



MEMORANDUM

Date: July 9, 2013

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: ***Arizona Daily Star v. Pima County*** Public Records Request Regarding the Legal Defender and Defendant Pamela Phillips

The *Arizona Daily Star* filed a lawsuit against Pima County to compel release of specific information by the Legal Defender regarding that office's defense of Ms. Pamela Phillips. The Pima County Superior Court ruled in favor of Pima County, ruling that we were justified in withholding specific information.

The litigation cost the County approximately \$22,500 in attorneys' fees. I asked the Legal Defender to review our options regarding the collection of these fees. The attached legal analysis indicates we would be unlikely to prevail in the collection of legal fees unless the action was commenced without substantial justification, was groundless, or not made in good faith.

While the County prevailed in the matter, we have little hope of collecting our legal fees.

CHH/dph

Attachment

c: Isabel Garcia, Legal Defender
Ellen Wheeler, Claims Manager, Finance and Risk Management

MEMORANDUM

To: Jim Belanger
From: Mel Bogden
Date: June 18, 2013
Re: Pima Legal Defender’s Office – Star Publishing, Recovery of Attorney’s Fees

ISSUE PRESENTED

1. Who can recover attorneys’ fees in a public records lawsuit?

SHORT ANSWER

1. Pursuant to A.R.S. §§ 39-121.02(B) and 12-349(A), any party, including the state or any political subdivision of the state, may recover attorneys’ fees and costs if the requesting party proves by a preponderance of the evidence that the claim is (1) groundless and is not made in good faith (*i.e.*, without substantial justification); (2) the claim is brought solely for delay or harassment; (3) the other party unreasonably expanded or delayed the proceedings; or (4) the other party engaged in abuse of discovery.

DISCUSSION

Arizona’s Public Records Law gives the court the discretion to “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.” A.R.S. § 39-121.02(B). It further provides that “[n]othing in this subsection shall limit the rights of *any party* to recover attorney fees, expenses and double damages pursuant to section 12-349.” *Id.* (emphasis added).

Under A.R.S. § 12-349(A), the court must award reasonable attorneys’ fees and expenses to a party, including the state or any political subdivision of the state,¹ in a civil action if the other party does any of the following:

1. Brings or defends a claim without substantial justification. “[W]ithout substantial justification’ means that the claim or defense is groundless and is not made in good faith.” A.R.S. § 12-349(F).
2. Brings or defends a claim solely or primarily for delay or harassment.

¹ See A.R.S. § 12-349(E) (“Notwithstanding any other law, this state and political subdivisions of this state may be awarded attorney fees pursuant to this section.”).

3. Unreasonably expands or delays the proceeding.
4. Engages in abuse of discovery.

The party requesting fees is required to prove by a preponderance of the evidence that one of the statutory conditions has been satisfied. *See In re Estate of Stephenson*, 217 Ariz. 284, 289, ¶ 28, 173 P.3d 448, 453 (App. 2007).

There is an abundance of Arizona case law that addresses the contours and boundaries of what constitutes a frivolous lawsuit, harassment or dilatory tactics. Please let me know if you would like me to provide you with examples of such conduct.