23 Respondents’ position is that if public records *might* contain exempt material, they
24 are not required to search for records, review whether any records apply to the
25 confidentiality statute, or whether redactions should be applied. That is not the law. But
26 despite their statutory obligation, Respondents have not even conducted a *search* for the
27

28 ¹ RealPage, Inc., is a real estate revenue-management software company.

1 records, due to their incorrect assertion that any potentially responsive records would
2 ultimately be confidential under the statute.

3 Two years after submitting the public records request, Petitioner still has not received
4 the records. Without access to information regarding the volume of complaints, the public
5 cannot determine whether a high-profile lawsuit was prompted by widespread consumer
6 harm, or instead, if driven by political or special interest considerations. By improperly
7 withholding public records, Respondents have deprived the public of the information
8 necessary to understand the AGO's actions and hold the agency accountable.

9 **FACTUAL BACKGROUND**

10 On February 28, 2024, Arizona Attorney General Mayes announced a lawsuit against
11 RealPage, Inc. and nine major residential landlords for allegedly conspiring or colluding to
12 raise rent in the Phoenix and Tucson metro areas. SSOF ¶ 1. RealPage is a technology
13 company that, among other things, provides software and data analytics to property owners
14 as a tool to recommend rental rates. *Id.* The announcement alleged that the conspiracy
15 between RealPage and certain landlords harmed Arizonans and “directly contributed to
16 Arizona’s affordable housing crisis.” SSOF ¶ 2. The lawsuit contends that the “conspiracy”
17 caused rental rates in Phoenix and Tucson to rise by at least 30% over a two-year period.
18 SSOF ¶ 3. The basis of the AG’s complaint was that residential landlords used a software
19 platform to assist in determining market rates for rental properties.

20 The RealPage lawsuit closely resembles other price fixing class-action lawsuits filed
21 by the law firm Hagens Berman Sobol Shapiro LLP. SSOF ¶ 4. The primary class action
22 case against Real Page was ultimately dismissed by a federal court. *Id.* After that, AGO
23 hired attorneys from the same firm as outside counsel in the RealPage matter, on a
24 contingency fee basis for any eventual judgment or settlement. *Id.*

25 Even more alarmingly, media reporting on the RealPage matter, and the AGO’s own
26 press statements, do not reference any consumer complaints as the impetus for that
27 litigation. SSOF ¶ 1.

Consequently, on April 17, 2024, Petitioner sent a public records request (the “Request”) to the AGO seeking six items related to the number of consumer complaints received against RealPage that were in the custody and control of the AG’s Office. SSOF

¶ 5. The Request sought the following:

- (1) Copies of records indicating the total number of complaints submitted to the Arizona Attorney General’s Office prior to February 28, 2024 by consumers or members of the public pertaining to an alleged conspiracy or collusion between landlords and/or “RealPage” or its subsidiaries and affiliates to raise residential rents.
- (2) Copies of records indicating the total number of complaints submitted to the Arizona Attorney General’s Office after February 28, 2024 by consumers or members of the public pertaining to an alleged conspiracy or collusion between landlords and/or “RealPage” or its subsidiaries and affiliates to raise residential rents.
- (3) Copies of records indicating the total number of complaints submitted to the Arizona Attorney General’s Office consumer protection division from January 1, 2023–December 31, 2023 by consumers or members of the public.
- (4) Copies of records indicating the total number of complaints submitted to the Arizona Attorney General’s Office consumer protection division from January 1, 2023–December 31, 2023 by consumers or members of the public pertaining to residential landlords.
- (5) Copies of all complaints submitted by consumers or members of the public¹ to the Arizona Attorney General’s Office pertaining to an alleged conspiracy or collusion between landlords and/or “RealPage” or its subsidiaries or affiliates to raise residential rents submitted to the Office of the Arizona Attorney General’s Office.

n.1. We are not seeking information that would invade bona fide privacy interests of any individual. To the extent such information exists within a record that is otherwise subject to disclosure, your Office may redact the privacy information and disclose the record.

- (6) Copies of any reports, studies, or economic analyses regarding market rates for residential rents in Arizona that have been reviewed by officials in the Arizona Attorney General’s Office in connection with any Complaint filed against “RealPage,” Apartment Management Consultants, Avenue5 Residential, BH Management Services, Camden Property Trust, Crow Residential Company, Greystar, HSL Properties, RPM Living, or Weidner Property Management.

SSOF ¶ 6 (emphasis in original).

1 On May 9, 2024, the AGO confirmed receipt of the Request and assigned it tracking
2 number PRR-2024-047. SSOF ¶ 7. Petitioner sent follow-up emails seeking a status on the
3 Request but did not receive a response for 243 days. SSOF ¶ 8. On January 7, 2025, the
4 AGO responded to the Request as follows:

- 5 (1) **The records requested, to the extent any exist, would be confidential**
6 **pursuant to A.R.S. §§ 44-1406 and 44-1525, and attorney work**
7 **product privilege.**
- 8 (2) **The records requested, to the extent any exist, would be confidential**
9 **pursuant to A.R.S. §§ 44-1406 and 44-1525, and attorney work**
10 **product privilege.**
- 11 (3) **For the request “Copies of records indicating the total number of**
12 **complaints submitted to the Arizona Attorney General’s Office**
13 **consumer protection division from January 1, 2023–December 31, 2023**
14 **by consumers or members of the public,” please find the responsive**
15 **record attached. Redactions have been applied to preserve**
16 **confidentiality pursuant to A.R.S. §§ 44-1406 and 44-1525.**
- 17 (4) The Attorney General’s Office does not compile statistics for the
18 requested category, and as such, there are no responsive records to
19 produce.
- 20 (5) Consumer complaints are confidential under Arizona statute (A.R.S. §
21 44-1525).
- 22 (6) The records requested, to the extent any exist, would be privileged
23 attorney work product and not subject to public disclosure.

24 SSOF ¶ 9 (emphasis in original). The AGO did not provide any further information
25 explaining the basis for its denial and withholding. SSOF ¶ 10.

26 Petitioner filed a complaint to compel production of records responsive to Items 1,
27 2, and 5 of the Request. SSOF ¶ 11. Respondents submitted an answer on January 14, 2026,
28 asserting, among other things, that the records were confidential under A.R.S. § 44-1525
and that Items 1 and 2 were also confidential under attorney work-product privilege. SSOF
¶ 12 at ¶ 44.² Additionally, Respondents asserted that responding to Petitioner’s Request
may require the creation of a new record, and the Request was broad and complex. SSOF
¶ 12 at 23. After discussions with Respondents, Petitioner revised its Request to address
Respondents’ concerns and clarified that if Respondents produced records responsive to

² Respondents no longer assert A.R.S. § 44-1406 as a basis for confidentiality. SSOF ¶ 12
at ¶ 44.

1 Items 1 and 2—the request for numerical information only—that Petitioner would withdraw
2 Item 5 seeking the underlying complaints. SSOF ¶ 14. Rather than deny the existence of
3 records regarding Items 1 and 2 (as Respondents did for Item 4, which also sought numerical
4 data), Respondents’ position is that it is not possible to perform a search for responsive
5 records, and those records would be confidential under A.R.S. § 44-1525. SSOF ¶ 15.

6 LEGAL ARGUMENT

7 Arizona law relies on the core principle that public access to information about the
8 operations of the government is essential to a free society and necessary to hold government
9 officials accountable. *Keegan*, 201 Ariz. at 351, ¶ 33. When government officials engage in
10 the public’s business and spend taxpayer money, the public has a right to view records
11 regarding those activities. A.R.S. § 39-121.01. To that end, “[A]rizona law defines ‘public
12 records’ broadly and creates a presumption requiring disclosure of public documents.”
13 *Griffis v. Pinal Cnty.*, 215 Ariz. 1, 4 ¶ 8 (2007).

14 For the government to justify withholding records, the “interest in non-disclosure
15 must ‘outweigh the general policy of open access.’” *Keegan*, 201 Ariz. at 349 ¶ 19 (quoting
16 *Carlson v. Pima Cnty.*, 141 Ariz. 487, 491 (1984)). The burden rests with the custodian of
17 the records to “prove specifically how the public interest outweighs the right of disclosure.”
18 *Id.*

19 I. Respondents Violated Arizona Public Records Law By Not Performing a 20 Search for Records.

21 In a public records case, the first question is whether the requested information is a
22 “public record” within the meaning of the Public Records Law. A public record is broadly
23 defined as one that is:

24 [1] made by a public officer in pursuance of a duty, the immediate purpose
25 of which is to disseminate information to the public, or to serve as a memorial
26 of official transactions for public reference; [2] required to be kept, or
27 necessary to be kept in the discharge of a duty imposed by law or directed by
28 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, whether required by ... law or not.

1 *Id.* at 4 ¶ 9 (internal citations omitted).

2 State law requires public officials to “make and maintain records ‘reasonably
3 necessary to provide knowledge of all activities they undertake *in furtherance of their*
4 *duties.*’” *Id.* at ¶ 10 (emphasis in original). The documents must have a “substantial nexus”
5 with the agency’s activities. *Id.*

6 There is no question that the requested here are public records. They were made in
7 furtherance of the AGO’s duties and have a substantial nexus with the AGO’s activities.
8 The AGO investigates consumer complaints and solicits for consumer complaints.³
9 According to the AGO’s website, the office “track[s] complaints” in its database. *Id.*⁴
10 Based on press releases issued by the AGO, it has the ability to provide a numerical
11 number of how many complaints they have received against a particular company.⁵ These
12 are the exact record types Petitioner requested: numerical data of complaints received, and
13 consumer complaints.

14 The records sought by Petitioner are public records, and there is, therefore, a
15 presumption favoring disclosure.

17 ³ File A Consumer Complaint, Arizona Attorney General’s Office,
18 <https://www.azag.gov/complaints/consumer>. Pursuant to Rule of Evidence 201(b), the
19 Court may take judicial notice of adjudicative facts, particularly given that these facts are
20 sourced directly from the Respondents’ official website, and Petitioner hereby moves that
the Court take judicial notice of all adjudicative facts presented in this Hearing Brief.

21 ⁴ *See also* Arizona Attorney General Kris Mayes Announces Top Five Consumer Complaint
Trends and Kicks Off Consumer Protection Week March 2-8, Arizona Attorney General’s
22 Office, Mar. 3, 2025, [https://www.azag.gov/press-release/arizona-attorney-general-kris-](https://www.azag.gov/press-release/arizona-attorney-general-kris-mayes-announces-top-five-consumer-complaint-trends-and)
mayes-announces-top-five-consumer-complaint-trends-and (in 2024, the AG’s Office
23 received nearly 22,000 consumer complaints).

24 ⁵ *See, e.g.,* Attorney General Mayes Announces \$11.8 Million Settlement with Choice
Home Warranty, Arizona Attorney General’s Office (Feb. 10, 2026),
25 [https://www.azag.gov/press-release/attorney-general-mayes-announces-118-million-](https://www.azag.gov/press-release/attorney-general-mayes-announces-118-million-settlement-choice-home-warranty?utm_source=chatgpt.com)
settlement-choice-home-warranty?utm_source=chatgpt.com (“Since 2013, more than
26 1,500 Arizona customers have submitted complaints against Choice Home Warranty...”.
“Customers frequently reported that ...”); Complaint at ¶¶ 54, 57, *State of Arizona v. PDD*
27 *Holdings, Inc., et al.*, No. CV2025-064062 (Ariz. Super. Ct. filed December 2, 2025) (“On
28 January 22, 2024, an Arizona consumer ordered an item described on Temu...” “In
approximately August 2024, an Arizona consumer complained...”.)

1 **II. Respondents Violated Arizona Public Records Law By Not Performing a Search**
2 **for Records.**

3 **A. Agencies have an affirmative duty to conduct a good-faith search.**

4 Once a records requester has submitted a request for public records, the government
5 body has an affirmative duty to conduct a reasonable search for responsive records. *ACLU*
6 *v. Arizona Dep’t of Child Safety*, 240 Ariz. 142, 148 ¶ 14 (App. 2016) (“Under Arizona’s
7 public records law, an agency is required to search for records upon request.”); *Phoenix*
8 *New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 539 ¶ 16 (App. 2008). This requires the agency
9 to query and search their database to identify, retrieve, and produce responsive records for
10 inspection. *ACLU*, 240 Ariz. at 148 ¶ 16. The agency bears the burden of proving the
11 adequacy of their search. *Arpaio*, 217 Ariz. at 539 ¶ 16. The agency must do this *before* it
12 can claim an exemption.

13 Searching a database to produce already existing records is fundamentally different
14 from compiling or creating new information about what a database may contain, as Arizona
15 courts have made clear. *ACLU*, 240 Ariz. at 148 ¶ 18. The same distinction is found in the
16 federal Freedom of Information Act (“FOIA”), which Arizona courts look to for guidance
17 when interpreting Arizona’s public records statute. *Id.* at ¶¶ 18-20; *see also Arpaio*, 217
18 Ariz. at 539 n.3.

19 Petitioner’s Request only seeks existing public records, not the creation, analysis, or
20 synthesis of new records beyond the scope of the Public Records Law. Just as in *ACLU*,
21 responding to the request therefore only requires Respondents to manipulate and extract
22 data already contained within their records—not to analyze or create new records.
23 Functionally, this is no different than responding to a request in a paper filing system: locate
24 the files, open them, and remove the responsive pages.

25 The Arizona Supreme Court has repeatedly analogized electronic recordkeeping to
26 traditional paper systems and construed the Public Records Law broadly in favor of
27 disclosure. *See Griffis*, 215 Ariz. 1; *Lake v. City of Phoenix (Lake II)*, 222 Ariz. 547 (2009).
28 *Lake II* said it would be “illogical” and contrary to the policy of openness to withhold

1 information embedded in an electronic file that the agency would have to produce if it were
2 on paper. *Id.* at 551 ¶ 13. The controlling question is whether the requested records exist: if
3 so, they can be retrieved and must be disclosed. Only truly *nonexistent* records fall outside
4 the scope of disclosure because they would require “creation,” rather than retrieval.

5 Here, Respondents contend that they need not query and search their databases if the
6 results may ultimately prove confidential. SSOF ¶ 12. But this misstates the order of events
7 under the Public Records Law and is contrary to the black letter rule that agencies have an
8 affirmative duty to *first* conduct a reasonable search, and only *then* review the records for
9 potential exemptions. *ACLU*, 240 Ariz. at 148 ¶ 16; *Arpaio*, 217 Ariz. at 539 ¶ 16.

10 Respondents cite no authority for the proposition that they can refuse to conduct a
11 search based on a claim statutory exemption—because none exists. Instead, they rely on
12 *Sierra Club v. Salt River Project Agricultural Improvement & Power District*, 563 P.3d 151
13 (Ariz. App. 2025), which addressed a different question entirely: the scope of judicial
14 review once an agency has *already* located records *and* established that a narrowly defined
15 category of documents is made confidential by statute. *See id.* at 160 ¶ 30. *Sierra Club* says
16 nothing about an agency’s threshold duty to search for responsive records in the first place.
17 There is simply no authority permitting an agency to altogether evade its initial obligation
18 to conduct a reasonable search because the agency thinks it might later assert
19 confidentiality.

20 Indeed, Respondents could not possibly determine whether Section 44-1525 applies
21 to a record the agency has never searched for or identified. That is especially true here,
22 where it is implausible that consumers themselves supplied the AGO with aggregate
23 statistics concerning the total number of complaints the AGO received.

24 Any determination of confidentiality necessarily comes *after* the agency conducts a
25 search and identifies responsive records. Confidentiality may limit disclosure—as set forth
26 below, it doesn’t in this case—but not the agency’s duty to search. Consequently,
27 Respondents have violated the Public Records Law by failing to conduct a reasonable
28 search for responsive records.

1 **B. Respondents’ objection does not relieve the agency of its duty to conduct**
2 **a search and does not overcome the presumption of disclosure.**

3 Respondents raise two objections: first, that their system “cannot be searched or
4 queried in the manner requested by the Institute,” and second, that compiling the requested
5 figures would impose an “unreasonable burden.” SSOF ¶¶ 12, 15. Neither argument
6 overcomes the agency’s obligation to conduct a search, or the strong presumption favoring
7 disclosure. What’s more, Respondents bear the burden of justifying nondisclosure, and they
8 have offered insufficient evidence to satisfy that burden.

9 It is rare indeed for courts to recognize “administrative burden” alone as an interest
10 that outweighs the public’s right of access to public records. *See ACLU*, 240 Ariz. at 152-
11 53, ¶¶ 33-36. To overcome the presumption in favor of disclosure, Respondents must
12 “articulate sufficiently weighty reasons to tip the balance away from the presumption of
13 disclosure and toward nondisclosure,” and courts consider the “resources and time it took
14 to locate and redact, as necessary, the requested materials; the volume of materials
15 requested; and the extent to which compliance with the requests disrupted [the agency’s]
16 ability to perform its core functions.” *Id.* at 153 ¶ 36.

17 Respondents offer only generalized assertions of burden, which are insufficient as a
18 matter of law to overcome the presumption of disclosure. Worse, the agency’s arguments
19 are contradictory. On the one hand, Respondents claim they do not compile records in the
20 manner requested and therefore cannot even search for responsive information. But on the
21 other hand, they argue that reviewing complaints against landlords would impose an
22 “unreasonable burden” because of the purportedly large volume of consumer complaints.
23 SSOF ¶ 12 at 24. These positions cannot coexist. Either Respondents truly lack any
24 mechanism to identify responsive complaints, or they have enough information to estimate
25 the burden of review. Without knowing how many consumer complaints exist—if any—
26 which is precisely the information sought in Items 1 and 2—Respondents’ burden argument
27 rests entirely on speculation.
28

1 The record also suggests that Respondents *do* maintain numerical complaint data.
2 Respondents have previously released tallies concerning the number of complaints against
3 specific entities. *See supra* note 5 (“Since 2013, more than 1,500 Arizona customers have
4 submitted complaints against Choice Home Warranty.”). That public information confirms
5 that the AGO tracks at least some complaint totals. It also indicates that the number of
6 complaints is not so voluminous as to warrant the conclusion that it would be an “undue
7 burden” to review and produce that data.

8 Also, if no responsive numerical records existed, Respondents could have easily
9 denied Items 1 and 2 (as they denied Item 4), which also sought numerical data. In response
10 to Item 4, the AGO stated it “does not compile statistics for the requested category, and as
11 such there are no responsive records to produce.” SSOF ¶ 9. But Respondents conspicuously
12 did not give the same response to Items 1 and 2.

13 Respondent does not plainly state that no numerical data responsive to the Request
14 exists. Instead, they argue they are not obligated to query their databases to count
15 complaints or create a new record. *See Silverman v. Ariz. Health Care Cost Containment*
16 *Sys.*, 255 Ariz. 387, 390–91 ¶ 11 (App. 2023); *ACLU*, 240 Ariz. at 148 ¶ 17. Of course, the
17 Public Records Law does not obligate an agency to create an entirely new record, but that
18 principle does not resolve this case because the Request does not require Respondents to
19 create anything new.

20 The Request seeks *either*: (1) existing records reflecting the total number of
21 complaints; *or* (2) the underlying complaint records themselves, appropriately redacted.
22 SSOF ¶ 12 at ¶ 27. Respondents can satisfy their obligations simply by producing the
23 existing raw records, subject to redactions, for Petitioner to count independently. That is
24 precisely what Item 5 seeks. Or the agency can provide the total number of complaints.
25 Indeed, Petitioner has already agreed that if records responsive to Items 1 and 2 exist, Item
26 5 may be withdrawn. *Id.*

27 Respondents nevertheless contend that querying their database to identify responsive
28 records would amount to creating a new record. SSOF ¶ 12 at ¶ 35. In support, they cite an

1 unpublished, nonbinding opinion that bears little resemblance to the facts here. *Id.* See
2 *Morgan v. Adams*, 2 CA-CV 2012-0041, 2012 WL 4142806 (App. Sept. 20, 2012)). But
3 *Morgan* did not involve extracting or aggregating *existing* database information. Rather, the
4 request there sought information such as the “date the memorandum was delivered to each
5 recipient, the method of delivery, whether it was actually received and whether it was
6 reviewed by recipients.” *Id.* at *4. That information that did not itself exist as a public
7 record. Thus *Morgan* is entirely different—this case involves public records that plainly
8 exist.

9 *ACLU* resolves this issue. There, the court of appeals held that because DCS used an
10 electronic database “to maintain and collect the records it needs to do its job, it must query
11 or search [the] CHILDS [database] to comply with its obligations under Arizona’s public
12 records law.” 240 Ariz. at 148 ¶ 16. While the court found that DCS did not have an
13 obligation to create averages over specific time periods, DCS *did* have an obligation to
14 produce records that had previously been compiled. To the extent AGO maintains a
15 database with complaints, including the total number of complaints, as the record plainly
16 shows, *see supra* note 4, it, too, has an obligation to query that database and produce those
17 records.

18 Federal FOIA jurisprudence, which Arizona courts routinely consult to interpret
19 Arizona’s Public Records Law, also supports Petitioner’s position. Under FOIA, courts
20 consistently hold that querying a database to extract a subset of data is not the creation of a
21 new record. *See, e.g., CIR v. United States Dep’t of Justice*, 14 F.4th 916 (9th Cir. 2021).
22 In *CIR*, the plaintiff, a non-profit investigative journalism organization, requested statistics
23 concerning the number of crimes committed with guns that at one time had been owned by
24 law enforcement. *Id.* The agency contended that FOIA did not require ATF to run a search
25 because “such a query would require it to create a new agency record.” *Id.* The Ninth Circuit
26 disagreed, holding instead “the use of a query to search for and extract a particular
27 arrangement or subset of existing data from [ATF’s] database does not require the creation
28 of a ‘new’ agency record.” *Id.* at 922.

1 CIR further placed the burden squarely on the agency to demonstrate that the
2 requested information did not already exist in the agency’s records systems. *Id.* at 937.
3 Arizona law is consistent. *See, e.g., Griffis*, 215 Ariz at 6 ¶ 16; *Smith v. Town of Marana*,
4 254 Ariz. 393, 397 ¶ 12 (App. 2022). Courts have consistently and repeatedly distinguished
5 between searching an existing database and creating a new record. *See, e.g., CIR*, 14 F.4th
6 at 938, *ACLU*, 240 Ariz. at 149 ¶ 18, *Lunney v. State*, 244 Ariz. 170, 177 ¶ 20 (App. 2017).

7 Under FOIA, sorting, extracting, and compiling pre-existing information from a
8 database does not amount to the creation of a new record. *CIR*, 14 F.4th at 938. Consistent
9 with *CIR* and Arizona Public Records Law, Respondents have the burden of demonstrating
10 why they cannot query their existing records systems and produce the records requested.

11 **III. Section 44-1525 does not bar disclosure of the requested records.**

12 **A. Section 44-1525 does not apply to Items 1 and 2 at all.**

13 Because the requested records qualify as public records under Arizona law, and
14 Respondents have a legal duty to conduct a reasonable search for them, the only remaining
15 question is whether the records are exempt from disclosure. They are not.

16 Respondents contend the records are confidential under Section 44-1525. But the
17 statute protects only information “provided to” the Attorney General—not information
18 generated, compiled, or maintained by the Attorney General itself. The statute provides in
19 full:

20 All information or evidence provided to the attorney general shall be
21 confidential and shall not be made public unless in the judgment of the
22 attorney general the ends of justice and the public interest will be served by
the publication thereof, provided that the names of the interested parties shall
not be made public.

23 *Id.*

24 Here, Respondents cannot meet their burden of proof that this section applies to
25 Items 1 and 2. These asked for the “total number of complaints” compiled by the AGO.
26 SSOFF ¶ 6. That is, those requests seek numerical data only. This requires the AGO to query
27 its own database to determine *how many* complaints it received, if any. Logically, these are
28 records created by Respondents not “provided to” AGO. Consequently, such tallies are

1 plainly agency-created records, not “information or evidence provided to the attorney
2 general” within the meaning of Section 44-1525. Records responsive to Items 1 and 2 fall
3 outside of the scope of Section 44-1525 and are not exempt from disclosure on that basis.

4 **B. Section 44-1525 does not apply to Item 5 because the requested records**
5 **would only reveal whether a complaint was submitted, not “information or evidence.”**

6 When a statute specifically makes certain documents confidential, the threshold
7 question is whether the records fall within that statutory confidentiality provision in the first
8 place. *Sierra Club*, 563 P.3d at 159–60 ¶¶ 29–30.

9 Respondents contend that Section 44-1525 categorically bars disclosure, and rely
10 heavily on *Sierra Club* for that proposition. But *Sierra Club* does not support such a
11 sweeping interpretation. There, the statute at issue expressly prohibited disclosure of
12 specifically identified categories of information and documents created by public power
13 entities. *Id.* at 157 ¶ 16. Even then, the court did not adopt a blanket presumption of
14 confidentiality. Instead, it first analyzed the scope of the confidentiality statute itself and
15 then determined whether the requested documents actually fell within the statute’s narrowly
16 defined categories. *Id.* at 161–62 ¶¶ 34–39.

17 That approach is consistent with longstanding Arizona public-records jurisprudence.
18 As the Supreme Court recognized in *ACLU*, “it is always possible to argue that public
19 records contain nondiscoverable matter,” and if that assertion alone were sufficient, it
20 “would always allow nonrevelation.” 240 Ariz.at 151 ¶ 29 (quoting *Star Publishing Co. v.*
21 *Pima County Attorney’s Office*, 181 Ariz. 432, 434 (App. 1994)). Thus, the government
22 bears the burden of overcoming the presumption favoring disclosure and must identify a
23 specific harm, privacy concern, confidentiality interest, or state interest sufficient to justify
24 withholding records. *Id.* Here, Respondents offer only a blanket assertion that the records
25 are confidential. That is not enough.

26 Arizona courts consistently require agencies to prove that a confidentiality statute
27 actually applies to the requested records before withholding them from disclosure. *ACLU*,
28 240 Ariz. at ¶ 45. *See also* *AUDIT-USA v. Maricopa County*, 254 Ariz. 536, 538 ¶¶ 6-9

1 (App. 2023) (analyzing whether the governing statute prohibited disclosure before applying
2 public-records principles); *Phoenix Newspapers, Inc. v. Arizona Department of Economic*
3 *Security*, 186 Ariz. 446, 448-49 (App. 1996) (same); *Arizona Portland Cement Co. v.*
4 *Arizona State Tax Court*, 185 Ariz. 354, 357 (App. 1996) (same). Importantly, the statutes
5 at issue in those cases involved categorical confidentiality protections far more restrictive
6 than the flexible, discretionary language found in Section 44-1525.

7 In this case, the Request sought complaints submitted to the AGO by members of
8 the public—but the Request expressly disclaimed any interest in personal or confidential
9 information contained within those complaints:

10 We are not seeking information that would invade bona fide privacy interests
11 of any individual. To the extent such information exists within a record that
12 is otherwise subject to disclosure, your Office may redact the privacy
13 information and disclose the record.

14 SSOFF ¶ 6. Thus, Item 5—like Items 1 and 2—sought records showing whether complaints
15 were submitted, not the substantive “information or evidence” contained within those
16 complaints. The Request expressly sought redaction of any confidential information, and
17 disclaimed any request for that information, including the identities and private information
18 of complainants. To the extent that no record exists containing the aggregate number of
19 complaints responsive to Items 1 and 2, Item 5 simply seeks records reflecting that
20 complaints were filed, with all other “information and evidence” redacted.

21 Moreover, the Attorney General has already chosen to *publicly* litigate these
22 allegations. The AGO has already filed a complaint against RealPage and related
23 defendants. The Amended Complaint spans approximately 170 paragraphs and contains
24 extensive factual allegations regarding RealPage’s alleged market conduct, its purported
25 influence over rental pricing in Maricopa and Pima Counties, and the involvement of
26 several major landlord defendants. Thus, the Attorney General has already determined that
27 “the ends of justice and the public interest” favor disclosure of at least some of the
28

1 information provided to the AGO. At that point, Section 44-1525's remaining concern is
2 straightforward: protecting the identities of complainants through redaction.

3 As the Supreme Court explained in *Keegan*, "[t]he public's right to know any public
4 document is weighty in itself." 201 Ariz. at 351 ¶ 30. That interest is especially strong where
5 the records relate to matters of "broad and intense public interest," such as a highly
6 publicized statewide consumer-protection lawsuit brought by the Attorney General.
7 Petitioner has independently articulated the substantial public interest in these records. *See*
8 SSOFF ¶¶ 5–6, 11.

9 Unlike the "purely private documents" at issue in *Griffis*, 215 Ariz. at 5 ¶ 12, the
10 records sought here directly illuminate how the AGO conducts its business and allocates
11 taxpayer resources in pursuing major litigation. Aggregate numerical data regarding
12 complaints is not "purely private." Rather, it informs the public whether this high-profile
13 enforcement action was driven by widespread consumer complaints or initiated independent
14 of alleged harm to consumers. Denying access to such records deprives the public of the
15 ability to scrutinize the AGO's conduct and effectiveness—exactly the purpose of Arizona's
16 Public Records Law. *Keegan*, 201 Ariz. at 351 ¶ 33.

17 Finally, Section 44-1525 is not a categorical bar to disclosure. That statute expressly
18 requires the AGO to exercise judgment regarding whether "the ends of justice and the public
19 interest" favor disclosure. Yet Respondents make no such determination here. Instead, they
20 assert—without analysis—that the records were categorically confidential and therefore
21 entirely exempt from disclosure. That position is inconsistent not only with the text of the
22 statute, but with the AGO's own practices. The Attorney General routinely publishes
23 complaint-related information to the public. *See supra* note 3. Indeed, even in response to
24 Item 3 of this Request, Respondents produced a responsive record and merely applied
25 redactions pursuant to Sections 44-1406 and 44-1525. *See* SSOFF ¶ 9. That response
26 confirms that disclosure is both possible and permissible.

27 Respondents have offered no meaningful explanation for why Section 44-1525
28 applies to the records sought here, nor have they explained why disclosure is improper when

1 comparable disclosures of otherwise confidential material routinely occur under the same
2 statute. They therefore have not met their burden of establishing that the requested records
3 are confidential or exempt.

4 **IV. The Requested Records are Not Protected by Attorney Work-Product** 5 **Privilege.**

6 The attorney work-product doctrine protects materials prepared in anticipation of
7 litigation. *See* Ariz. R. Civ. P. 26(b)(3). Its purpose is to safeguard an attorney's mental
8 impressions, conclusions, opinions, and legal theories concerning actual or anticipated
9 litigation. By its nature, the doctrine applies only to documents prepared because of
10 prospective trial or litigation strategy.

11 The Request does not seek attorney work product at all. It does not request internal
12 legal memoranda, litigation strategy, attorney notes, or communications reflecting legal
13 analysis. Instead, it seeks numerical data regarding consumer complaints and, if necessary,
14 the underlying complaints themselves subject to appropriate redactions. Aggregate
15 numerical data concerning the number of complaints received cannot plausibly reveal an
16 attorney's mental impressions or litigation theories. Nor does the mere fact that complaints
17 may later become relevant to litigation transform every complaint into protected work
18 product.

19 Accordingly, the attorney work-product doctrine provides no basis for categorically
20 withholding the requested records.

21 **V. Conclusion**

22 Petitioner requested numerical data kept and/or compiled by the AGO—not
23 information or evidence “provided to” the AGO. The confidentiality statute claimed does
24 not apply to the internal documents of the AGO. And in any event, the public's interest in
25 disclosure outweighs any asserted confidentiality interest of Respondents.

26 Accordingly, judgment should be entered in favor of Petitioner.

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2 **RESPECTFULLY SUBMITTED** this 29th day of May, 2026.

3 **MICHAEL J. BLOOM, P.C.**

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4
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9 FILED electronically with the Clerk of the Superior Court and a copy delivered via the
10 Court's e-filing system on this 29th day of May, 2026, to:

11 Honorable Quintin Cushner

12 COPY of the foregoing emailed on this 29th day of May, 2026, to:

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