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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

BRIAN ANDERSON,

Plaintiff,

v.

**CITY OF PHOENIX POLICE
DEPARTMENT,**

Defendant.

**CUSTODIAN OF RECORDS OF CITY OF
PHOENIX POLICE DEPARTMENT,**

Real Party in Interest.

Case No. _____

**APPLICATION FOR ORDER
TO SHOW CAUSE**

(Oral Argument Requested)

Plaintiff Brian Anderson submits this Application for an Order to Show Cause, pursuant to Rule 4(c), Ariz. R. Special Actions, requiring the Defendant City of Phoenix Police Department to appear before this Court and show cause, if Defendant has any, why an order of contempt should not be entered against the Custodian of Records for the City of Phoenix Police Department (or other employee of the City of Phoenix Police Department) for failure to honor Mr. Anderson's public records request dated March 22, 2024.

Mr. Anderson's accompanying Petition for Special Action in this matter seeks inspection and copying of public records in accordance with A.R.S. § 39-121.02(A), which provides that "[a]ny person who has requested to examine or copy public records pursuant to this article, and

1 who has been denied access to or the right to copy such records, may appeal the denial through a
2 special action in the superior court, pursuant to the rules of procedure for special actions against
3 the officer or public body.” By law, “[a]ccess to public records is deemed denied if a custodian
4 [of such records] fails to promptly respond to a request for production of a public record.” A.R.S.
5 § 39-121.01(E).

6 This Application is supported by the following Memorandum of Points and Authorities.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 1. On March 22, 2024, Brian Anderson submitted an online public records request to
9 the City of Phoenix Police Department requesting, *inter alia*, the personnel file for Tyler Kemp
10 because of the fact that Mr. Kemp is running for Sheriff of Maricopa County. A copy of the
11 submitted request is attached and incorporated herein as Exhibit 1.

12 2. The custodian of records for the City of Phoenix Police Department has
13 acknowledged receipt of the above records request and has produced everything except for Mr.
14 Kemp’s personnel records.

15 3. By letter dated August 28, 2024, Plaintiff’s counsel Dennis I. Wilenchik, Esq., wrote
16 to the City of Phoenix Police Department records division requesting production of the requested
17 records or a response. A copy of Mr. Wilenchik’s letter is attached hereto and incorporated herein
18 as Exhibit 2.

19 4. Defendant acknowledged receipt of such letter to Mr. Anderson *only* and indicated
20 that records would be produced by September 13, 2024.

21 5. While some of the requested records have been disclosed to Mr. Anderson, Mr.
22 Kemp’s personnel file and documents contained therein have not been disclosed to Mr. Anderson
23 for nearly six months by the City of Phoenix Police Department as of the time of filing of this
24 Application.

25 6. The Arizona Public Records Law further provides that “[p]ublic records and other
26 matters in the custody of any officer shall be open to inspection by any person at all times during
27 office hours.” A.R.S. § 39-121.
28

1 7. The records requested by Anderson are indeed “public records” within the meaning
2 of the Arizona Public Records Law. *See* A.R.S. § 39-121.01(B); *Lake v. City of Phoenix*, 222 Ari.
3 547, 549 (2009) (“Arizona law defined ‘public records’ broadly and creates a presumption
4 requiring the disclosure of public information.”).

5 8. The employment history of Tyler Kemp while employed with the City of Phoenix
6 Police Department is a matter of urgent public concern. The administration of our elections is
7 fundamental to our democracy. The public cannot properly evaluate Mr. Kemp for Sheriff for
8 Maricopa County without prompt and full access to the public records that Defendant is
9 unlawfully withholding.

10 9. Defendant’s failure to disclose Mr. Kemp’s personnel records before the Primary
11 Election has already resulted in the public not knowing possibly important matters of concern that
12 the public should have knowledge of before voting at the General Election on November __, 2024.

13 10. By its failure to provide access to or copies of all of the requested records promptly,
14 Defendant has “denied” Anderson’s public records request, and they have done so “wrongfully.”
15 *See* A.R.S. § 39-121.01(E) and § 39-121.02(C).

16 11. There is a strong public benefit in honoring the public’s statutory right to inspect
17 these public records, and Defendant has failed to articulate any specific harm or reason that should
18 inhibit the release of the requested public records. There is no such harm, and Mr. Anderson has
19 given the City of Phoenix ample opportunity to assert any.

20 12. Defendant has failed to perform its duties required under the Arizona Public
21 Records Law regarding requested records and has wrongfully denied Mr. Anderson access to
22 inspect and copy these records as a matter of law. *See* Ariz. R. Special Actions 3.

23 Accordingly, Plaintiff respectfully requests that this Court issue an Order to Show Cause
24 requiring Defendant and Real Party in Interest to appear before this Court and show cause, if
25 Defendant has any, why this Court should not award Plaintiff’s attorney’s fees and costs.

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