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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JEREMY THACKER,

12 *Plaintiff Pro Se,*

13 v.

14 CITY OF PHOENIX, a municipal
15 corporation,

16 *Defendant.*

Case No. CV2025-026278

**DEFENDANT CITY OF PHOENIX'S
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Honorable Scott Minder)

17 **I. INTRODUCTION**

18 Generally, in Arizona, “[a]ll meetings of any public body shall be public meetings and
19 all persons so desiring shall be allowed to attend and listen to the deliberations and
20 proceedings.” A.R.S. § 38-431.01(A). Arizona law, however, permits public bodies to hold
21 executive sessions on “a public majority vote of the members constituting a quorum.” A.R.S.
22 § 38-431.03(A). The law requires that “[m]inutes of and discussions made at executive
23 sessions shall be kept confidential,” with limited inapplicable exceptions. A.R.S. § 38-
24 431.03(B).

25 The executive session confidentiality requirement makes sense, given the sensitive
26 nature of the specific purposes for which a public body may meet in executive session. *See*
A.R.S. § 38-431.03 (A)(1-9) (permitting public bodies to hold executive sessions for 1)
discussion or consideration of employment, assignment, appointment, promotion, demotion,

1 dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any
2 public body; 2) discussion or consideration of records exempt by law from public inspection,
3 including the receipt and discussion of testimony that is specifically required to be maintained
4 as confidential by state or federal law; 3) discussion or consultation for legal advice with the
5 attorney or attorneys of the public body; 4) discussion or consultation with the attorneys of the
6 public body in order to consider its position and instruct its attorneys regarding the public
7 body's position regarding contracts that are the subject of negotiations, in pending or
8 contemplated litigation or in settlement discussions conducted in order to avoid or resolve
9 litigation; 5) discussions or consultations with designated representatives of the public body in
10 order to consider its position and instruct its representatives regarding negotiations with
11 employee organizations regarding the salaries, salary schedules or compensation paid in the
12 form of fringe benefits of employees of the public body; 6) discussion, consultation or
13 consideration for international and interstate negotiations or for negotiations by a city or town,
14 or its designated representatives, with members of a tribal council, or its designated
15 representatives, of an Indian reservation located within or adjacent to the city or town; 7)
16 discussions or consultations with designated representatives of the public body in order to
17 consider its position and instruct its representatives regarding negotiations for the purchase,
18 sale or lease of real property; 8) discussion or consideration of matters relating to school safety
19 plans or programs; and 9) discussions or consultations with designated representatives of the
20 public body in order to discuss security plans, procedures, assessments, measures or systems
21 relating to, or having an impact on, the security or safety of buildings, facilities, operations,
22 critical infrastructure information and information technology maintained by the public body).

23 Plaintiff asserts he brought this action "to restore transparency and public accountability
24 to the City's use of closed-door meetings." *See* First Amended Complaint, ¶ 2. But, closed-
25 door meetings, by definition, are not transparent; nor are they meant to be. Arizona law
26 specifically allows a public body to hold closed-door meetings, in the form of executive

1 sessions—not to thwart transparency and public accountability—but to protect the interests of the
2 public body in discussing and considering the enumerated sensitive areas for which executive
3 sessions may be held. The City of Phoenix (the “City”) complied with Arizona law and
4 properly held the executive sessions at issue here on a public majority vote of the members
5 constituting a quorum of the Phoenix City Council, with timely notice to the public of those
6 meetings, and with general descriptions of the matters to be considered at those meetings. The
7 City had no intent to block transparency or public accountability by lawfully holding executive
8 sessions permitted by law.

9 **II. FACTUAL BACKGROUND**

10 **The Executive Sessions**

11 On November 13, 2024, the Phoenix City Council approved Item No. 21 on the Agenda
12 of the Formal Council Meeting, a request for the City Council to call meetings for the purpose
13 of holding an Executive Session pursuant to Arizona Revised Statutes, Section 38-431.003A,
14 on 17 specific dates in 2025, including January 28 and February 11. (DSOF ¶ 1). Agendas,
15 topics, or an indication of the subject matter for those 17 meetings was not included in Item 21.
16 (DSOF ¶ 2).

17 At least 24 hours before the January 28 and February 11, 2025, executive sessions, the
18 City posted notice of the meetings, indicating Item 7 and Item 4, respectively, would be for
19 “Discussion and consultation for legal advice re: **Community Citizen Comment**, A.R.S. §38-
20 431.03A.3.” (DSOF ¶¶ 3-4). At least 24 hours before the July 29, 2025, executive session, the
21 City posted notice of the meeting, indicating Item 2 would be for “Discussion and consultation
22 for legal advice re: **Federal Guidance for Public Benefits**, A.R.S. §38-431.03 A.3 and A.4.”
23 (DSOF ¶ 7).

24 **The Public Records Request**

25 On May 9, 2025, the City received Plaintiff’s Public Records Request (“PRR”), through
26 which he sought records related to Item 7 on the January 28, 2025, executive session Agenda

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1 and Item 4 on the February 11, 2025, executive session Agenda. (DSOF ¶ 5). In response to
2 the PRR, the City informed Plaintiff it had “reviewed its files and there are no responsive
3 documents to your request except for those protected under attorney client privilege or work
4 product privilege.” (DSOF ¶ 6). The City did not provide a privilege log. (*Id.*).

5 **III. ARGUMENT**

6 **A. The City Complied with Arizona’s Open Meeting Law.**

7 **1. The City Properly Scheduled 17 Executive Sessions for 2025.**

8 “The open meeting law, A.R.S. § 38-431, *et seq.*, was enacted in 1974, although it was
9 preceded in 1962 by a statute declaring that it was the public policy of the state that
10 proceedings of government bodies be conducted openly.” *Cooner v. Board of Educ.*, 136 Ariz.
11 11, 15 (App. 1982). The open meeting law requires that all “meetings of any public body shall
12 be public meetings and all persons so desiring shall be allowed to attend and listen to the
13 deliberations and proceedings.” A.R.S. § 38-431.01(A). The open meeting law also provides,
14 however, that on “a public majority vote of the members constituting a quorum, a public body
15 may hold an executive session” for nine enumerated purposes. A.R.S. § 38-431.03(A).

16 Where a public body “intends to meet for a specified calendar period, on a regular day,
17 date or event during the calendar period, and at a regular place and time,” the public body
18 “may post notice of the meetings at the beginning of the period.” A.R.S. § 38-431.02(F). If
19 an executive session is scheduled, a notice of the executive session must state the provision of
20 law authorizing the executive session and be provided to the members of the public body and
21 the general public. A.R.S. § 38-431.02(B). Meetings of a public body “shall not be held
22 without at least twenty-four hours’ notice to the members of the public body and to the general
23 public.” A.R.S. § 38-431.02(C).

24 Here, the City Council’s scheduling of 17 specific dates in 2025 on which to hold
25 executive sessions fully complied with the open meeting law. First, a majority of the members
26 of the City Council voted during the November 13, 2024, public meeting to hold executive

1 sessions on 17 specific dates in 2025. (DSOF 1). This vote effectively posted notice of the
2 meetings at or near the beginning of the calendar year, as A.R.S. § 38-431.02(F) requires.
3 Then, as A.R.S. § 38-431.02(C) requires, at least 24 hours before each of those executive
4 sessions, the Phoenix City Clerk posted notice of the meetings, stating the specific provisions
5 of law authorizing the executive sessions. (DSOF ¶¶ 3, 4, 7). As the meeting minutes
6 submitted for *in camera* review show, the executive sessions were held for the purposes
7 designated in the public notices. Thus, the City properly scheduled, noticed, and held these
8 meetings in full compliance with Arizona law.

9 Plaintiff correctly asserts the City Council held executive sessions without holding a
10 “vote immediately prior to” the executive sessions. *See* FAC, ¶¶ 12-13. But § 38-431.03(A)
11 does not require a public body to vote to go into executive session immediately prior to the
12 executive session; it simply requires, instead, “a public majority vote of the members
13 constituting a quorum.” § 38-431.03(A). Because there is no temporal requirement for the
14 timing of the vote to go into executive session, the City did not violate Arizona law by failing
15 to vote to go into executive session immediately prior to those sessions.

16 **2. The Executive Session Notices Properly Included General Descriptions of**
17 **Matters to Be Considered at Those Meetings.**

18 While agendas for public meetings generally must “list the specific matters to be
19 discussed, considered, or decided at the meeting” A.R.S. § 38-431.02(H), “notice of executive
20 sessions shall be required to include only a general description of the matters to be considered.”
21 A.R.S. § 38-431.02(I). The agenda for an executive session must “provide more than just a
22 recital of the statutory provisions authorizing the executive session.” *Id.*

23 In *Shelby School v. Arizona State Bd. of Educ.*, 192 Ariz. 156, 168, (App. 1998), “the
24 Board voted to go into executive session to review records exempt from public inspection and
25 for consultation for legal advice related to charter school applications.” The Arizona Court of
26 Appeals found the Board adequately satisfied the general description requirement of section

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1 38-431.02(I) where the “motion for the Board to go into executive session used language
2 similar to that used in A.R.S. section 38-431.03(A)(2)-(3) to describe what would be
3 considered in the session.” *Id.* at 167.

4 Like the agenda description at issue in *Shelby*, the agenda descriptions at issue here
5 fully comply with the general description requirement of section 38-431.02(I). Not only does
6 each of the agenda descriptions at issue here include a general description of the matters to be
7 considered at the meeting, but each provides more than just a recital of the statutory provisions
8 authorizing the executive sessions. The agenda descriptions for the January 28 and February
9 11, 2025, executive sessions both stated the meetings would be held for “Discussion and
10 consultation for legal advice re: **Community Citizen Comment**, A.R.S. §38-431.03A.3.”
11 (DSOF ¶¶ 3-4). The agenda description for the July 29, 2025, executive session stated the
12 meeting would be held for “Discussion and consultation for legal advice re: **Federal Guidance**
13 **for Public Benefits**, A.R.S. §38-431.03 A.3 and A.4.” (DSOF ¶ 7). While these agenda
14 descriptions may not be perfect, because they provide general descriptions of the matters to be
15 considered at the respective executive sessions and provide more than just a recital of the
16 statutory provisions authorizing the sessions, they comply with the open meeting law.

17 **B. The City Complied with the Public Records Law.**

18 **1. The City Properly Withheld Executive Session Meeting Minutes.**

19 Executive sessions of the Phoenix City Council are recorded only by written meeting
20 minutes. (DSOF ¶ 8). Written meeting minutes that accurately reflect the proceedings that
21 took place on January 28, 2025, February 11, 2025, and July 29, 2025, have been submitted to
22 the Court for *in camera* review. (DSOF ¶ 9).

23 A.R.S. § 38-431.03(B) requires that “[m]inutes of and discussions made in executive
24 session” be kept confidential with four limited exceptions that do not include releasing the
25 minutes in response to a public records request. Because Arizona law prohibits the release of
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1 executive session meeting minutes, the City properly withheld those minutes in response to
2 Plaintiff’s public records request.

3 **2. The City Properly Withheld Privileged Records.**

4 **a. The Records Were Protected by the Attorney-Client Privilege.**

5 The attorney-client privilege protects communications from the client and advice to the
6 client. A.R.S. § 12-2234; *Granger v. Wisner*, 134 Ariz. 377, 379 (1982). The privilege extends
7 to those who assist an attorney, such as the “attorney’s paralegal, assistant, secretary,
8 stenographer, or clerk.” A.R.S. § 12-2234. “The purpose of the attorney-client privilege is to
9 encourage a client to confide in his or her attorney all the information necessary in order that
10 the attorney may provide effective legal representation.” *Id.* “The attorney-client privilege
11 exists to encourage free exchange of information between the attorney and the client and to
12 promote the administration of justice.” *Robert W. Baird & Co. Incorporated v. Whitten*, 244
13 Ariz. 121, 125 (App. 2017) (internal quotation marks and citation omitted).

14 “A government lawyer’s duties may include an obligation to render advice to elected
15 and appointed representatives of a government organization,” where “the government
16 organization, rather than an individual government client representative to whom the advice is
17 given, is the client.” *See*, Rule 42, Rules of the Supreme Court of Arizona, ER 1.13, Editor’s
18 Note 10. Because the records plaintiff sought in his public records request constitute
19 communications and advice between the City’s attorneys (and their staff) and its client, the
20 City, through its elected representatives, those records squarely fall under the protections of
21 the attorney-client privilege. For this reason, the City properly withheld those privileged
22 records in response to plaintiff’s public records request.

23 **b. The Records Were Protected by the Legislative Privilege.**

24 “The legislative privilege has deep historical roots that the Supreme Court has traced
25 back to ‘the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.’” *Lee v. City*
26 *of Los Angeles*, 908 F.3d 1175, 1186 (9 Cir. 2018) (quoting *Tenney v. Brandhove*, 341 U.S.

1 367, 372 (1951)). “[T]he privilege extends to matters beyond pure speech or debate in the
2 legislature only when such matters are ‘an integral part of the deliberative and communicative
3 processes relating to proposed legislation or other matters placed within the jurisdiction of the
4 legislature.’” *Arizona Independent Redistricting Commission v. Fields*, 206 Ariz. 130, 137
5 (App. 2003) (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972)). “The privilege is
6 not intended to protect legislators’ individual interests, but to support the rights of the people,
7 by enabling their representatives to execute the functions of their office” *Arizona*
8 *Independent Redistricting Commission*, 206 Ariz. at 137 (internal quotation marks and citation
9 omitted).

10 “The rationales for according absolute immunity to federal, state, and regional
11 legislators apply with equal force to local legislators.” *Bogan v. Scott-Harris*, 523 U.S. 44, 52
12 (1998). In fact, any “public official who acts in a legislative capacity may assert the privilege
13 regardless of his or her particular location within government.” *Arizona Independent*
14 *Redistricting Commission*, 206 Ariz. at 138 (citation omitted); *see also Tenney*, 341 U.S. at
15 369, 379 (finding that a civil rights suit could not proceed against a California senate
16 committee and a local mayor due to legislative privilege). “Regardless of the level of
17 government, the exercise of legislative discretion should not be inhibited by judicial
18 interference” *Bogan*, 523 U.S. at 52.

19 “[T]he legislative privilege protects against disclosure of documents in appropriate
20 circumstances.” *Arizona Independent Redistricting Commission*, 206 Ariz. at 140.
21 Documentary evidence of a legislator’s conduct in performing legislative acts and
22 communications between a legislator and his or her aides during their term of employment and
23 related to any legislative act can be as revealing as oral testimony. *Arizona Independent*
24 *Redistricting Commission*, 206 Ariz. at 140. “Even though such documents will not be used
25 in any evidentiary proceeding, their mere disclosure could ‘chill’ legislators from freely
26 engaging in the deliberative process necessary to the business of legislating.” *Id.* “Therefore,

1 to the extent the legislative privilege protects against inquiry about a legislative act or
2 communications about that act, the privilege also shields from disclosure documentation
3 reflecting those acts or communications.” *Id.* at 141.

4 The documents plaintiff sought through his public records request pertain to matters
5 that are placed within the jurisdiction of the City Council, which is Phoenix’s legislature.
6 Because those documents reflect legislative acts or communications about legislative acts, the
7 legislative privilege shields them from disclosure. For this reason, the City properly withheld
8 these privileged documents from disclosure in response to plaintiff’s public records request.

9 **3. The City Was Not Required to Provide a Privilege Log.**

10 Plaintiff claims the City violated the law by failing to provide specific statutory
11 exemptions and a privilege log for the records it withheld from him. *See* FAC, Request for
12 Relief, ¶ C. Plaintiff asks this Court to “[m]andate the City’s compliance with A.R.S. § 39-
13 121.01(D)(2).” *Id.* at ¶ D. That statute, however, does not require the City to provide specific
14 statutory exemptions or a privilege log for withheld records.

15 A.R.S. § 39-121.01(D)(2) provides that, “[i]f requested, the custodian of records of an
16 agency shall also furnish an index of records or categories of records that have been withheld
17 and the reasons the records or categories of records have been withheld from the requesting
18 person.” The statute clarifies that for “the purposes of this paragraph, ‘agency’ has the same
19 meaning prescribed in § 41-1001” A.R.S. § 41-1001(1.) defines “agency” as

20 any board, commission, department, officer or other administrative
21 unit of this state, including the agency head and one or more
22 members of the agency head or agency employees or other persons
23 directly or indirectly purporting to act on behalf or under the
24 authority of the agency head, whether created under the
25 Constitution of Arizona or by enactment of the legislature.

24 A.R.S. § 41-1001(1.) specifically provides, “Agency does not include a political
25 subdivision of this state or any of the administrative units of a political subdivision.” *Id.*
26 Phoenix, as a city, is a political subdivision of the state. *See, e.g.,* A.R.S. § 38-431(5.); A.R.S.

1 38-382(3.); 41-563(E)(3); *see also*, *City of Tucson v. Fleischman*, 152 Ariz. 269, 272 (App.
2 1986) (“The general rule is that cities are political subdivisions of the state”). Because Phoenix
3 is a political subdivision of the state, not an agency, section 39-121.01(D)(2) does not require
4 the City to furnish an index of records, categories of records, or the reasons the records or
5 categories of records have been withheld. The City, therefore, did not violate the law by failing
6 to provide specific statutory exemptions and a privilege log for the records it withheld from
7 Plaintiff.

8 **IV. CONCLUSION**

9 The City did not violate the open meeting law. The City Council properly voted to hold
10 executive sessions on 17 dates in 2025 and effectively provided notice of those meetings at or
11 near the beginning of 2025. Notice to the public with a general description of the topics to be
12 discussed at each meeting and the specific reason for holding the executive session was
13 properly posted at least 24 hours before each meeting.

14 The City complied with the public records law. The City maintained the confidentiality
15 of the executive session meeting minutes and preserved the attorney-client and legislative
16 privileges by withholding documents related to the executive sessions in response to Plaintiff’s
17 public records request. For these reasons, the City respectfully requests the Court find Plaintiff
18 is entitled to no relief.

19 RESPECTFULLY SUBMITTED this 1st day of December, 2025.

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