



Arizona State Senate Issue Brief

September 26, 2008

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

ARIZONA'S PUBLIC RECORDS LAWS

INTRODUCTION

Arizona law requires all officers and public bodies to maintain records reasonably necessary to provide an accurate accounting of their official activities and of any government funded activities.

An officer is any person elected or appointed to hold an office of a public body or any chief, administrative officer, head, director, superintendent or chairman of any public body. Public bodies include the state, counties, cities, towns, school districts, political subdivisions or special taxing districts and any branch, department, board, bureau, commission, council or committee thereof.

Records are defined as books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of government. The following are examples of public records:

- permits and application forms for permits.
- documents indicating the number of applicants for personnel positions classified by race and national origin, where no personal identifying information of the applicant is sought.
- taxpayers' property tax valuations.
- records of expenditures of public monies.
- official records of proceedings of state boards and commissions.
- public officer and state employee's disciplinary records.

The Director of the Arizona State Library, Archives and Public Records (ASLAPR) is responsible for the preservation and management of all government records, except for those of the Legislature and the courts; statute requires that the Director of ASLAPR, on request, assist and advise in the establishment of records management programs in the legislative and judicial branches of the state. Additionally, ASLAPR provides training in records management for any governmental entity around the state.

MAINTENANCE OF RECORDS

Each officer and public body is responsible for preserving, maintaining and caring for the records within their offices. The records must be secured, protected and preserved from deterioration, mutilation, loss or destruction, unless disposed of in accordance with prescribed standards. Permanent public records must be kept or transcribed on paper or other material that is of durable or permanent quality and stored and maintained according to standards established by the Director of ASLAPR. Statute permits each agency of the state or of a political subdivision to implement a program for the production or reproduction on film or electronic media of records in its custody with approval from the Director of ASLAPR.

Additionally, Arizona's Uniform Real Property Electronic Recording Act of 2005 allows a county recorder to receive, index, store, archive and transmit electronic documents and provide for access to documents and information by electronic means. A county recorder may also convert paper documents accepted for recording into electronic form.

The head of each state and local agency must submit to the Director of ASLAPR, in accordance with the established standards, schedules proposing the length of time each record should be retained, a list of public records that are not needed in the transaction of current business and a list of all essential public records in the custody of the agency.

PUBLIC ACCESS

Any person may request to examine a public record or be furnished copies, printouts or photographs of any public record not available on the Internet during regular office hours. The custodian of public records is required to promptly furnish them, except under certain circumstances that have been established by federal and state statute and rule and the Arizona courts. However, the records custodians of most state agencies, if asked, must furnish an index of records or categories of records withheld and the reasons why. The list must not include any confidential or privileged information.

A person may request a records custodian to mail a copy of any public record not available on the Internet. A records custodian may charge a fee for copying and postage, except where statute requires the records to be provided free of charge. Statute permits the custodian to collect the fee before the records are furnished. All copies must be made while the document is under the custodian's supervision.

Commercial Purpose

Statute specifically addresses the use of public records for commercial purposes. A commercial purpose refers to the use of a public record for sale or resale or for producing a document that contains all or part of the record for sale or to obtain names and addresses to solicit or sell to another for any purpose in which the purchaser can reasonably anticipate monetary compensation. The use of records as evidence or research for evidence in any judicial or quasi-judicial body is not a commercial purpose.

A person who requests a copy of a public record for a commercial purpose must provide a statement setting forth the purpose for which the record will be used and may be charged a different fee from that charged for the same record for a noncommercial purpose. However, if the custodian of records in any public body believes that a stated commercial purpose is a misuse of public records, the custodian may request the Governor to issue an executive order prohibiting the furnishing of the record for that purpose. If no order is issued within 30 days of application, the custodian must furnish the record.

If a person does not clearly state the commercial purpose at the time of request or uses the record for a purpose other than that stated, damages in the amount of three times what would have been charged for the actual commercial purpose must be paid to the state or political subdivision, plus costs and attorney fees, or, if the public record would not have been provided for the actual commercial use, an amount of three times the actual damages.

CIRCUMSTANCES FOR DENIAL

In Arizona, the presumption is for disclosure of public records. The Arizona courts have found that the custodian of public records may deny inspection only in the following three circumstances: 1) the record is made confidential by statute; 2) the record involves the privacy interests of a person; or 3) disclosure would be detrimental to the best interests of the state.

Confidentiality

In addition to federal law, there are over 300 Arizona statutes that address the confidentiality of records. Administrative rules may also limit disclosure of certain information. 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 redacted.

In 2007, legislation was enacted requiring recorders from counties with populations over 800,000 persons to redact references to complete nine-digit Social Security numbers that are, or will be, available on their county website. Similarly, recorders from counties with populations less than 800,000 persons must redact references to complete nine-digit Social Security numbers that are, or will be, available on their county website at the holder's request.

Personal Privacy

Under this exception, the custodian has discretion to deny public inspection when the disclosure would invade privacy and that invasion outweighs the public's right to know.

As it is not addressed in Arizona's public records statutes, the Arizona Supreme Court relies on the federal definition of "privacy," which states that information is private if it is intended for or restricted to the use of a particular person or group of persons and the privacy interest encompasses the individual's control of information concerning his or her person. Courts have found that a person has a privacy interest in his or her date of birth and home address.

Best Interest of the State

The Arizona Supreme Court has recognized that an officer or custodian of public records may refuse inspection of public records to protect the best interest of the state where inspection might lead to substantial and irreparable private or public harm. The standard "detrimental to the best interest of the state" permits a public body to designate a record as "confidential" only when the release of information would have a harmful effect on the duties of the officials or agency in question. A record may not be labeled "confidential" to save an officer or public body from inconvenience or embarrassment.

Thus, 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. When a public officer determines that the harm to the state outweighs the public right to disclosure of a document, the officer has the burden of specifically demonstrating the harm if the determination is challenged in superior court.

VIOLATIONS

Any person denied access to or the right to copy records may file for a special action in the superior court and the court may award legal costs, including attorney fees, if the person seeking public records substantially prevails. A public officer or agency may also be liable for damages that result from wrongfully denying a person access to public records. Penalties also exist for officers who wrongfully disclose information that is considered confidential.

The Office of the Ombudsman-Citizens' Aide is authorized to investigate complaints relating to public access laws, including public records. During such investigations, the Ombudsman-Citizens' Aide may enter without notice to inspect agency premises with agency staff on the premises, have access to all agency records, with a few exceptions, and issue subpoenas, among other things. Additionally, the Ombudsman-Citizens' Aide must educate public officials and the public on public access laws.

• **ADDITIONAL RESOURCES** •

- Public Records Statutes: Arizona Revised Statutes, Title 39
- Arizona Agency Handbook, prepared by the Attorney General
www.azag.gov/Agency_Handbook/Agency_Handbook.html
- Arizona State Library, Archives and Public Records Statutes: A.R.S. §§ 41-1345 through 41-1351
- Records Management Division
Arizona State Library, Archives and Public Records
1919 West Jefferson
Phoenix, AZ 85009
(602) 926-3815
www.lib.az.us/records/
- Office of the Ombudsman-Citizens Aid Statutes: A.R.S. § 41-1376.01
- Arizona Ombudsman-Citizens' Aide
3737 North 7th Street, Suite 209
Phoenix, AZ 85014
(602) 277-7292
(800) 872-2879
www.azleg.gov/ombudsman/
http://www.azleg.gov/ombudsman/Public_records_Book.pdf