

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-026278

02/24/2026

HONORABLE SCOTT MINDER

CLERK OF THE COURT
M. R. Diaz
Deputy

JEREMY THACKER

JOSHUA CARDEN

v.

CITY OF PHOENIX

BILL C SOLOMON

JUDGE MINDER

ORAL ARGUMENT HELD

East Court Building – Courtroom 711

9:32 a.m. This is the time set for Oral Argument regarding *Plaintiff Jeremy Thacker's Motion For Summary Judgment*, filed December 2, 2025; and *Defendant City Of Phoenix's Motion For Summary Judgment*, filed December 1, 2025. Plaintiff Jeremy Thacker is present and represented by counsel of record, Joshua Carden. Defendant City of Phoenix is represented by counsel of record, Bill C. Solomon. All participants appear virtually.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court addresses the parties regarding Defendant *City of Phoenix's Notice of Document Production*, filed February 23, 2026. Discussion is held regarding the same.

The Court has received and reviewed *Plaintiff Jeremy Thacker's Motion For Summary Judgment*, filed December 2, 2025; and *Defendant City of Phoenix's Motion For Summary Judgment*, filed December 1, 2025; and all related pleadings thereto.

Arguments are presented.

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Based upon the arguments presented on the record,

IT IS ORDERED taking *Plaintiff Jeremy Thacker's Motion For Summary Judgment*, filed December 2, 2025; and *Defendant City Of Phoenix's Motion For Summary Judgment*, filed December 1, 2025, under advisement.

10:22 a.m. Matter concludes.

LATER:

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF THE CITY

On September 28, 2025, Mr. Thacker filed a special action against the City of Phoenix for alleged violations of Arizona's Open Meeting Laws. He alleged that the City was improperly setting executive sessions months in advance, providing insufficient descriptions of those sessions, and then withholding the meeting minutes from those sessions after valid public records requests. The Complaint was later amended, Mr. Thacker filed a motion for a show cause order, and then an emergency motion for a temporary restraining order, which this Court denied after a discussion on September 17, 2025. Days prior to that, the parties and Court met to discuss plans for resolving the dispute. At that time, the parties indicated that the issues would likely be addressed by dispositive motions and possibly an *in camera* review of the documents withheld by the City as privileged. The Court has now received the documents at issue and reviewed them. The parties have each filed their summary judgment motions, on December 1 and 2, 2025, and the Court has reviewed them, the responses, replies, and the fact statements. Oral argument was held on February 24, 2026. Because the City has followed the appropriate procedures for setting, announcing, and conducting the executive sessions, and because the City responded to the related records requests within the applicable legal parameters, the Court denies all relief sought by Mr. Thacker.

Background

The parties do not dispute the series of events leading up to this lawsuit:

- On November 13, 2024, the Phoenix City Council approved a request to hold 17 executive sessions on set dates in 2025, including January 28 and February 11. No specific topics or reasons for those sessions were provided at the time of the approval.
- At least 24 hours prior to the scheduled January 28 and February 11 executive sessions, the City posted notices indicating that the Council would enter executive sessions for "Discussion and consultation for legal advice re: Community Citizen Comment, A.R.S. §38-431-03 A.3."

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- The City Council entered executive session on those dates.
- On May 9, 2025, Mr. Thacker submitted a public records request for certain materials related to those executive sessions.
- In the initial response, the City provided no documents, claiming that no responsive documents existed except those protected by the attorney-client or work-product privileges.
- Days before oral argument, the City produced some of the withheld documents in redacted form.

Analysis

Ariz. R. Civ. P. 56 permits this Court to enter summary judgment when the undisputed facts demonstrate that a party is entitled to judgment as a matter of law. The Court agrees with both parties that the undisputed facts permit this Court to enter summary judgment and resolve this dispute in its entirety.

Timing of the Approval for Future Executive Sessions

Ariz. Rev. Stat. § 38-431.03(A)(3) permits that “[o]n a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes: . . . 3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.” Here, there is no dispute that the City Council held a vote authorizing the executive sessions and that those votes passed by the majority of those members present and that those members constituted a quorum. Mr. Thacker instead argues that the vote was improper because it was not held in closer proximity to the dates of the executive session when the precise purpose of the session would be known and did not necessarily consist of the same quorum of members who would participate in the executive session.

This Court must construe a statute according to its plain terms. Here, section A permits executive sessions if (1) the public body properly authorizes one and (2) the session relates to one of the nine listed acceptable purposes. The sessions *were* authorized by a public majority vote of the members constituting a quorum at the time of the vote. And this Court’s review of the meeting minutes confirms that the executive sessions *were* held for an appropriate purpose under subsection A(3). The City’s actions therefore met the listed requirements.

The Court does not interpret the statute as requiring a particular timing between the vote to enter executive session and the session itself. Referencing the first phrase—“On a public majority vote of the members constituting a quorum a public body may hold an executive session”—Mr. Thacker claims that the quorum must be the same quorum that would enter the executive session, and therefore the vote to enter executive session should occur just prior to the executive

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session. But that interpretation places restrictions not contained in the plain language. The statute, in contrast, reads “a quorum” rather than “the quorum.” Mr. Thacker further asserts that the Legislature’s use of the term “‘Upon’ connotes immediacy and causation.” Pl. Mot. at 6. But the statute reads “on” rather than “upon.” And the Legislature is undoubtedly capable of mandating timing, having done so elsewhere in the OML, rather than discreetly intimating a necessary proximity through the term “on.”

Next, despite Mr. Thacker’s arguments to the contrary, the Council’s decision to authorize an executive session before it knows the basis does not expressly violate the letter of the law. The Legislature has identified the acceptable reasons for an executive session, not the process for a vote (other than requiring a majority of a quorum) or a requirement that the vote expressly contemplate one of the nine bases. In any event, the spirit of the law—to permit the public to understand and object—is maintained when the public is properly notified of the subject of the executive session with sufficient notice to respond accordingly, and when any legal action occurs in public. Ariz. Rev. Stat. § 38-431.02(B) supports this reading by anticipating executive sessions scheduled in advance, and the City complied with its obligations here.¹

Notice of the Executive Sessions

Under Ariz. Rev. Stat. § 38-431.02, the City Council must post the agenda for its meetings at least 24 hours in advance and, for executive sessions, the notice need provide “only a general description of the matters to be considered.” The notice must, however, “provide more than just a recital of the statutory provisions authorizing the executive session[.]” *Id.* Here, the City’s notice was posted on time and stated that the Council would enter executive sessions for “Discussion and consultation for legal advice re: Community Citizen Comment, A.R.S. §38-431-03 A.3.”

Mr. Thacker argues that this description falls short of the OML’s spirit and language. He claims that the description contains no bounds or limitations on what commentary from a citizen could be discussed. And while there is some inherent appeal to that argument, the City clarified in the briefing, and the Court separately confirmed, that the session involved legal advice on the process for receiving “Community Citizen Comments,” rather than any discussion related to a particular comment or set of comments.

The Court agrees with the City that the description was legally sufficient. Could the description have been more precise? Certainly. The City could have stated in its notice that the legal advice addressed the receiving of public commentary, for example. It did not, however, and ambiguity exists. But both parties agree that perfection is not required here. And the Court

¹ This decision does not, of course, restrict the City from adopting Mr. Thacker’s views on the voting process to avoid future questions about secrecy from its residents.

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declines to unwind what appears to be a consistent application of the Open Meeting Laws due to reasonable ambiguity.

This result is consistent with the requirements listed above; i.e, it provides more than just a recital of the statute and includes a general description of the matters considered. The result also squares with *Shelby School v. Arizona State Bd. of Educ.*, 192 Ariz. 156 (Ct. App. 1998). There, the Court of Appeals approved a notice for “legal advice related to charter school applications.” *Id.* at 167-68. Although based on an earlier version of the statute, the approved description is equally broad and provides a similar level of insight into the actual issue related to applications.

Again, while the City could have done better, and can strive to do better in the future, they have not violated the law.

Withholding of the Minutes and Related Documents

As noted earlier, this Court reviewed the minutes and related documents, in their entirety. The Court presumes that the City produced all documents related to the meeting for the Court to review. This presumption was confirmed by counsel during oral argument. The Court has also reviewed the requests made by Mr. Thacker. The City has identified the bases for withholding portions of the documents related to the executive session in its reply in support of its motion for summary judgment, Dkt. # 29.

Ariz. Rev. Stat. § 38-341.03(B) permits the City to keep confidential any “minutes of and discussions made at executive sessions” except for certain persons. Mr. Thacker is not one of those exceptions, so those documents may be kept confidential. The Court agrees with the City that the records submitted and Bates-numbered 0001-0009 and 01777-0185 qualify under this provision and need not be produced.

The City is also not obligated to produce documents not responsive to Mr. Thacker’s specific request. The Court agrees with the City that the records submitted and Bates-numbered 0083, 0086-0095, and 0098-0174 are all related directly to the substantive discussion from the executive session but not covered by Mr. Thacker’s requests. The Court further agrees that those documents also fall within the attorney-client privilege as providing legal advice and/or assessing information for purposes of providing legal advice. Other documents, such as 0024, and 0026-0034 are functionally related to the meeting but not to its substance and thus do not fall under the categories of documents requested.

Remaining are documents Bates-numbered 0010-0023, 0025, 0035-0082, 0084-0085, 0096-0097, and 0175-0176. The City originally claimed that these documents are subject to the legislative privilege and withheld them in their entirety. Just prior to the oral argument, the City

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produced redacted versions of these documents and emailed copies of the production to the Court for its own review. The Court agrees that the documents have been redacted to provide only the information related to the items requested by Mr. Thacker. Because they have been produced, the Court declines to assess the City's claim of legislative privilege.²

Logging of Withheld Documents

In the briefing and again at oral argument, the parties confirmed that no logging is required. The Court, therefore, declines to rule on whether the City was required to provide a log or other description of the documents redacted or withheld.

Conclusion

Because the City complied with the Open Meeting Laws, the Court grants the City's *Motion for Summary Judgment* and denies Mr. Thacker's motion. And because this decision resolves the matter, the Court will dismiss Mr. Thacker's petition for special action.

IT IS ORDERED granting the City's December 1, 2025, *Motion for Summary Judgment*.

IT IS FURTHER ORDERED denying Mr. Thacker's December 2, 2025, *Motion for Summary Judgment*.

IT IS FURTHER ORDERED that the City shall provide, by **March 20, 2026**, a proposed form of judgment, including any necessary Rule 54 language, along with any motions or affidavits. All objections or responses shall be filed no later than **April 3, 2026**.

² The Court is not endorsing the City's occasionally shifting justification for withholding documents, though no resulting relief is appropriate on this record.