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8 IN THE SUPERIOR COURT OF ARIZONA  
9 IN AND FOR THE COUNTY OF MARICOPA

10 SOUTHWEST PUBLIC POLICY INSTITUTE )  
11 Petitioner/Plaintiff, )

Case No. \_\_\_\_\_

12 v. )

**VERIFIED COMPLAINT  
for statutory special action  
and injunctive relief**

13 MESA PUBLIC SCHOOLS, and )  
14 SUE BEYER, in her official capacity as )  
custodian of records for the Mesa Public )  
15 Schools, )

**APPLICATION FOR ORDER  
TO SHOW CAUSE**

16 Respondents/Defendants. )  
17  
18

1 **I. INTRODUCTION**

2  
3 1. This is an action on behalf of the Southwest Public Policy Institute to compel the Mesa  
4 Public Schools to provide public records pursuant to Arizona Public Records Law  
(A.R.S. Title 39, or “APRL”).

5 2. Plaintiff/Petitioner Southwest Public Policy Institute is a nonprofit organization  
6 organized under the laws of New Mexico and maintaining its principal place of  
7 business in Albuquerque, New Mexico. Its mission is to explore and build on sound,  
8 data-driven policies regarding education, crime, and economics that will  
9 encourage positive change in the American Southwest.

10 3. Respondent Mesa Public Schools is a “Public Body” as that term is defined at A.R.S. §  
11 39-121.01. It received a public records request from Patrick Brenner, President of the  
12 Southwest Public Policy Institute, on or about March 16, 2023

13 4. Respondent Sue Beyer is a custodian of records at the Mesa Public Schools, and  
14 responded to the public records request mentioned in the previous paragraph on behalf  
of the Mesa Public Schools. She is sued in her official capacity only.

15 **JURISDICTION AND VENUE**

16 5. Jurisdiction over this action and its claims is provided by A.R.S. §§ 39-121.02 and 12-  
17 123; and Rule 45, Ariz. R. P. for Spec. Actions.

1 6. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b), Ariz. R. P. for Spec.  
2 Actions.

3 **FACTUAL BACKGROUND**

4 7. Southwest Public Policy Institute initiated a transparency project to make government  
5 information more accessible to the public and guard against government employees and  
6 elected officials excluding the public from information to which they are entitled by  
7 law.

8 8. As part of Southwest Public Policy Institute's transparency project, it has been  
9 requesting and obtaining information held by publicly funded agencies, including  
10 public schools, related to the mailings those agencies send out to members of the  
11 public.

12 9. As part of the transparency project mentioned above, Southwest Public Policy Institute  
13 submitted a public records request to the Mesa Public Schools. A true and correct copy  
14 of that request is attached hereto as Exhibit A.

15 10. The Mesa Public Schools denied access to the requested records on the grounds that the  
16 schools were being asked to create a record, instead of being asked to produce a copy  
17 of a record. A true and correct copy of correspondence between the Schools and the  
18 Southwest Public Policy Institute is attached hereto as Exhibit B.

**LEGAL CLAIM**

- 1 11. Under Arizona’s public records law, officers and public bodies must maintain all  
2 records of their official activities supported by public funds, and they must promptly  
3 furnish copies of public records to any person upon request. A.R.S. §39-121.01.
- 4 12. “The core purpose of the public records law is to allow the public access to official  
5 records and other government information so that the public may monitor the  
6 performance of government officials and their employees.” *Phoenix News., Inc. v.*  
7 *Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (App. 2001)(citation omitted).
- 8 13. The requirement to provide copies of public records includes fulfilling ongoing public  
9 records requests. *W. Valley View, Inc. v. Maricopa County Sheriff’s Office*, 216 Ariz.  
10 225, 229-30, 165 P.3d 203, 207-08 (App. 2007).
- 11 14. “[T]he objective implicitly expressed in § 39-121.01 is to broadly define those records  
12 which are open to the public for inspection under § 39-121,” and “the combined effect  
13 of [Arizona public records statutes] evince a clear policy favoring disclosure.” *Carlson*  
14 *v. Pima County*, 141 Ariz. 487, 490, 687 P.2d 1242, 1245 (1984).
- 15 15. “[A]ll records required to be kept under A.R.S. § 39-121.01(B), are presumed to be  
16 open to the public.” *Id.* at 491, 687 P.2d at 1246.
- 17 16. Upon request, the custodian of public records must provide an index of records or  
18 categories of records withheld and the reasons for withholding them. A.R.S. § 39-  
121.01.

1 17. Plaintiff Southwest Public Policy Institute’s request is for clearly defined categories of  
2 public records, and does not call for the creation of any record.

3 18. Under APRL, the public body (in this case, the Mesa Public Schools) has the burden to  
4 “specifically demonstrate” how a competing interest overcomes the presumption of  
5 disclosure, within a reasonable period of time as called for in the statute. *Phoenix*  
6 *News., Inc. v. Ellis*, 215 Ariz. 268, 273, 159 P.3d 578, 583 (App. 2007)(quotation  
7 omitted). The probability of “specific, material harm” must be shown. *Mitchell v.*  
8 *Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984). “[G]eneralized claims of  
9 broad state interest” are insufficient, and the Arizona Supreme Court has rejected using  
10 a blanket rule exempting categories of documents from disclosure. *Cox Ariz.*  
11 *Publications, Inc. v. Collins*, 175 Ariz. 11, 13-14, 852 P.2d 1194, 1197-98 (1993).

12 19. Despite these obligations, the respondents have failed to provide identified records or a  
13 legal justification for withholding public records relating to certain of its own  
14 communications, which were plainly sent, received and/or held using taxpayer funds.

15 20. By declining to provide either the identified, responsive records or the required  
16 legitimate basis for withholding the requested records, the respondents have failed to  
17 adequately respond to Plaintiff’s request, or have unilaterally attempted to reframe  
18 Plaintiff’s request into a request for the creation of records, rather than for copies of  
records.

1 21. As a public institution covered by the Arizona Public Records Law, the Mesa Public  
2 Schools and the employees of that public body are required to conduct reasonable  
3 searches for and properly turn over records responsive to a public records request,  
4 within a reasonable period of time.

5 22. Satisfying an APRL request inherently requires a non-conflicted search. On  
6 information and belief, the respondents simply asserted no records existed, or that the  
7 request was seeking the creation of a record, without conducting a lawful or proper  
8 search.

9 23. The emails at issue in this matter are public records, and the public is entitled to open  
10 access to them. The respondents must fulfill this outstanding request by releasing  
11 responsive records.

12 24. Publicly funded activities are “not meant to be clothed in secrecy, but to be subject to  
13 open discussion and debate.” *Moorehead v. Arnold*, 130 Ariz. 503, 505, 637 P.2d 305,  
14 307 (App. 1981).

15 25. For these reasons, the respondents have violated Arizona Public Records Law and  
16 Plaintiff’s rights under it.

17 **APPLICATION FOR ORDER TO SHOW CAUSE**

18 26. As set forth above, Defendants/Respondents are plainly prohibited by law from  
withholding the requested records. Accordingly, pursuant to Rule 6(d), Ariz. R. Civ. P.,

1 and Rule 4(c), Ariz. R. of P. for Spec. Actions, it is appropriate and proper for this  
2 Court to issue an Order to Show Cause why the requested relief should not be granted.

3 **APPLICATION FOR ORDER TO SHOW CAUSE**

4 27. As set forth above, Respondents/Defendants are prohibited by law from withholding  
5 the requested records. Accordingly, pursuant to Rule 6(d), Ariz. R. Civ. P., and Rule  
6 4(c), Ariz. R. of P. for Spec. Actions, it is appropriate and proper for this Court to issue  
7 an Order to Show Cause why the relief requested below should not be granted.

8 **REQUEST FOR RELIEF**

9 28. To serve the interests of equity and justice, Plaintiffs respectfully request that this  
10 honorable Court award the following relief:

11 A. Issue a preliminary and permanent injunction enjoining the respondents from  
12 withholding the requested records;

13 B. Issue an order compelling the respondents to immediately provide copies of the  
14 requested public records;

15 C. If necessary, conduct an *in camera* inspection to delete confidential information and  
16 produce non-exempt information;

17 D. In the alternative, issue an order compelling the respondents to search the  
18 appropriate email accounts *de novo*, remedying any inherently conflicted or deficient  
search/production process, to produce responsive non-exempt information and/or to

1 provide sufficient justification for the failure to produce any withheld records within  
2 thirty days;

3 E. Award damages, costs and attorneys' fees pursuant to A.R.S. §§ 12-341, 12-348, 12-  
4 2030, and 39-121.02; Rule 4(g), Ariz. R. P. for Spec. Actions; and the private  
5 attorney general doctrine; and

6 F. Order such additional relief as may be just and proper.

7 **RESPECTFULLY SUBMITTED** this \_\_\_\_\_ day of May, 2023, by:

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