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9 STATE OF ARIZONA

10 MARICOPA COUNTY SUPERIOR COURT

11 Jeremy Thacker,

12 Plaintiff,

13 v.

14 City of Phoenix, and Laura Pastor, in her
15 capacity as District 4 Councilwoman,

16 Defendants.

CASE NO. CV2025-007652

**PLAINTIFF’S MOTION FOR LIMITED
DISCOVERY PURSUANT TO RPSA RULE 7(g)
AND ARCP RULE 30(b)(6)**

(Assigned to the Honorable Randall H.
Warner)

17
18 Plaintiff, through undersigned counsel, respectfully moves this Court (pursuant to the
19 parties’ scheduling order) to a) exercise its discretion to permit specific, limited discovery
20 pursuant to Rule 7(g) of the Arizona Rules of Procedure for Special Actions (“RPSA”) and Rule
21 30(b)(6) of the Arizona Rules of Civil Procedure (“ARCP”), and b) order the City to create an
22 index pursuant to, and as permitted by, A.R.S. § 39-121.01(D)(2). This discovery and index are
23 warranted because of the material fact issues surrounding the adequacy, custodial scope, and
24 promptness of Defendants’ search for and production of public records responsive to Plaintiff’s
25 September 30, 2023 public records requests. This motion is supported by the following
26 Memorandum of Points and Authorities, and the attached Exhibits filed contemporaneously
27 herewith.
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. LEGAL STANDARD**

3 RPSA Rule 7(g) does provide that “[d]iscovery is not routinely permitted in special
4 actions,” but “[i]f a special action raises a material issue of fact, the court may issue special
5 orders concerning discovery.” The 2025 Comment confirms that Rule 7(g) gives the Court
6 latitude to allow discovery in those rare instances when necessary, while emphasizing that
7 speedy resolution remains a core special-action value. There are no cases the undersigned can
8 locate that set forth the factors that the Court must consider, and therefor this issue is
9 committed to the sound discretion of the trial court. However, Plaintiff contends that this
10 Motion should be viewed in the light of Arizona’s deep-seated commitment to open
11 government and transparency – which the public records statutes are designed to foment, not
12 avoid: the core purpose of the public records law is “to allow the public access to official
13 records and other government information so that the public may monitor the performance of
14 government officials and their employees.” *Fann v. Kemp in and for County of Maricopa*, 253
15 Ariz. 537, 542 n. 1 (2022) (quoting *Phx. New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 541 ¶ 27, 177
16 P.3d 275, 283 (App. 2008)).

17 This is a statutory special action arising under Arizona’s Public Records Law, A.R.S. § 39-
18 121 *et seq.*, and specifically A.R.S. § 39-121.02(A), which authorizes a special action in superior
19 court to appeal a denial of access to public records. Public records disputes often require the
20 Court to resolve factual questions about (1) whether the public body conducted an adequate
21 search and (2) whether the public body’s response was “prompt” under the circumstances.
22 Here, given the long delay and the apparent heightened scrutiny applied to his public records
23 requests, Plaintiff seeks a single, 4 hour, 30(b)(6) deposition of Defendant’s designated
24 representative(s) focused narrowly on the methodology of Defendants’ search and production
25 process (not privileged communications). The topics are included below. The index is required
26 in this matter because of the heightened scrutiny applied to Plaintiff in order to ascertain
27 which documents were actually gathered and withheld, and on what basis.



1 **II. A MATERIAL ISSUE OF FACT EXISTS REGARDING THE ADEQUACY AND SCOPE OF DEFENDANTS' SEARCH**

2 As a brief reminder, Plaintiff submitted two public records requests on September 30,
3 2023, through the City's public records portal, seeking communications between Council
4 District 4 and identified persons/entities relating to the subject matter at issue. Defendants'
5 Answer asserts that these requests were (eventually) "fulfilled," including by reference to the
6 City's communications office. No responses were received prior to filing the complaint March
7 3, 2025.

8 Because Defendants have not provided a detailed, sworn description of the systems
9 searched, custodians queried, date ranges applied, search terms used, and how text-message
10 and other mobile communications were collected (if at all), there is a material factual dispute
11 over whether Defendants' search was reasonably calculated to find all responsive records.
12 Simply put, there is no mechanism to evaluate the appropriateness of City's response in this
13 case without some discovery.

14 Arizona law places the initial burden on the public body to show it conducted an
15 adequate search for records responsive to a public records request. *Phoenix New Times, L.L.C.*,
16 217 Ariz. at 539, 177 P.3d at 281. And the governing standard is not whether a search
17 produced "something," but whether the search was "reasonably calculated to uncover all
18 relevant documents." *Hodai v. City of Tucson*, 239 Ariz. 34, 44, 365 P.3d 959, 969 (Ct. App.
19 2016).

20 The scope questions are particularly acute in a modern communications request. Arizona law
21 recognizes that agencies may be required to query and search electronic databases to produce
22 responsive records. *ACLU v. Arizona Dep't of Child Safety*, 240 Ariz. 142, 147-52, 377 P.3d 339,
23 344-49 (Ct. App. 2016). It also recognizes that—under appropriate circumstances—records
24 reflecting public business can exist on private devices, and that public-record status turns on
25 the "substantial nexus" to government activity rather than the device's ownership. *Lunney v.*
26 *State*, 244 Ariz. 170, 178-79, 418 P.3d 943, 951-52 (Ct. App. 2017)

1 **A. The existence of a “High Profile PRR” monitoring list leads to a material factual**
2 **dispute on thoroughness and promptness.**

3 Internal City correspondence dated March 14, 2025 reflects that City personnel
4 maintain and monitor a list of “high profile PRRs” requiring special tracking, internal
5 notification, and system flagging. Plaintiff is expressly identified on that list. (Ex. 1) The
6 correspondence further reflects a request that such requests be “flagged” in the system and
7 that notes be added upon receipt. *Id.* The existence of a requestor-specific monitoring
8 designation creates a material issue of fact as to whether Plaintiff’s PRRs were processed
9 through standard workflow or subjected to additional routing, supervisory oversight, or
10 heightened review steps that affected or altered scope, thoroughness, or promptness. Under
11 Rule 7(g), discovery is warranted where the adequacy or promptness of a public body’s
12 response cannot be evaluated without factual development. The existence of a requestor-
13 specific monitoring system directly implicates the neutrality and reasonableness of
14 Defendant’s search and response process.

15 Without limited discovery into how “high profile” requests are handled and without an index,
16 Plaintiff is unable to test Defendant’s assertion that the PRRs were “fulfilled” in compliance
17 with A.R.S. § 39-121.

18 **B. Evidence supports a concrete basis to question completeness**

19 The subject matter underlying Plaintiff’s requests was the focus of public proceedings in
20 which participants described extensive stakeholder communications (including high volumes of
21 texts and emails and multiple meetings), underscoring that communications likely existed
22 across multiple channels and custodians. This explicitly included a statement that
23 Councilwoman Pastor had been “texting” regarding the project – yet no such texts were
24 produced. Ex. 2. Plaintiff does not seek discovery into privileged legal advice or purely private
25 records. Plaintiff seeks only the objective “how, where, and who” of Defendants’ gathering and
26 searching process—information needed to test Defendants’ conclusory assertion that the
27 requests were “fulfilled” after litigation began.

28

1 **III. A RULE 30(B)(6) DEPOSITION IS THE MOST EFFICIENT MEANS TO RESOLVE THE FACTUAL DISPUTE**

2 In addition to requesting the index contemplated by A.R.S. § 39-121.01(D)(2) (expressly
3 permitted by that statute against any public body by court order), Plaintiff seeks the following
4 30(b)(6) topics:

- 5 1. Identification of all City departments/offices involved in receiving, routing,
6 processing, searching, collecting, reviewing, redacting, and producing records
7 responsive to Plaintiff's September 30, 2023 public records requests (including the
8 role, if any, of the communications office referenced in Defendants' Answer).
- 9 2. The complete timeline of Defendants' response actions for each request: the date
10 each request was received/assigned, the date(s) searches were conducted, the
11 date(s) responsive material was collected, reviewed, and produced, and the
12 date(s) the request(s) were closed.
- 13 3. Custodians and custodial sources searched: all individuals whose email accounts,
14 text messages, messaging applications, calendars, or other communications
15 repositories were searched or collected, including but not limited to how
16 Defendants identified custodians and whether and when Council District 4
17 personnel were actually included.
- 18 4. Systems and repositories searched, including but not limited to (as applicable):
19 Exchange/Outlook mailboxes and archives; shared drives; Teams/SharePoint or
20 similar collaboration platforms; public-records-portal repositories; City-issued
21 mobile devices; mobile device management repositories; and any eDiscovery
22 collection tools or vendors used.
- 23 5. Search methodology for electronic communications, including: keyword lists;
24 Boolean operators; date-range constraints; sender/recipient filtering; wildcarding;
25 proximity operators (if used); and steps taken to validate the completeness of
26 search terms against the language of Plaintiff's record requests.
- 27 6. The methods used to search for and collect text messages and other mobile
28 communications responsive to the request, including whether Defendants

1 searched City-issued devices, requested custodians to self-search, used collection
2 software, or relied on carrier logs; and what Defendants did to determine whether
3 responsive texts existed, if any.

4 7. Policies and practices regarding records of public business on non-City-issued
5 devices or accounts, including what steps Defendants take (if any) to capture or
6 preserve such communications when they relate to official activity, and how
7 Defendants determined whether such sources were implicated here.

8 8. Retention, archiving, and deletion practices relevant to the custodians/systems
9 searched, including any applicable retention schedules or purge cycles for email,
10 text messaging, and collaboration tools during the relevant time period.

11 9. Whether any categories of records were withheld and on what stated basis.

12 10. Steps taken to ensure production included the “real record” where maintained
13 electronically (including native-format production and embedded metadata,
14 where responsive and maintained).

15 11. The existence, purpose, and objective processing criteria (if any) for any
16 designation of “high profile” or specially monitored public records requests within
17 the City’s PRR system.

18 12. Whether Plaintiff has been designated as a “high profile” requestor or otherwise
19 flagged in the City’s PRR system, and the date of any such designation.

20 13. The processing workflow applicable to “high profile” or flagged PRRs, including:

- 21 • routing procedures,
- 22 • supervisory review requirements,
- 23 • communications-office involvement,
- 24 • legal review protocols,
- 25 • and whether such requests are handled differently from standard PRRs.

26 14. Whether Plaintiff’s September 30, 2023 PRRs were subject to any special
27 tracking, notation, flagging, or internal notification process.

1 Pursuant to the agreement of the parties, the Court’s scheduling order expressly provides that
2 Plaintiff may file a motion to allow discovery, upon a showing of good cause and a clear
3 description of the nature and extent of discovery sought. Good cause exists because (1)
4 Defendants’ unsworn “fulfilled” assertion is not accompanied by an adequate factual record of
5 the search particulars, and (2) without limited discovery, Plaintiff cannot meaningfully test
6 whether Defendants’ search met the governing “reasonably calculated” standard. Plaintiff has
7 set forth the nature and extent of discovery sought based on all information currently
8 available. The nearly seventeen-month delay between submission of the September 30, 2023
9 PRRs and the City’s assertion of fulfillment further underscores the need for limited discovery
10 into routing, supervisory review, and processing workflow.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an order:

- 13 1. Finding that a material issue of fact exists regarding the adequacy and scope of
14 Defendants’ search for records responsive to Plaintiff’s September 30, 2023 public
15 records requests;
- 16 2. Ordering Defendants to produce an index as described in A.R.S. § 39-121.01(D)(2).
- 17 3. Authorizing Plaintiff to take a 30(b)(6) deposition of Defendants’ designated
18 representative(s), limited to the topics described herein;
- 19 4. Scheduling any needed supplemental evidentiary hearing or return hearing after
20 completion of the limited discovery.

21 Respectfully submitted on this 22nd day of March, 2026,

22 Robinson Law Offices

23 By: s/Joshua W. Carden

24 Joshua W. Carden

25 *Attorney for Plaintiff Jeremy Thacker*