CHAPTER 6
PUBLIC RECORDS

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CHAPTER 6
PUBLIC RECORDS

6.1 Scope of this Chapter. This Chapter presents guidelines for agencies to use in determining which documents may be subject to public inspection pursuant to the Arizona Public Records Law, A.R.S. §§ -39-101 to -161 and discusses the procedure for handling public records requests. It also discusses the preservation and disposition of records. Notwithstanding the guidelines examined here, counsel likely should be consulted for advice in specific circumstances.

6.2 Scope of Public Records Requirements.

6.2.1 Arizona’s Policy of Public Disclosure. The general policy of this State with respect to public inspection of governmental records is set forth in A.R.S. § 39-121: “Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.” This public records statute seeks to increase public access to government information and to make government agencies accountable to the public. However, some public records are confidential and should not be disclosed to the public. See Section 6.4 infra.

6.2.1.1 Defining a Public Record. “Public Record” is not defined in statute, though A.R.S. § 39-121.01(B) requires all officers and public bodies to “maintain records, including records defined in A.R.S. § 41-151.18, that are reasonably necessary to provide an accurate accounting of their official activities and government-funded activities. "Records" are defined in A.R.S. § 41-151.18 as:

all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to § 41-151.16, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained in the record, and includes records that are made confidential by statute.

As a general rule, "all records required to be kept under A.R.S. § 39-121.01(B), are presumed open to the public for inspection as public records." Carlson v. Pima Cty., 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984).
In addition, A.R.S. § 39-121 provides that “other matters in the custody” of public officers are open to inspection by the public. "Other matters subject to the public’s right of access include 'documents which are not required by law to be filed as public records. . . .'." Salt River Pima-Maricopa Indian Cnty. v. Rogers, 168 Ariz. 531, 539, 815 P.2d 900, 908 (1991). "Other matters" include documents held by the public officer in his or her official capacity and in which the public's interest in disclosure outweighs the governmental interest in confidentiality. Id. “Because the language of A.R.S. § 39-121.01(B) is so broad, [the Arizona Supreme] Court has abandoned any ‘technical distinction’ between public records and other matters.” Griffis v. Pinal Cty., 215 Ariz. 1, 4 n.5, 156 P.3d 418, 421 n.5 (2007) (quoting Carlson, 141 Ariz. at 490, 687 P.2d at 1245). Although most documents in a public officer’s possession are public records, documents that relate solely to personal matters and have no relation to official duties are not public records even if a public officer or agency possesses them or uses public funds to create them. See id. at 5, ¶ 14, 156 P.3d at 422 (recognizing that e-mails on a county-owned computer system may be purely personal and not subject to disclosure under the Public Records Law).

For examples of documents that have been found to be "public records" and "other matters," see Section 6.3 infra. A custodian of public records may be justified in not disclosing some public records (see Section 6.4 infra) but this determination does not change their character as public records.

6.2.1.2 Persons Subject to the Public Records Law. The Public Records Law applies to "any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body." A.R.S. § 39-121.01(A)(1). Public body is defined as "this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state." Id. § (A)(2). This definition differs from and is more inclusive than the term "public body" as defined in the State's Open Meeting Law. See A.R.S. § 38-431(6): see, e.g., Ariz. Att’y Gen. Op. I95-010 (both Public Records Law and Open Meeting Law apply to charter schools but a different analysis applies); Ariz. Att’y Gen. Op. I85-101 (for public records purposes, the county public defender is a public official and therefore records made or received by that office are records of the State subject to the requirements discussed in this Chapter). By definition, the employees of public officers and public bodies are also bound by the Public Records Law.

Arizona courts are not subject to Arizona’s public records laws. Arizona Supreme Court Rule 123 governs the maintenance and disclosure of judicial records.

6.2.1.3 Public Records and the federal Freedom of Information Act (FOIA). Arizona’s Public Records Law is wholly separate from the federal law regarding
disclosure of public information by the federal government as required under the Freedom of Information Act ("FOIA"). See 5 U.S.C. § 552. Although Arizona courts will look to federal case law concerning FOIA to assist them in resolving questions under the Arizona Public Records Law, see Salt River Pima-Maricopa Indian Cnty. v. Rogers, 168 Ariz. 531, 540-41, 815 P.2d 900, 909-10 (1991), FOIA does not apply to officers and public bodies as defined by Arizona’s Public Records Law. However, public records custodians that receive a record request citing FOIA should, to the extent applicable, disclose information as required.

6.3 Types of Public Records. The following are examples of records considered to be "public records and other matters" and therefore available for inspection upon request to the public unless otherwise protected from disclosure (discussed in Section 6.5.3 infra):

2. Documents indicating the number of applicants for personnel positions by race and national origin, where no personal identification of the applicant is sought, Ariz. Att’y Gen. Op. I80-044;
5. Probate files, Henderson v. Las Cruces Prod. Credit Ass’n, 6 Ariz. App. 549, 554, 435 P.2d 56, 61 (1967);
10. A county sheriff’s "offense report" of an assault by a prisoner in the county jail, Carlson v. Pima Cty., 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984);
11. A draft or unfinished police report, Lake v. City of Phoenix, 220 Ariz. 472, 483, ¶ 36, 207 P.3d 725, 736 (2009), vacated in part on other grounds, 222 Ariz. 547, 218 P.3d 1004 (2009);


15. Notice of claim that high school student’s attorney filed with the school district, where student’s identity and medical history could be redacted. *Phoenix Newspapers, Inc. v. Ellis*, 215 Ariz. 268, 272, ¶ 17, 159 P.3d 578, 582 (App. 2007);

16. Disciplinary records of public employees, including the employee responses to disciplinary actions, A.R.S. § 39-128(A);

17. E-mail communications and computer backup tapes containing all documents for a county attorney's office may be public records, see *Star Publ’g Co. v. Pima Cty. Attorney’s Office*, 181 Ariz. 432, 434, 891 P.2d 899, 901 (App. 1994) (County failed to provide specific factual basis to support argument that records were protected from disclosure);

18. Metadata embedded within electronically-maintained records. *Lake v. City of Phoenix*, 222 Ariz. 547, 551, ¶ 12, 218 P.3d 1004, 1008 (2009);


6.4 Denying Public Inspection. Although there is a presumption in favor of access to public records, this presumption may be outweighed by legitimate government considerations of privacy and the best interests of the State. See *Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 300, ¶ 9, 955 P.2d 534, 537 (1998) (confidentiality, privacy, or other “best interests of the state” can outweigh the public's right of inspection under the Public Records Law, but the State has the burden of overcoming the legal presumption favoring disclosure); *United States v. Loughner*, 807 F.Supp.2d 828, 835 (D. Ariz. 2011) (criminal defendant’s Sixth Amendment right to fair trial may overcome duty to disclose otherwise public documents under Arizona public records law). A public body or public officer may seek a declaratory judgment in cases in which it is unclear whether or not disclosure is appropriate. See *Arpaio v. Citizens Publ’g Co.*, 221 Ariz. 130, 211 P.3d 8 (App. 2008). Below are the three exemptions that may shield certain public records from disclosure.

6.4.1 Records Confidential by Statute. Over 300 Arizona statutes address the confidentiality of records. Appendix 6.1 provides a list of Arizona statutes that may require that all or a portion of governmental records be withheld from public disclosure. Please note that there may be changes to relevant statutes after the date this chapter was last updated, so agencies are advised to consult with their counsel. Rules or regulations also may limit disclosure of certain information. See, e.g., A.A.C. R2-5A-105 (limiting public access to information in personnel files to the following: name of employee; date of employment; current and previous class title and dates of
employment to class; current and previous agencies to which the employee has been assigned; current and previous salaries and dates of each change; name of employee’s current or last known supervisor; certain records related to the employee’s disciplinary action. In addition, federal law may require confidential treatment of certain information. See, e.g., 42 U.S.C. § 405(c)(2)(C)((viii)(I) (prohibiting disclosure of social security numbers to unauthorized persons); Loughner, 807 F. Supp. 2d at 835-36 (finding authorization for prohibiting the release of the sheriff’s investigative file under Local Crim. R. of Practice for the Dist. of Ariz. 57.2(f) because release would pose a substantial threat to the defendant’s Sixth Amendment right to a fair trial). Public officials and employees should review the confidentiality provisions that affect their areas of responsibility to avoid disclosure of confidential information.

6.4.2 Records Involving Privacy Interests. The Arizona courts have long recognized that protecting personal privacy may justify an exception to the general presumption of access to public records. See Scottsdale Unified Sch. Dist., 191 Ariz. at 300, ¶ 9, 955 P.2d at 537; Carlson v. Pima Cty., 141 Ariz. 487, 490-91, 687 P.2d 1242, 1245-46 (1984). An exception is warranted when the disclosure would invade privacy and that invasion outweighs the public’s right to inspection. See id. A custodian evaluating whether this exception is warranted also should consider “whether the information in question is available through alternative means.” A.H. Belo Corp v. Mesa Police Dep’t, 202 Ariz. 184,186, ¶ 6, 42 P.3d 615, 617 (App. 2002) (holding that the city appropriately refused to disclose the audiotape of a 911 call in light of the family’s privacy interests because the city disclosed the transcript, which was all that was necessary to inform the citizens about the government’s actions).

“Privacy” is not defined under the Public Records Law. The Arizona Supreme Court relied on the United States Supreme Court’s definition of privacy under the federal Freedom of Information Act in finding that "information is ‘private if it is intended for or restricted to the use of a particular person or group or class of persons: not freely available to the public’" and "the privacy interest encompasses ‘the individual’s control of information concerning his or her person.’" Scottsdale Unified Sch. Dist., 191 Ariz. at 301, ¶ 14, 955 P.2d at 538 (quoting U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 763 (1989)).

For example, a person has a privacy interest in his or her birth date. Id. at 301-02, 955 P.2d at 538-39. State employees have a privacy interest in their home addresses and phone numbers. Ariz. Att’y Gen. Op. I91-004. Although autopsy reports are subject to the Public Records Law, the privacy interests of survivors “must be weighed against the need for public awareness of the government’s performance of its law enforcement functions” to determine if some of the records are not appropriately subject to public inspection. Schoeneweis v. Hammer, 223 Ariz. 169, 175-76 ¶ 23, 221 P.3d 48, 54-55 (App. 2009). The "records of the Industrial Commission’s proceedings, orders and awards" are public but "information which is not collected to serve as a memorial of an official transaction or for the dissemination of information is private["]” Indus. Comm’n v. Holohan, 97 Ariz. 122, 126, 397 P.2d 624, 627 (1964). The public's right to information about the disposition of offenders generally outweighs

When a government entity withholds documents generated or maintained on a government-owned computer system on the grounds that the documents are personal records and not public records, the requesting party may ask the trial court to perform an in camera inspection to determine whether the documents are public records. *Griffis v. Pinal Cty.*, 215 Ariz. 1, 5, ¶ 16, 156 P.3d 418, 422 (2007).

**6.4.3 Restricting Access to Records Based Upon the Best Interests of the State.** An officer or custodian of public records may refuse inspection of public records to protect the best interests of the State where "inspection might lead to substantial and irreparable private or public harm." *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246.

As early as 1952, the Arizona Supreme Court recognized an exception to public disclosure for records the disclosure of which would be "detrimental to the best interests of the [S]tate." *Mathews v. Pyle*, 75 Ariz. 76, 81, 251 P.2d 893, 897 (1952). The standard "detrimental to the best interests of the state" permits a public body to designate a record as confidential only when the "release of information would have an important and harmful effect on the duties of the officials or agency in question." *Ariz. Bd. of Regents v. Phoenix Newspapers Inc.*, 167 Ariz. 254, 257-58, 806 P.2d 348, 351-52 (1991). Public officers must balance the possible adverse impact on the operation of the public body if the information in question is disclosed against the public's right to be informed about the operations of its government. *Id*. A public officer who determines that the harm to the State outweighs the public right to disclosure of a document has the burden of specifically demonstrating the harm if the decision is challenged in superior court. *Cox Ariz. Publ’n, Inc. v. Collins*, 175 Ariz. 11, 14, 852 P.2d 1194, 1198 (1993).

In Arizona *Board of Regents v. Phoenix Newspapers Inc.*, the Arizona Supreme Court applied a balancing test and held that the public's interest in ensuring the State's ability to secure the most qualified candidate for university president is more compelling than its interest in knowing the names of all of the "prospects" for the position. 167 Ariz. at 258, 806 P.2d at 352. When a "prospect" is seriously considered and interviewed, the "prospect" becomes a candidate. The court held that the public's interest in knowing which *candidates* are being considered for the job outweighs "countervailing interests of confidentiality, privacy and the best interest of the state." *Id.* (quoting *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246); see also *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351, ¶ 33, 35 P.3d 105, 112 (App. 2001) (superior court did not abuse its discretion in ordering the State to disclose most of the test questions in a statewide academic test that students must pass to graduate from high school because the public interest in disclosure outweighed "the State's cost and inconvenience inremedying that disclosure"); *KPNX-TV v. Superior Court*, 183 Ariz. 589, 593, 905 P.2d 598, 602 (App. 1995) (State was justified in withholding surveillance camera videotape due to its "security concerns about public disclosure of a videotape showing undercover officers, the evidence locker, and the location of the surveillance camera").
A public officer or public body may refuse to disclose documents that contain information protected by a common law privilege where release of the documents would be harmful to the best interests of the State. See, e.g., the informant’s privilege, Grimm v. Ariz. Bd. of Pardons & Paroles, 115 Ariz. 260, 268-69, 564 P.2d 1227, 1235-36 (1977) (recognizing the "informant’s privilege which, with certain exceptions, protects the identity of the informant but not generally the contents of the communication"); State v. Celaya, 27 Ariz. App. 564, 567, 556 P.2d 1167, 1170 (1976) ("The state may withhold from disclosure the identity of persons who furnish information of violations of law to law enforcement officers in furtherance of the public interest in effective law enforcement.")

This exception may not be used, however, to save an officer or public body from inconvenience or embarrassment. Dunwell v. Univ. of Ariz., 134 Ariz. 504, 508, 657 P.2d 917, 921 (App. 1982); Ariz. Att'y Gen. Op. I80-097, 78-234, 70-1. Nor may officials deny access simply because the records might be used to establish tort liability on the part of the State. Ariz. Att'y Gen. Op. 76-43. And “[t]he promise of confidentiality standing alone is not sufficient to preclude disclosure.” Moorehead v. Arnold, 130 Ariz. 503, 505, 637 P.2d 305, 307.

6.4.4 Requests by Litigants. The foregoing guidelines on refusing public inspection may not apply when the person requesting access to the records is a party to litigation with the State. In those cases, the party may have a greater right to access than the public generally. See Grimm, 115 Ariz. at 269, 564 P.2d at 1235. If a party to litigation against the State requests records under the Public Records Law, the party need not demonstrate that the "documents are relevant to anything" and therefore may obtain records that would not be discoverable in litigation. Bolm v. Custodian of Records of Tucson Police Dep’t, 193 Ariz. 35, 39, ¶ 10, 969 P.2d 200, 204 (App. 1998). However, if the State or other public entity refuses to disclose a document to a litigant who requests it under the public records law, the court balances the government’s interest in nondisclosure with the public’s, not the litigant’s, interest in disclosure. Cf. London v. Broderick, 206 Ariz. 490, 495, ¶ 17, 80 P.3d 769, 774 (2003) (holding that the government employer’s interest in not disclosing its investigatory file before a pre-disciplinary interview outweighed the public’s interest in “disclosure of the preliminary investigation of a low-level probation department employee at the initial stage of the investigation”).

6.5 Procedure for Handling Requests for Access to Public Records or Other Matters.

6.5.1 Inspection and Copying of Public Records. The right to inspect documents is not unqualified. See A.R.S. § 39-121.01(D)(1) ("Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours.") Records may not be inspected at times, or in ways, that disrupt public business. See Ariz. Att'y Gen. Ops. I80-097, 78-234, 70-1. Records must be provided if they are in the custody of the public officer or public body, even if they are
If the custodian of public records does not promptly respond to record requests and promptly furnish records that are subject to disclosure, access will be deemed denied. A.R.S. § 39-121.01(E). “‘Prompt,’ . . . mean[s] ‘quick to act or to do what is required,’ or ‘done, spoken, etc. at once or without delay.’” W. Valley View, Inc. v. Maricopa County Sheriff’s Office, 216 Ariz. 225, 230, ¶ 21, 165 P.3d 203, 208 (App. 2007) (quoting Webster’s New World Dictionary 1137 (2d ed. 1980)). In Phoenix New Times, the Arizona Court of Appeals found that the Maricopa County Sheriff’s Office had wrongfully denied records requests because it had delayed in providing the requested documents and failed to offer a legally sufficient reason for the delay. Phoenix New Times, 217 Ariz. at 547, ¶ 49, 177 P.3d at 289.

The governmental entity has the burden in proving that its response to records request was prompt in light of the circumstances surrounding each request. Id. at 538-39, ¶ 15, 177 P.3d at 280-81. Promptness must in all cases be a factual determination, depending upon the accessibility and volume of the material. If the information requested is on microfilm and thus requires use of a reader/printer to view it, the time for inspection would depend upon the availability of the necessary equipment. If the requested material has been stored off the premises of the agency, additional time might be necessary to retrieve the document requested. Should this occur, the requesting party should be advised, in writing, of the delay and the reason for it. Similarly, if the requested material contains confidential information that must be redacted, the custodian should inform the requesting party that the response will be delayed and the reason for the delay. See Judicial Watch, Inc. v. City of Phoenix, 228 Ariz. 393, 398, 267 P.3d 1185, 1190 (App. 2011) (noting that because “[t]he promptness of a production of public records for inspection varies with the circumstances,” the government “can expend time reasonably necessary to make redactions”).

If the custodian of the record does not have the facilities for making copies, the person requesting the record must be granted access to it for the purpose of making copies. See A.R.S. § 39-121.01(D)(3). However, the copies must be made while the document remains in the possession, custody, and control of the custodian. Id.

6.5.2 Ongoing Requests. In W. Valley View Inc., 216 Ariz. at 228, ¶ 14, 165 P.3d at 206, the Arizona Court of Appeals held that the sheriff’s office must comply with a newspaper’s ongoing public records request for copies of its press releases. The court found the request justified because the request only sought copies of “a single easily defined and identifiable category of documents that the public agency admittedly regularly generates”; the newspaper needed to receive timely press releases to meet its deadlines; and the sheriff’s office provided timely press releases to many other media outlets. Id. at 229, ¶ 14, 230, ¶ 19.
6.5.3 Duty to Redact. When confidential and public information are commingled in a single document, a copy of the document may be made available for public inspection with the confidential material excised. *Carlson v. Pima Cty.*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984); see also *KPNX-TV v. Superior Court*, 183 Ariz. 589, 594, 905 P.2d 598, 603 (App. 1995) (custodian must demonstrate specific reasons and a good faith basis for denying access to entire record rather than redacting confidential portions). If confidential material has been attached to an otherwise disclosable document, the material so attached may simply be removed. See *id.*; Ariz. Att’y Gen. Ops. I86-090, I85-097. The public body should note in its records precisely which material has been excised and which has been released.

If requested, the custodian of the records of an agency (as prescribed under A.R.S. § 41-1001) shall also furnish an index of records or categories of records that have been withheld and state the reasons that each record or category has been withheld. A.R.S. § 39-121.01(D)(2). “The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order.” Id. Records may be grouped by categories for the purposes of this index. Id. The Department of Public Safety, the Motor Vehicle Division of the Department of Transportation, the Department of Juvenile Corrections, and the State Department of Corrections are specifically exempt from this indexing requirement. Id.

6.5.4 Charges for Copies. The Legislature has distinguished between the fees an agency may impose for commercial and non-commercial requests for copies of public records. A.R.S. §§ 39-121.01(D)(1), -121.03(A); see also Section 6.5.5 and 6.5.6. The custodian may require the person requesting the public record to pay in advance for any copying and postage charges. A.R.S. § 39-121.01(D)(1). If records are available on the web site, the public body or public officer may direct the requestor to obtain copies there. See A.R.S. § 39-121.01(D)(1).

6.5.5 Non-Commercial Use. A person requesting copies, printouts, digital copies, or photographs of public records for a non-commercial purpose may be charged a fee for the records. A.R.S. § 39-121.01. But see Section 6.5.7 infra. An agency may charge a fee it deems appropriate for copying records, including a reasonable amount for the cost of time, equipment, and personnel used in producing copies of records, but not for costs of searching for the records. A.R.S. § 39-121.01(D)(1); *Hanania v. City of Tucson*, 128 Ariz. 135, 136, 624 P.2d 332, 333 (App. 1980); Ariz. Att’y Gen. Op. I86-090. When the requester only wants to inspect the record, the agency may not charge a copying fee incurred, for example, to make redactions before public inspection. Ariz. Att’y Gen. Op. I13-012. Further, if the requester makes copies of public records using his or her own personal device, the agency may not charge a copying fee. Id. If an agency is producing documents pursuant to a subpoena in a civil action to which the agency is not a party, the fee is prescribed by A.R.S. § 12-351.

6.5.6 Commercial Use. Persons requesting reproductions of public records for a commercial purpose must provide a statement setting forth the commercial purpose for which the records will be used. A.R.S. § 39-121.03(A).
Commercial purpose is defined as:

[T]he use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

A.R.S. § 39-121.03(D).

Commercial uses include: 1) use of the public records for sale or resale; 2) obtaining names and addresses from public records for the purposes of solicitation; and 3) the sale of names and addresses to another for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. *Primary Consultants, LLC v. Maricopa County Recorder*, 210 Ariz. 393, 400, 111 P.3d 435, 442 (App. 2005). The use of public records for one’s trade or business is not a commercial purpose. *Id.* at 400, ¶ 28, 111 P.3d at 442. Gathering newsworthy facts from public records to include in a newspaper or other publication is not a commercial purpose. *Star Publ'g Co. v. Parks*, 178 Ariz. 604, 605, 875 P.2d 837, 838 (App. 1993).

If the records are to be used as evidence or as research for evidence in an action in any judicial or quasi-judicial body, they are not for a commercial purpose and there is no requirement that the action is pending at the time of the request, or that the records must be admissible. *LaWall v. R.R. Robertson, L.L.C.*, 237 Ariz. 495, 501 (App. 2015).

Upon being furnished a statement of the commercial purpose, the custodian may assess a charge that includes the following:

1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.

2. A reasonable fee for the cost of time, materials, equipment and personnel [used] in producing such reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body.

A.R.S. § 39-121.03(A).

As with non-commercial requests, the determination of the fee to be charged is made in the first instance by the public body. Among the factors to be considered in making this determination are 1) the time expended in retrieving the records; 2) transportation costs, if any; and 3) the actual cost to the public body in terms of special equipment or processing required in preparing the record for release.

In addition to the reasons for withholding records discussed in Section 6.4, public bodies may withhold records sought through a commercial request as follows:

If the custodian of a public record determines that the [requester’s] commercial purpose . . . is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the [G]overnor requesting that the [G]overnor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose.

A.R.S. § 39-121.03(B).

The public body may pursue damages in the following circumstances:

- A person obtained a public record for a commercial purpose without indicating the commercial purpose.
- A person obtained a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose.
- A person obtained a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose.
- A person obtained a public record from anyone other than the custodian of such records and uses it for a commercial purpose.

Id. § (C).

Requests that are for a non-commercial purpose do not require an explanation for the use of the records, or even a statement that the request is for a non-commercial purpose. LaWall v. R.R. Robertson, L.L.C., 237 Ariz. 495 (App. 2015).
6.5.7 Free Copies. Certain public records must be provided without charge, namely certified copies of those "to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which [are] to be presented to the United States or a bureau or department thereof." A.R.S. § 39-122(A). Victims of certain crimes also have rights to obtain copies of some records at no cost. A.R.S. § 39-127.

6.6 Consequences of Wrongful Refusal to Disclose.

6.6.1 Attorney’s Fees. In lawsuits alleging the denial of requested public records, a court may award attorneys’ fees and other legal costs to requesters who substantially prevail. A.R.S. § 39-121.02(B). This does not limit the rights of any party to recover attorney’s fees, expenses, and double damages that are authorized by other statutes. Id.

6.6.2 Damages. A public officer or agency may also be liable for damages that result from wrongfully denying a person access to public records. A.R.S. § 39-121.02(C).

6.7 Preservation, Maintenance, Reproduction, and Disposition of Public Records.

6.7.1 Preservation and Maintenance Generally. "All records made or received by public officials or employees of this state or the counties and incorporated cities and towns of this state in the course of their public duties are the property of the state." A.R.S. § 41-151.15(A). Each public body and officer is responsible for preserving, maintaining, and caring for the public records within their offices. A.R.S. § 39-121.01(C). Each officer and public body is required by statute to carefully secure, protect, and preserve public records from deterioration, mutilation, loss, or destruction, unless the records are disposed of pursuant to A.R.S. §§ 41-151.15 and 41.151.19. See A.R.S. § 39-121.01(C); see also Section 6.7.5 infra.

The head of each state agency must perform the following duties:

1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.

2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of this state and of persons directly affected by the agency’s activities.
3. Submit to the director [of the Arizona State Library, Archives and Public Records], in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.

4. Once every five years submit to the director lists of all essential public records in the custody of the agency.

5. Cooperate with the director in the conduct of surveys.

6. Designate an individual within the agency to manage the records management program of the agency. The agency shall reconfirm the identity of this individual to the state library every other year. The designated individual:
   
   (a) Must be at a level of management sufficient to direct the records management program in an efficient and effective manner.

   (b) Shall act as coordinator and liaison for the agency with the state library.

7. Comply with rules, standards and procedures adopted by the director.


Governing bodies of counties, cities, towns, and other political subdivisions are also required, as far as practicable, to follow the program established for the management of state records. A.R.S. § 41-151.14(B). A state or local agency head who fails to comply with these requirements is guilty of a class 2 misdemeanor. A.R.S. § 41-151.14(C).

The Director of the State Library, Archives and Public Records is responsible for (a) establishing "standards, procedures, and techniques for effective management of public records," A.R.S. § 41-151.12(A)(1), and (b) establishing standards and procedures for preparing schedules for retaining records of continuing value and promptly and efficiently disposing of records "no longer possessing sufficient administrative, legal, fiscal, research or historical value" to warrant their retention, id. § (A)(3). The Director of the State Library, Archives and Public Records is also responsible for the preservation and management of records and for authorizing the destruction or disposal of records. A.R.S. §§ 41-151.12(A), -151.15, and -151.19. Additional information regarding the standards and procedures currently established by the Director of the State Library, Archives and Public Records is available on that entity’s website.

6.7.2 Quality and Storage Requirements. All permanent public records must be "transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona state
library, archives and public records." A.R.S. § 39-101(A). These public records must also be stored and maintained according to the Director’s standards. *Id.* § (B). A public officer who fails to keep permanent public records in accordance with the Director’s standards is guilty of a class 2 misdemeanor. *Id.* § (C).

**6.7.3 Size Requirements.** All public records must conform to the standard letter size of eight and one-half inches by eleven inches, within standard paper manufacturing tolerances, unless they are "engineering drawings, architectural drawings, maps, computer generated printout, output from test measurement and diagnostic equipment, machine generated paper tapes," or public records required by law to be a different size or otherwise exempt by law from the standard size requirement. A.R.S. § 39-103(B). In addition, the Director of the Arizona State Library, Archives and Public Records may exempt documents from the standard size "requirement" if "the director finds that the cost of producing a particular type of public record [in the standard size] is so great as to not be in the best interests of this state." *Id.*

**6.7.4 Reproduction of Public Records.** Each state agency may implement a program for the reproduction by photography or other method of reproduction on film, microfiche, digital imaging, or other electronic media of records in its custody. A.R.S. § 41-151.16(A). However, prior to instituting the program, the agency must obtain approval from the Director of the Arizona State Library, Archives and Public Records. *Id.*

**6.7.5 Disposition of Public Records.** The disposition of public records by the State or any of its political subdivisions is governed by A.R.S. §§ 41-151.15, -151.17, -151.19, 44-7601. A state agency may destroy records when the State Library concludes "that the record has no further administrative, legal, fiscal, research or historical value." A.R.S. § 41-151.15(B). The agency may obtain approval to destroy records from the Records Management Division of the State Library on a continuing basis pursuant to a records retention and disposition schedule or, for records not on a retention schedule, pursuant to single request form. A report of records destruction that includes a list of all records disposed of shall be filed at least annually with the State Library on a form prescribed by the State Library. A.R.S. § 41-151.19. The forms are available on the State Library website.

A public officer or other person having custody or possession of any record for any purpose, "who steals, or knowingly and without lawful authority destroys, mutilates, defaces, alters, falsifies, removes or sequesters" all or part of a public record, or who permits any other person to do so, is guilty of a class 4 felony. A.R.S. § 38-421; see also A.R.S. § 13-2407 (making it a class 6 felony to tamper with a public record). See Section 2.15(3), (19), (22).
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