

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. GREG SAKALL

CASE NO. C20254935

DATE: July 30, 2026

AMERICAN CIVIL LIBERTIES UNION OF ARIZONA
Plaintiff

VS.

CHRIS NANOS, IN HIS OFFICIAL CAPACITY AS THE
DULY ELECTED SHERIFF OF PIMA COUNTY
Defendant

R U L I N G

IN CHAMBERS:

Pending before the Court is Plaintiff's Application for Award of Attorneys' Fees and Costs in which it seeks \$110,199.40 in attorneys' fees and \$2,634.44 in costs pursuant to A.R.S. § 39-121.02(B). Defendant opposes the Application in full, and alternatively, argues that any award should be substantially less.

In addition, with leave of Court, Plaintiff filed a Supplemental Application seeking an award of \$10,665.00 for additional fees incurred in the Reply brief. It also relies upon A.R.S. § 12-349 in support of its request. Defendant opposes the Supplemental Application also.

For the reasons set forth below, the Court GRANTS IN PART and DENIES IN PART the Application and Supplemental Application, and it awards \$70,350.00 in reasonable attorneys' fees and \$2,634.44 in costs.

A. Background

Plaintiff brought this action in July 2025, seeking a declaration that Defendant violated Arizona Public Records Law, A.R.S. §§ 39-121.01(D)(1) and 39-121.01(E), and an order compelling Defendant to provide access to the requested public records.

On March 23, 2026, in advance of a scheduled hearing, Plaintiff offered to settle the

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lawsuit. Part of that offer included a demand that Defendant pay \$58,100 in attorney's fees and costs based upon a capped hourly rate of \$350/hour, and a waiver of incurred costs.

On April 2, 2026, Defendant rejected other terms of the Plaintiff's offer, so the litigation continued.

After an April 3, 2026 hearing, the Court issued an Under Advisement Ruling in which it granted the declaration which Plaintiff sought. *See* June 5, 2026 Under Advisement Ruling. Because of the parties' cooperation both before and after the hearing, the Court was not required to order Defendant to produce the requested records. The Court did deny Plaintiff's request that the following records be produced at no cost: (i) internal communications referencing GO2025-001 between May 1, 2025 through July 21, 2025, and additional reports which ultimately totaled 80 reports (which had been culled from 1,854 potentially responsive documents) at a cost of \$404.75. *See* May 13, 2026 Joint Status Report.

B. Discussion

A.R.S. § 39-121.02(B) provides as that "[t]he court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed. This subsection does not limit the rights of any party to recover attorney fees, expenses and double damages pursuant to section 12-349." A.R.S. § 39-121.02(B).

Based upon the statute's "broad and flexible" phrases, the Court has "wide latitude in making its determination" in exercising its discretion to award fees. *Democratic Party of Pima Cty. v. Ford*, 228 Ariz. 545, 548, ¶ 9 (App. 2012). "A party has substantially prevailed if, after a comprehensive examination by the trial court, it was more successful than not in obtaining the requested records, defeating the government's denial of access to public records, or securing other relief concerning issues that were contested before

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litigation was initiated.” *Am. C.L. Union of Ariz. v. Ariz. Dep’t of Child Safety* (“*ACLU-AZ*”), 251 Ariz. 458, 461, ¶ 14 (2021). “In determining whether a party has substantially prevailed, the court may consider all of the claims or requests made by the requesting party in order to evaluate a party’s overall success in the litigation with respect to issues that were contested before litigation was initiated.” *Smith v. Town of Marana*, 254 Ariz. 393, 400, ¶ 24 (App. 2022) (citation and quotation marks omitted). The focus is on “the purpose of an original records request.” *Paradigm DKD Group, LLC v. Pima Cty. Assessor*, 246 Ariz. 429, 437, ¶ 27 (Ap. 2019).

As to relevant factors, “documents sought and received by a requesting party is a factor that a trial court should consider when analyzing a fee request[.]” *ACLU-AZ*, at 461, ¶ 15. Other relevant factors include “[s]ecuring a legal precedent” and “forcing compliance by a recalcitrant government entity . . . even if it does not yield a document bounty.” *Id.* at ¶ 16. Also relevant is “whether an agency has acted or continued to act in an adversarial role.” *Paradigm*, 246 Ariz. at 436, ¶ 22.

However, some facts are not relevant. “[A] party’s success in pre-litigation negotiations” is not relevant. *Abraham v. Ariz. Board of Regents*, 259 Ariz. 158, ___, ¶ 72 (App. 2025), *review granted in part on other grounds* (Sept. 9, 2025) (granting review on whether a public entity’s denial of access to a public record is a question of law reviewed de novo). Likewise, a government entity’s “good faith, or lack thereof” for its position “is not relevant to eligibility[.]” *Smith*, at 400, ¶ 26.

While Plaintiff has relied in part upon the factors set forth in *Associated Indemn. v. Warner*, 143 Ariz. 567, 570 (1985), it has not cited this Court to any binding precedent that applies to those factors to a fee request under A.R.S. § 39-121.02(B). This Court’s research has not found any such binding precedent.

Defendant does not object to Plaintiff’s argument that any fees awarded should be calculated based upon the lodestar method described in *Schweiger v. China Doll Rest. Inc.*, 138 Ariz. 183, 187-88 (App. 1983), nor that the prevailing market rate is the

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appropriate starting point. He does object to the rates claimed—\$600/hour for Mr. McCormick, \$540/hour for Mr. Hickman, \$375/hour for Mr. Mitchell, and \$275/hour for an e-discovery analyst. Defendant also objects to the hours claimed.

Defendant has also not objected to Plaintiff’s argument that it is entitled to recovery of its pro bono counsel’s fees under A.R.S. § 39-121.02(B).

1. Plaintiff Substantially Prevailed in the Litigation.

Turning to the facts of this case, the Court finds that Plaintiff has substantially prevailed.

Before the litigation, Defendant failed to respond to the public record request in a prompt manner even though the requested records were generally readily available and took only days to produce. It was only after Plaintiff filed this action that Defendant began to comply with his statutory obligations. In short, the Court finds that Plaintiff “was compelled to initiate litigation to obtain the precise unredacted information [it] sought through [its] records request.” *Smith*, at 400, ¶ 26. Even though the litigation did not yield ultimately a “document bounty[,]” it did “forc[e] compliance by a recalcitrant government entity.” *ACLU-AZ*, at 461, ¶ 16.

Also, the Court has considered that it never ordered Defendant to produce any records, except for those ordered in the Stipulated Protective Order. However, Defendant’s cooperation and production of records was slow, and thus, resulted in multiple hearings and efforts by Plaintiff’s counsel to secure Defendant’s ultimate compliance with the law.

Furthermore, Plaintiff was successful on its request for a declaration that Defendant violated Arizona Public Records Law. Up through the scheduled hearing, Defendant still argued that he had promptly produced the records. Litigation and a court ruling were necessary to resolve that disputed issue.

However, Plaintiff did not prevail on its request that some of the records be

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produced free of cost.

2. A Reduction of Plaintiff's Claimed Attorneys' Fees is Appropriate.

Turning to the amount of the fees requested, the Court finds \$70,350.00 to be appropriate.

Considering the nature of this lawsuit and relative lack of legal and factual complexity, the Court finds that the requested hourly rates by Plaintiff's counsel are not reasonable. *See, e.g., Schwartz v. Schwerin*, 85 Ariz. 242, 245–46 (1959) (holding that the court determines reasonable attorneys' fees by considering “the qualit[y] of the advocate ... the character of the work to be done ... the work actually performed by the lawyer ... [and] the result [obtained]”). For the lodestar calculation, the Court will use \$350.00/hour. Based upon reviewing countless numbers of *China Doll* affidavits, the Court finds that to be a reasonable and prevailing rate in the community for a case of this nature.

Furthermore, for some tasks such as reviewing the initial production of 1,854 potentially responsive documents for relevancy, the Court finds that at least the initial review could have been performed by a paralegal at a lower billable rate. *See, e.g., Aires v. Palmer Johnson, Inc.*, 153 Ariz. 250, 261 (App. 1987) (fees may be awarded for legal services performed by a paralegal, legal assistant, or law clerk);

Arizona Attorneys' Fees Manual § 1.6.4, at 1–8 (Bruce Meyerson & Patricia K. Norris eds., 7th ed. 2022) (“Courts frequently have refused to award fees when partners perform work that should be accomplished by either associates or paralegals.”). Rather than deny the fee entirely, the Court finds that a reasonable, prevailing billing rate for a paralegal's document review is \$225/hour.

As to Mr. Mitchell's fee records, the Court finds some of his work performed was clerical in nature (*id.* (“[C]ourts are not willing to award attorneys' fees for clerical work that could have been performed or delegated to others.”)). Also, the Court has found some of the time spent by Mr. Mitchell and Mr. McCormick to be excessive. As such, the Court

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has reduced his hours claimed.

In coming to its calculation of the reasonable hours expended, the Court has considered Defendant's other objections.

3. Some Fees Related to the Reply Brief are Appropriate under A.R.S. § 39-121.02(B).

As to Plaintiff's request for fees related to the Reply brief, the Court finds fees are appropriate under A.R.S. § 39-121.02(B). However, the Court finds the claimed amount of \$10,665.00 to be excessive.

As to Plaintiff's request for fees under A.R.S. § 12-349, the Court has considered Defendant's Response to the Supplemental Application. Use of Gen-AI is not prohibited, and the Court finds that the errors in the Opposition were related to human error and negligence. Ultimately, the Court finds that an award of fees under A.R.S. § 12-349 is not appropriate, and the cases cited in the Court's July 16, 2026 In Chambers Order are distinguishable for the reasons set forth by Defendant.

4. Plaintiff is Entitled to its Costs.

As to costs, A.R.S. § 39-121.02(B) controls, and A.R.S. § 12-341 does not. *Democratic Party*, 228 Ariz. at 550, ¶ 17. The Court has considered and overrules Defendant's objections, and awards Plaintiff its legal costs of \$2,634.44.


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