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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 Jeremy Thacker,

15 Plaintiff,

16 v.

17 City of Phoenix, and Laura Pastor, in
18 her capacity as District 4
19 Councilwoman,

20 Defendants.

No. CV2025-007652

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR LIMITED
DISCOVERY AND INDEX**

(Assigned to the
Honorable Randall H. Warner)

21 Discovery is strongly disfavored in special actions. And for good reason. In such
22 proceedings, “the speedy determination of the issue is of prime consideration.” *See Riggins*
23 *v. Graham*, 20 Ariz. App. 196, 198 (1973). Permitting discovery stands in firm tension
24 with goal of expediency. Nevertheless, Plaintiff seeks leave to conduct burdensome
25 discovery, through an expansive 30(b)(6) deposition, as part of a fishing expedition to test
26 the validity of the Defendants’ response. This tactic is antithetical to the special action
27 framework and would open the floodgates for any requestor to seek “rare” discovery by
28 simply alleging that a public entity’s response was incomplete.

Importantly, this special action does not present a dispute over whether the
Defendants, the City of Phoenix and District Four Councilwoman Laura Pastor
(collectively, the “City”) have improperly withheld certain categories of documents.
Instead, the issue presented is whether discovery is warranted where the City has conducted

1 a reasonable search and represented, consistent with its legal and ethical duties, that it has
2 made reasonable efforts to produce all responsive records within its possession, custody,
3 and control.

4 Plaintiff’s motion rests on unsupported speculation that additional records exist and
5 seeks intrusive discovery that is neither necessary nor consistent with the streamlined
6 nature of special action proceedings. The City respectfully requests that the Court deny
7 Plaintiff’s requested relief.

8 **FACTUAL BACKGROUND**

9 This special action arises from two public records requests submitted by Plaintiff
10 Jeremy Thacker to the City of Phoenix (the “City”) pursuant to Arizona’s Public Records
11 Law, A.R.S. § 39-121 *et seq.*

12 On September 30, 2023, Plaintiff submitted two requests through the City’s
13 centralized public records portal. The first request sought communications—including
14 emails, text messages, mobile phone logs, social messaging, and other forms of
15 communication—between members of City Council District Four and certain identified
16 individuals and organizations. The second request sought similar categories of
17 communications between members of City Council District Four and two additional named
18 individuals—employees in the City’s Planning Department. [City’s Confirmation of
19 Receipt of Plf.’s Public Records Request R004767-093023, attached as Exhibit 1; City’s
20 Confirmation of Receipt of Plf.’s Public Records Request R004768-093023, attached as
21 Exhibit 2] The City acknowledged receipt of both requests that same day and assigned
22 tracking reference numbers through its public records system. [Exhibit 1; Exhibit 2]

23 The City processes approximately 11,000 public records requests each year—that
24 is more than 211 requests per week on average. The City’s robust records process involves
25 routing requests through the Public Records Division of the City’s Communications Office
26 to relevant departments and custodians to identify, search for, and produce responsive
27 materials. As reflected in the City’s standard communications to Plaintiff acknowledging
28 his requests—communications with which Plaintiff is undoubtedly familiar, as he has filed

1 a total of twenty-six public records requests with the City since July of 2023—requests are
2 processed in accordance with A.R.S. § 39-121 *et seq.* and may require coordination among
3 multiple offices. [See Exhibit 1; Exhibit 2]

4 In March 2025, the City onboarded a new employee to serve as a Public Records
5 Coordinator. This new employee brings the headcount of the Public Records Division to
6 four. The purpose of onboarding this new employee was to bolster the Public Records
7 Division to enable it to process requests more quickly.

8 On the Public Records Coordinator’s first day, she received an emailed list of
9 requesters and topics to flag to management. The purpose of this email was not to delay or
10 deny requests, as Plaintiff postulates, but, rather, to allow monitoring where the requestor
11 or subject matter requires particularized attention.

12 The City has since conducted a reasonably diligent search and produced the records
13 responsive to both of Plaintiff’s requests—431 pages of emails and eight pages of text
14 messages. Although these records were not provided until after Plaintiff filed this special
15 action, the City has fully complied with its obligations under A.R.S. § 39-121 *et seq.*

16 In addition, while Plaintiff questions the “neutrality and reasonableness of the
17 Defendant’s search and response process” [Plf.’s Mot. for Limited Discovery and Index,
18 at 4], he fails to inform this Court that after he filed this matter, the City worked
19 cooperatively with his counsel to conduct an additional search for records. [April 2025
20 Email Exchange between City Attorney and Plf.’s Counsel, attached as Exhibit 3] In fact,
21 the City’s attorneys cooperated in good faith with Plaintiff’s counsel to make reasonable
22 efforts to locate the records Plaintiff sought by formulating agreed-upon search terms that
23 went well beyond Plaintiff’s initial public records requests. [See Exhibit 3 at 4] The City’s
24 attorneys provided Plaintiff’s counsel all records located during this second search.

25 **ARGUMENT**

26 Arizona law favors openness and transparency, requiring a public body to promptly
27 furnish existing records in its custody. A.R.S. § 39-121. It does not require the creation of
28 new records, the preservation of records beyond approved retention schedules, or the

1 undertaking of limitless investigative efforts to satisfy speculation that additional
2 documents might exist. As demonstrated below, the undisputed record establishes that the
3 City satisfied its obligations under the Arizona Public Records Act when it furnished
4 Plaintiff with the responsive material.

5 **I. Discovery—Which Is Rarely Permitted in Special Actions—Is Not**
6 **Justified Here Because It Is Not Necessary.**

7 There is no right to discovery in a special action. *See* RPSA 7(g). Rather, “the
8 speedy determination of the issue is of prime consideration.” *See Riggins*, 20 Ariz. App. at
9 198. Accordingly, discovery is permitted only in exceedingly rare instances where it is
10 absolutely necessary for the resolution of the disputed issues. 2025 Comment to RPSA
11 7(g). Plaintiff fails to meet this high threshold. His motion is premised not on concrete
12 evidence of inadequate search or unlawful withholding, but on speculation and inference.
13 Such conjecture does not justify permitting discovery—let alone the expansive form of
14 discovery, a 30(b)(6) deposition, that he requests.

15 **A. Information Sought is not Relevant or of Sufficient Evidentiary**
16 **Value to Warrant Discovery.**

17 As the Arizona Court of Appeals recognized in *Riggins*, discovery is inappropriate
18 where the requested information lacks sufficient evidentiary value to justify delaying the
19 resolution of the special action. 20 Ariz. App. at 198. Here, Plaintiff argues that a material
20 factual dispute exists regarding whether the City’s search was reasonably calculated to
21 identify responsive records. However, Plaintiff’s own counsel collaborated with the City
22 in developing the scope of the second search. [Exhibit 3] That fact significantly undermines
23 any claim that the search methodology was unreasonably deficient or biased.

24 Moreover, Plaintiff’s motion seeks to probe the City’s internal collection and review
25 processes rather than to obtain specific, identifiable records that allegedly exist but were
26 not produced. Courts routinely reject such requests absent a concrete showing of a deficient
27 process—evidence that does not exist in this matter.

1 **B. Plaintiff’s Evidence Does Not Demonstrate Sufficient Need for**
2 **Discovery.**

3 “Unless an appropriate showing is made on which the court in an original special
4 action can ground its exercise of discretion to issue special orders concerning discovery,
5 the parties are generally not entitled to discovery.” 2025 Comment to RPSA 7(g) (citing
6 *King v. Neely*, 143 Ariz. 329, 331 (App. 1984) (affirming trial court's denial of discovery
7 when there was no showing of illegality or actions in excess of power).

8 Plaintiff’s proffered evidence does not meet this standard. That twenty months
9 elapsed before the City provided Plaintiff with the responsive records, and that the
10 Plaintiff’s name was included on an emailed list of individuals and topics for which
11 requests should be flagged as high profile, does not warrant the Court taking the rare step
12 of ordering discovery. *See Riggins*, 20 Ariz. App. at 198 (“The trial court, after a hearing,
13 ruled that some of the information had already been furnished to the Recipients and that
14 the remainder of the information sought was not relevant or of sufficient evidentiary value
15 to warrant an order compelling discovery.”). The inclusion of Plaintiff’s name in an email
16 to the Public Records Coordinator is not evidence of obstruction or obfuscation; it can just
17 as easily be construed as demonstrating the City’s commitment to take special care in
18 processing and responding to Plaintiff’s requests and the requests of other similarly
19 frequent requestors.

20 Plaintiff’s reliance on a February 28, 2022, email referencing text messages likewise
21 falls short of demonstrating that this is the rare case in which discovery is necessary. The
22 email states, in pertinent part: “I have been texting with Laura and I would love to set up a
23 meeting to visit with her about project at Glenrosa and Central. Could you possibly help
24 me get that scheduled?” [Plf’s Mot. at Exhibit 2] Contrary to Plaintiff’s misguided
25 insinuation, the email does not indicate that the sender texted Councilmember Pastor *about*
26 *the Glenrose/Central project*.

27 Significantly, Arizona’s public records law applies only to documents pertaining to
28 official activities. As the Arizona Supreme Court has stated: “[W]e reject [the] argument

1 that all e-mails generated or maintained on a government-owned computer system are
2 automatically public records[;] [s]ome e-mails will relate solely to personal matters and
3 will not, therefore, reflect the requisite substantial nexus with government activities.”
4 *Griffis v. Pinal Cnty.*, 215 Ariz. 1, 5 (2007). Here, the February 28, 2022 email leaves
5 unanswered the question of whether Councilmember Pastor sent or received texts that
6 constitute public records, as opposed to messages that were personal in nature. Without
7 more, Plaintiff’s assertions are too attenuated to justify the need for discovery.

8 Furthermore, Plaintiff has failed to establish that the purported text messages existed
9 at the time of his request. The City’s retention schedule provides for the disposal of such
10 messages after ninety days. [Excerpt from City’s Records Retention Schedule, attached as
11 Exhibit 4] Plaintiff submitted his request on September 30, 2023, more than nineteen
12 months after the February 28, 2022 email, meaning that any such messages may have been
13 lawfully destroyed. The absence of responsive text messages is, therefore, entirely
14 consistent with lawful records management practices and does not create a factual dispute
15 warranting discovery.

16 Critically, Plaintiff cannot simply will nonexistent documents into existence
17 through the forcefulness and repetition of his requests. Nor can Plaintiff bootstrap
18 speculation into necessity by stacking inference upon inference—first, that additional
19 records must exist; second, that they were processed through a different workflow; and
20 third, that that workflow was somehow unreasonable. This chain of conjecture is
21 insufficient to justify discovery in a special action.

22 **C. Plaintiff’s Request Is, In Substance, An Attempt to Conduct**
23 **“Discovery on Discovery.”**

24 Much like the discovery process in the civil litigation context, Arizona’s public
25 records law operates on an honor system grounded in legal and professional obligations to
26 produce relevant, nonprivileged information, after reasonable inquiry, that is within the
27
28

1 party's possession, custody, and control. This concept was discussed in *LKQ Corp v. Kia*
2 *Motors Am., Inc.*, where the court explained:

3 Discovery production is akin to an honor system. We trust that attorneys
4 uphold their professional obligations and responsibilities by following the
5 Federal Rules of Civil Procedure to produce relevant, nonprivileged
6 information, after a reasonable inquiry, that is within their client's
7 possession, custody, and control. As a general rule, attorneys do not second-
8 guess each other's processes for producing responsive information. They
9 may request more information after an initial disclosure or argue about
10 objections, but generally they do not need a deep dive into the collection,
11 review, and processing methodology of their opponent. If second-guessing
12 was the norm, the whole discovery system would break down into an endless
13 barrage of motions based on mistrust about the opponent's production.
14 Counsel's status as an officer of the court, combined with the possibility of
15 serious sanctions embedded in Rules 11 and 37 and other professional
16 disciplinary measures, serve as a deterrent to lawyers from either
17 intentionally or negligently failing to produce information. Trust in an
18 adversarial process appears contradictory at first, but it is the bedrock of
19 modern discovery practice and has worked well for decades.

20 345 F.R.D. 152, 156 (N.D. Ill. 2023).

21 Here, Plaintiff is seeking the functional equivalent of "discovery upon discovery." And,
22 because the request is made in the context of a special action, it is doubly disfavored.

23 Plaintiff's second-guessing here is clearly unwarranted given the City's efforts to
24 work cooperatively with his counsel to conduct a second search for records with agreed-
25 upon terms and scope. Absent specific and substantial evidence of a material failure, courts
26 do not permit parties to conduct intrusive examinations into collection and review
27 methodologies. *Id.* at 162–63. As *LKQ Corp.* Court properly acknowledged, if second-
28 guessing was the norm, the whole discovery system would break down into an endless
29 barrage of motions based on mistrust about the opponent's production. *Id.* at 157.

30 This principle is particularly compelling in a special action where the procedural
31 framework prioritizes speed and efficiency. Allowing "discovery on discovery" here would
32 undermine those objectives and invite precisely the type of protracted litigation that *LKQ*
33 cautions against. If a plaintiff could secure discovery merely by claiming that a public
34

1 entity’s response might be incomplete, then discovery would effectively become routine in
2 nearly every public records case—an outcome that directly conflicts with the fundamental
3 principle that special actions are meant to be resolved quickly and without discovery.

4 **II. Plaintiff’s Asserted Need for Information Can Be Provided**
5 **Through Less Intrusive Means.**

6 Assuming arguendo that Plaintiff is entitled to discovery (which he is not), he should
7 be limited to using the least intrusive means necessary to obtain relevant
8 information. Instead, he’s opted for a 30(b)(6) deposition, which is a notoriously
9 burdensome discovery tool. Courts have explicitly acknowledged that preparing a
10 corporate witness designee for deposition may be an onerous and burdensome task. *Great*
11 *American Ins. Co. of New York v. Vegas Const. Co, Inc.*, 251 F.R.D. 534, 540 (D. Nev.
12 2008). The burden arises because the organization must identify appropriate witnesses,
13 ensure they review all matters known or reasonably available to the organization, and
14 prepare them to provide complete and binding testimony on behalf of the entity. *See Id.*

15 Plaintiff’s request discovery is also plagued by other infirmities. Despite his
16 purported “evidence” of nonresponsiveness being limited to text messages sent to
17 Councilmember Pastor, Plaintiff is requesting to depose a representative of the City on
18 fifteen sweeping categories that span across multiple Public Records requests.

19 Plaintiff’s request for “limited” discovery is a misnomer, insofar as he seeks, among
20 other things, limitless and City-wide testimony regarding:

- 21 • Policies and practices regarding records of public business on non-City-issued
22 devices or accounts, including what steps Defendants take (if any) to capture or
23 preserve such communications when they relate to official activity, and how
24 Defendants determined whether such sources were implicated here.
- 25 • Retention, archiving, and deletion practices relevant to the custodians/systems
26 searched, including any applicable retention schedules or purge cycles for email,
27 text messaging, and collaboration tools during the relevant time period.

1 Notably, these are just two of the fifteen requests, and they would apply universally
2 to the City, a large, complex organization with more than 14,000 employees and 41
3 departments.

4 Furthermore, given the City’s decentralized records-management structure—
5 involving multiple departments, custodians, and subject-matter experts—compliance
6 would likely require the preparation and appearance of numerous individuals. Such an
7 undertaking is fundamentally inconsistent with the streamlined and expedited nature of a
8 special action while providing marginal, if any, evidentiary value.

9 If the Court deems discovery necessary, the City can affirmatively provide Plaintiff
10 with information regarding efforts to retrieve and produce text messages sent or received
11 by Councilmember Pastor by furnishing sworn declarations from relevant City employees
12 and officials. Indeed, this was mentioned as the preferred method in Plaintiff’s own legal
13 authority: “[T]he agency may rely on affidavits or declarations that provide reasonable
14 detail of the scope of the search.” *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533,
15 539, 177 P.3d 275, 281 (Ct. App. 2008)

16 If the Court determines that additional information is warranted, mechanisms that
17 are more efficient and less intrusive than a 30(b)(6) deposition exist to provide that
18 information. The use of such methods better aligns with the principle that discovery is rare
19 and limited in special actions.

20 **III. The City Is Not Required to Provide an Index, Nor Is One Necessary.**

21 Plaintiff’s request for an index likewise lacks legal or evidentiary support. A.R.S. §
22 39-121.01(D)(2) provides, “if requested, the custodian of the records of an **agency** shall
23 also furnish an index of records or categories of records that have been withheld and the
24 reasons the records or categories of records have been withheld from the requesting person.
25 (emphasis added). The statute clarifies that for “the purposes of this paragraph, ‘agency’
26 has the same meaning prescribed in § 41-1001” A.R.S. § 41-1001(1) defines “agency”
27 as:
28

1 any board, commission, department, officer or other administrative unit of
2 this state, including the agency head and one or more members of the agency
3 head or agency employees or other persons directly or indirectly purporting
4 to act on behalf or under the authority of the agency head, whether created
under the Constitution of Arizona or by enactment of the legislature. []

Agency does not include a political subdivision of this state

5 (emphasis added).

6 Thus, as a matter of public policy, the Legislature made a deliberate decision to spare
7 municipalities from the burden of creating an index. This Court should not casually
8 override this policy decision.

9 While the statute permits courts to order an index from a public body other than an
10 agency in appropriate circumstances, such relief is unnecessary here because Plaintiff has
11 failed to present any evidence that responsive records were discovered but improperly
12 withheld.

13 **CONCLUSION**

14 Plaintiff has not demonstrated that this is the rare case in which discovery is
15 necessary in a special action. His motion is grounded in speculation, rather than evidence,
16 seeks intrusive examination of internal processes, and would undermine the expedited
17 framework governing special actions.

18 For these reasons, the City respectfully requests that the Court deny Plaintiff's
19 Motion for Limited Discovery and Index.

20 RESPECTFULLY SUBMITTED this 27th day of March, 2026.

21
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1 **ORIGINAL** of the foregoing *e-filed
2 with the court this 27th day of March, 2026,
3 via AZ Turbo Court:

4 *The Honorable Randall H. Warner

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