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Public Records Violation Results in Six-Figure Fee Award

On August 30, 2019, the Maricopa County Superior Court in *McCarthy v. Scottsdale Unified School District* (CV2017-012386), levied a $118,000 attorneys' fee award against an Arizona school district for its improper handling of a public records request. The court's ruling is a cautionary tale to public schools—and all public bodies—regarding the costly consequences of noncompliance with their public records obligations.

Under Arizona's public records law, individuals who have been denied prompt access to public records may file suit and may recover attorneys' fees if they substantially prevail in their lawsuit. A.R.S. § 39-121.02. John and Mary McCarthy filed such a claim against the Scottsdale Unified School District ("SUSD"). After a year and a half of litigation, the parties settled the underlying claim; stipulated that the McCarthys were entitled to an award of attorneys' fees; and agreed that the amount of fees would be determined by the court.

Although the court awarded slightly less than the $139,000 requested, the fee award was substantial, and the court's analysis reveals several traps for the unwary. Here are some key takeaways from the court decision about responding to public records requests:

- **Don't get distracted by the person's motive in requesting public records.** SUSD objected to the fee request because the requestor's underlying motive was to obtain evidence for use against the District in a separate federal court lawsuit. The court summarily dismissed this argument, noting: "[I]t is well-established that the requestor's need, good faith, or purpose is entirely irrelevant to the disclosure of public records."
- **Don't cut corners.** SUSD argued that the lawsuit and associated fees were not necessary because the District in fact responded to every request. But the court pointed out that the District's responses were "misleading, if not false." For example, when the District's initial electronic search for responsive documents returned "an excessively large" number of "hits," SUSD did not refine and re-run the search; instead, the District simply reviewed the first 4,800 hits … and ignored the remaining 115,000.

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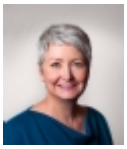

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Whether it is reviewing your discrimination and Title IX policies, handling an OCR complaint, providing training for teachers and staff, or providing legal advice as issues arise during the school day, Osborn Maledon's Education Law team is here to help.

- **Be transparent regarding the scope of responsive records produced**. Not only did the court rebuke SUSD for cutting corners, it further scolded SUSD for implying in communications with the McCarthys that the District had produced *all* responsive electronic records. Likewise, the court showed no patience for SUSD's argument that McCarthys "could have satisfied their thirst for documents" without resorting to litigation by simply filing additional public record requests.
- **Don't selectively withhold documents that are substantially similar.** While SUSD acknowledged that some documents were belatedly provided, they argued that drafts of such documents were timely provided and that there was no "material difference" between the drafts and the final versions they provided later. Once again, the court concluded that "the Defendant's opinion of the significance of the final version [vs. the draft version of responsive documents] is irrelevant."
- **Disclose responsive documents promptly.** The public records statute requires documents to be produced "promptly." While promptness requires a fact-specific analysis, waiting to produce documents until after the requestor files a lawsuit undermines the promptness analysis. Here, the court was highly skeptical of SUSD's argument that the District would have produced the documents without the need for litigation: "The fact that, by their own admission, the Defendants did not produce these documents until this case had been pending for a year hardly supports Defendant's suggestion that they could have been counted on to comply with their obligations under [the public records statute], even if Plaintiffs had never filed suit."

If you have questions about the court's analysis or your obligations under Arizona's public records law, Osborn Maledon's Education Law Team stands ready to help.

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