

OFFICE OF THE CITY ATTORNEY

OPINION NO. 93-02

TO: Janice L. Graziano, Deputy City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: March 16, 1993
SUBJECT: Public Records Act

QUESTION:

Definition of Public Records and use of commercial purpose requirements.

OPINION:

There is no definition of a public record in the Arizona Revised Statutes. However, the Arizona Supreme Court has defined a public record as "a record which is required by law to be kept or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done is a public record." Matthew v. Pyle, 75 Ariz. 76, 251 P.2d 893 (1953)

Based on this definition, any written document, tape recording, computer disk or electronic recording generated by a city department in the performance of its official duties is a public record. Public records that are not confidential must be available for public inspection and copying. A.R.S. §39-121.01

Individuals who are seeking commercial use of a public record must pay fair market value for the access to the public record. A.R.S. §39-121.03.A. A sample form for requesting copies of any public record, commercial or non-commercial, is enclosed for this purpose. It is my recommendation that this form be used for all public record requests.

It bears noting that the following basic principles should be followed when responding to any public record request:

1. All public records are presumed subject to public disclosure unless the interest of the City would be adversely impacted or unless they are determined to be confidential pursuant to law. This judgment is a legal determination, not an administrative one.
2. If there is a question pertaining to the confidentiality of a public record, the determination shall be in favor of disclosure.
3. All records are public records, even if they are confidential. Essentially a two step determination is made. First, whether the matter is a public record, secondly, whether the matter is confidential.

I trust that this answers the question raised. If you should have any questions, please do not hesitate to contact me.

REQUEST FOR PUBLIC RECORDS
AND
AFFIDAVIT OF NON COMMERCIAL USE

A. General Information:

- 1. Name of Requestor: _____
- 2. Agency: _____
- 3. Address: _____
- 4. Date of Request: _____

PLEASE NOTE: Many public records are in storage off-site or are in storage on-site. The City requests that a minimum of forty-eight hours (48) notice be provided of any request to copy or inspect in order to locate the appropriate record. If the City requires additional time, the applicant will be advised.

B. Indicate whether you desire to inspect or copy public records.

Inspect _____
Copy _____ Number of copies per record

C. Specifically describe the record requested for inspection of copying:

PLEASE MAKE
THE DESCRIPTION AS SPECIFIC AS POSSIBLE TO
ASSIST THE CITY IN LOCATING THE CORRECT
RECORD THAT YOU ARE REQUESTING.

D. Indicate whether you are using the public record for a commercial or a non-commercial purpose. Commercial purpose includes any use of a public record for the purpose of sale or resale or for the purpose of producing an item containing the same information contained in the public record or for the purposes of solicitation for financial gain. If you are using the record for a commercial purpose, you must execute the attached affidavit.

Commercial purpose
Non Commercial purpose

I certify that all of the foregoing information is true to the best of my knowledge information and belief.

Dated:_____

Signature

AFFIDAVIT OF NON-COMMERCIAL PURPOSE

State of Arizona }
County of Maricopa } ss:

_____ being first duly sworn states that the public records requested above are being requested for a non-commercial purpose unless specifically indicated above.

Dated:

Subscribed and sworn to before me this _____ day of _____, 199____.

Notary Public

My Commission Expires:

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