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

GOLDWATER INSTITUTE,
Plaintiff/Petitioner,

vs.

CITY OF GLENDALE, a municipal
corporation, and PAM HANNA, in her
official capacity as City Clerk for the City
of Glendale,

Defendants/Respondents.

Case No.

CV 2009-020757

**COMPLAINT for statutory special
action and injunctive relief**

and

**APPLICATION FOR ORDER TO
SHOW CAUSE**

INTRODUCTION

1. This is an action on behalf of the Goldwater Institute to compel the City of Glendale to provide public records pursuant to Arizona Public Records Law (A.R.S. Title 39).

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff/Petitioner Goldwater Institute is a nonprofit research, public policy, and public interest litigation center based in Phoenix, Arizona.

3. Defendant/Respondent City of Glendale is a municipal corporation organized under the laws of the State of Arizona.

4. Defendant/Respondent Pam Hanna is the City Clerk for the City of Glendale and is charged with responding to public records requests. She is sued in her official capacity only.
5. Jurisdiction over this action and its claims is provided by A.R.S. §§ 39-121.02 and 12-123; and Rule 4, Ariz. R. P. for Spec. Actions.
6. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b), Ariz. R. P. for Spec. Actions.

FACTS

7. The Goldwater Institute believes that information is power, and that power must not be jealously guarded by government employees and elected officials to the exclusion of the public. The Institute began an Open Government Project to make government more transparent and enable Arizonans to hold government accountable for its actions, particularly its use of taxpayer dollars. The Institute successfully challenged an unconstitutional use of taxpayer funds by the City of Phoenix to subsidize a luxury shopping mall (*Turken v. Gordon*, 1 CA-CV 08-0310, Arizona Court of Appeals, Division One, pending review by the Arizona Supreme Court).

8. The Institute has been called on by its members, residents of Arizona and the City of Glendale, and multiple news reporters to examine the constitutionality of the City of Glendale's use of taxpayer funds to benefit the Phoenix Coyotes hockey team, and to consider filing a lawsuit should the City grant further subsidies.

9. The Institute began monitoring the City's actions when rumors surfaced that the team skipped rent payments for the municipally-owned Jobing.com arena where the team plays. Through public records requests, the Institute learned the Coyotes missed no fewer than seven months of payments owed to the City, with no action or penalties enforced on behalf of the City

or its taxpayers. Recently this year, the City reported that the Coyotes became current on the payments.

10. New evidence has surfaced that the City officials have discussed offering \$15 to 20 million in concessions to potential new owners of the Coyotes team, which filed for bankruptcy (*In re Dewey Ranch Hockey, LLC*, 2:09-bk-09488, United States Bankruptcy Court, District of Arizona).

11. According to records in the bankruptcy proceeding, Glendale City Manager Ed Beasley discussed a possible \$20 million annual subsidy with Coyotes representative Earl Scudder (Notice of Filing NHL Relocation Application Under Seal, Doc 236 at 18). Also according to those records, “the Coyotes are currently negotiating with the City for significant concessions to the AMULA [lease agreement]. The proposed concessions would include an elimination of a \$2.70 per ticket parking fee from the City (which the Coyotes would now retain), providing approximately \$2.5 million in additional revenue beginning in the 2009-10 season. Also being sought is an elimination of rent payments to the City, which would result in annual savings of \$512,496. In addition, the City would pay Arena Management an annual \$2 million management fee and cover the first \$8 million in losses and all capital renewal and replacement contributions.” (*Id.* at 24.)

12. All of those possible subsidies and agreements involve taxpayer dollars and are of immediate interest to the public.

13. On June 23, 2009, the Institute submitted a public records request to the Glendale City Clerk requesting a copy (for noncommercial purposes) of “all drafts, correspondence, notes,

emails, memoranda, proposals, and other records of negotiations with potential new owners of the Phoenix Coyotes hockey team from May 11, 2009 to date.” The Institute requested that the clerk consider the request “ongoing” and “continue to send . . . records as they are created.” The Institute requested that the City provide “a written explanation for the denial or limitation” of any part of the request, “including a reference to the specific law(s) upon which [the City] rel[ie]d.”

14. The following day, Glendale Deputy City Clerk Darcie McCracken informed the Institute by telephone that the City denied the public records request.

15. At the Institute’s further request, Ms. McCracken provided the City’s denial in writing. Ms. McCracken stated that “any responsive documents would be considered confidential in light of the pending bankruptcy and current negotiations,” but that the Institute could resubmit the request “at a future date.”

16. Ms. McCracken also stated that “the City of Glendale does not have a mechanism in place to track on-going requests” for public records.

17. The Institute again requested citations to the specific law(s) upon which the City relied to deny the request and a further explanation for its denial of ongoing requests.

18. Management Assistant to the City Attorney Caroline Wells responded that (i) the City relied upon *Carlson v. Pima County*, 141 Ariz. 487 (1984) to deny the Institute’s request; (ii) an ongoing request “would impose undue burden”; and (iii) the request “is not for ‘narrow and clear categories of public records.’”

LEGAL CLAIM

19. “The core purpose of the public records law is to allow the public access to official records and other government information so that the public may monitor the performance of government officials and their employees.” *Phoenix News., Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (App. 2001) (citation omitted).

20. Under the law, officers and public bodies must maintain all records of their official activities and all activities supported by public funds, and they must promptly furnish copies of public records to any person upon request. A.R.S. § 39-121.01.

21. The requirement to provide copies of public records includes fulfilling ongoing public records requests. *W. Valley View, Inc. v. Maricopa County Sheriff’s Office*, 216 Ariz. 225, 229-30, 165 P.3d 203, 207-08 (App. 2007).

22. “[T]he objective implicitly expressed in § 39-121.01 is to broadly define those records which are open to the public for inspection under § 39-121,” and “the combined effect of [Arizona public records statutes] evince a clear policy favoring disclosure.” *Carlson v. Pima County*, 141 Ariz. 487, 490, 687 P.2d 1242, 1245 (1984).

23. “[A]ll records required to be kept under A.R.S. § 39-121.01(B), are presumed open to the public.” *Id.* at 491, 687 P.2d at 1246.

24. Upon request, the custodian of public records must provide an index of records or categories of records withheld and the reasons for withholding them. A.R.S. § 39-121.01.

25. Where the interests of disclosure of public records competes with interests of confidentiality or privacy, “a practical alternative to the complete denial of access would be

deleting specific personal identifying information, such as names.” *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246. A court’s *in camera* inspection of the records is appropriate for this purpose. *Id.*

26. The Goldwater Institute’s request is for a narrow and clear category of public records, namely records of City negotiations with potential new owners of the Coyotes.

27. There is no competing interest of confidentiality in fulfilling the request. Records of the Coyotes’ bankruptcy proceedings and negotiations involving city funds are all matters of public record. Even if there were some identifiable matter of confidentiality in requested records, that concern does not outweigh the presumption of disclosure or objective of the statutory mandates for open access to public records. Moreover, any concern for confidentiality could be met by deleting confidential information instead of completely denying access.

28. The Goldwater Institute made several requests for the City’s reasons for withholding the requested public records. The *Carlson* case cited by the City does not provide an independent legal basis or reason for denying a public records request. In that case, the Arizona Supreme Court held a sheriff’s offense report was a public record open to public inspection and the sheriff’s release of the report was protected against a defamation action by privilege. *Id.*, 141 Ariz. 487, 687 P.2d 1242.

29. It cannot be an “undue burden” for a City, whose official activities are funded by taxpayers, to disclose information about how, how much, and to whom its officials consider distributing their money. Further, “undue burden” is not an adequate legal basis or reason for denying a public records request.

30. A City may not deny access to public records merely by claiming it “does not have a mechanism in place to track on-going requests.”

31. Glendale failed to provide a legal justification for withholding public records relating to official City negotiations, including potential expenditures of taxpayer funds. Those negotiations are public records, and the public is entitled to prompt open access to them. Furthermore, the City cannot require the Goldwater Institute which “has made known its desire to have copies of [public records] to somehow discover on its own that a [record] has been issued and then make a separate formal request to the [City] for a copy of each such [record].” *See W. Valley View, Inc.*, 216 Ariz. at 228, 165 P.3d at 206. Rather, the City must fulfill ongoing requests.

32. For these reasons, the City has violated Arizona Public Records Law and the Goldwater Institute’s rights under it.

APPLICATION FOR ORDER TO SHOW CAUSE

As set forth above, Defendants/Respondents are plainly prohibited by law from withholding the requested records. Accordingly, pursuant to Rule 6(d), Ariz. R. Civ. P., and Rule 4(c), Ariz. R. of P. for Spec. Actions, it is appropriate and proper for this Court to issue an Order to Show Cause why the requested relief should not be granted.

REQUEST FOR RELIEF

To serve the interests of equity and justice, the Goldwater Institute respectfully requests that this honorable Court award the following relief:

- A. Issue an order compelling the City to immediately provide copies of the requested public records, and if necessary, conduct an *in camera* inspection to delete confidential information;
- B. Issue a preliminary and permanent injunction enjoining the City from withholding the requested records;
- C. Award damages, costs, and attorneys' fees pursuant to A.R.S. §§ 12-341, 12-348, 12-2030, and 39-121.02; Rule 4(g), Ariz. R. P. for Spec. Actions; and the private attorney general doctrine; and
- D. Order such additional relief as may be just and proper.

RESPECTFULLY SUBMITTED this 26th day of June, 2009 by:



Clint Bolick

Carrie Ann Sitren

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Verification

Pursuant to Rule 80(i), Ariz. R. Civ. P., Carrie Ann Sitren verifies under penalty of perjury that the foregoing is true and correct:

1. I am a full-time employee of Plaintiff/Petitioner Goldwater Institute.
2. I have read the foregoing Complaint and know the contents thereof.
3. The statements and matters alleged are true of my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I reasonably believe them to be true.

Dated this 26th day of June, 2009.



Carrie Ann Sitren