

COPY



MAY 22 2019
CLERK OF SUPERIOR COURT
MARICOPA COUNTY
PHOENIX, ARIZONA

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16 *Attorneys for Plaintiffs*

17 **ARIZONA SUPERIOR COURT**

18 **MARICOPA COUNTY**

19 American Civil Liberties Union of Arizona
20 and Sean Holstege,

21 Plaintiffs,

22 v.

23 William Montgomery, in his official capacity
24 as Maricopa County Attorney and Maricopa
25 County Attorney's Office,

26 Defendants.

No. CV 2019-007636

**VERIFIED COMPLAINT FOR
STATUTORY SPECIAL ACTION
AND INJUNCTIVE RELIEF**

and

**APPLICATION FOR ORDER TO
SHOW CAUSE**

1 *See, e.g., Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 539-47, ¶¶ 18-52 (App. 2008).

2 This case requires the same result.

3 4. Mr. Montgomery often impedes attempts to gather public information. For
4 example, last year news outlets reported that he threatened police departments with financial
5 consequences if they did not let his office control whether police records were disclosed under
6 the PRL.¹ He also did not respond to a request for documents regarding the internal investigation
7 into Assistant County Attorney Juan Martinez, who has a history of confirmed misconduct.² Mr.
8 Montgomery even had the gall to assert that opponents of his policies, practices, and activities
9 are basing their objections on “myth and rhetoric . . . with no data to support it”³—while he
10 simultaneously fights tooth and nail against requests for such data, including the request at issue
11 here.

12 5. Indeed, when Mr. Montgomery’s office first received Plaintiffs’ request, the office
13 admitted that responses typically take “3-5 months.” In other words, Defendants effectively
14 deny every request they receive via delay. And, in this case, they did not even honor their own
15 months-long deadline.

16 6. “Democracies die behind closed doors,” *Detroit Free Press v. Ashcroft*, 303 F.3d
17 681, 683 (6th Cir. 2002), and Mr. Montgomery and his office have shut the door in the public’s
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20 ¹ *See* Jason Pohl, Uriel J. Garcia, Perry Vandell, and Michael Kiefer, *Maricopa County*
21 *attorney seeks to usurp police control of records, video*, THE ARIZONA REPUBLIC (May
22 20, 2018), <https://www.azcentral.com/story/news/local/phoenix/2018/05/21/maricopa-county-attorney-bill-montgomery-police-records-video/624111002/>.

23 ² *See* Michael Kiefer, *Judge grants Maricopa County Attorney’s request to seal documents on*
24 *prosecutor’s conduct*, THE ARIZONA REPUBLIC (Dec. 2, 2018),
<https://www.azcentral.com/story/news/local/phoenix/2018/12/02/maricopa-county-attorney-bill-montgomery-report-jodi-arias-prosecutor-juan-martinez-conduct/2152827002/>.

25 ³ *See* Paulina Pineda and Katie Campbell, *Arizona resistant to change in ‘tough-on-crime’*
26 *sentencing laws*, ARIZONA CAPITOL TIMES (Mar. 23, 2018),
<https://azcapitoltimes.com/news/2018/03/23/arizona-doug-ducey-bill-montgomery-david-stringer-will-gaona-caroline-isaaacs-kurt-altman-resistance-to-criminal-justice-reform/>.

1 face. Intervention from this Court is therefore necessary to ensure that Defendants comply with
2 the law and furnish the requested information immediately.

3 **Parties and Jurisdiction**

4 7. Plaintiff Sean Holstege is a freelance investigative reporter and researcher hired
5 by the ACLU of Arizona to investigate the policies and practices of elected prosecutors in
6 Arizona.

7 8. Plaintiff ACLU of Arizona is a nonprofit, civil-rights organization that has
8 furthered the public interest and defended individual rights in Arizona through litigation,
9 legislation, public education, and other methods for decades. Protecting and ensuring fairness
10 in Arizona's criminal justice system is among the ACLU of Arizona's strategic priorities areas.
11 The ACLU of Arizona is also committed to ensuring government transparency and
12 accountability, particularly when government actions affect civil rights and civil liberties.

13 9. Defendant William Montgomery is the elected Maricopa County Attorney and an
14 "officer" as defined in A.R.S. § 39-121.01(A)(1).

15 10. Defendant Maricopa County Attorney's Office ("MCAO") is a "public body" as
16 defined in A.R.S. § 39-121.01(A)(2).

17 11. Mr. Holstege brings this action and invokes the jurisdiction of this Court pursuant
18 to A.R.S. § 39-121.02 and Rules 1 and 4 of the Arizona Rules of Procedures for Special Actions.

19 12. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b) of the Arizona Rules
20 of Procedure for Special Actions.

21 **General Factual Allegations**

22 13. On October 16, 2018, Mr. Holstege submitted a records request to MCAO. *See*
23 Exhibit A (hereinafter, "Request"). The Request sought records related to six categories of
24 information from January 1, 2013, to the present:

25 a. MCAO's case management system;

- 1 b. Information about each criminal case prosecuted by MCAO, including case
- 2 number, charge(s), disposition, and demographic information of each defendant;
- 3 c. Information about charges declined;
- 4 d. Personnel and discipline issues related to prosecuting attorneys in MCAO;
- 5 e. MCAO's policies, procedures, guidelines, and training materials covering topics
- 6 like bail, plea bargaining, and bias; and
- 7 f. Administrative and budgeting information.

8 14. On October 31, 2018, having received no response or acknowledgment of receipt
9 of the Request from MCAO, Mr. Holstege sent an email requesting that MCAO acknowledge
10 receipt of the Request and advise him of when to expect compliance. *See Exhibit B.*

11 15. On November 1, 2018, MCAO acknowledged receipt of the Request, noting that
12 "it is not uncommon for the turnaround time for most [public records requests] to be 3-5 months."
13 *See Exhibit C.*

14 16. In response, Mr. Holstege asked if some records could be provided before others.
15 *See Exhibit D.* He received no reply.

16 17. Nearly four months later, on February 26, 2019, Mr. Holstege sent an email to
17 MCAO again asking for an update on when MCAO would comply with the Request. *See Exhibit*
18 *E.*

19 18. In response, MCAO claimed that they had been "chipping away at" the Request.
20 MCAO also stated that "[s]ome of the items cannot be provided and some can be provided,
21 although in abbreviated/different format that requested," but did not specify which items could
22 be provided, which could not, and which could be provided in a different format. *See id.*

23 19. On April 1, 2019, Mr. Holstege again emailed MCAO about the Request, noting
24 that it was made almost six months earlier. Mr. Holstege requested clarification on when he
25 would receive documents and asked, "which items will not be released . . . [a]nd why?" *See*
26 *Exhibit F.*

1 employees.” *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351, ¶ 33 (App. 2001) (citation
2 omitted).

3 29. Arizona’s public policy further favors disclosure of records. *Primary Consultants,*
4 *L.L.C. v. Maricopa Cty. Recorder*, 210 Ariz. 393, 396-97, ¶ 9 (App. 2005) (citing *Carlson v.*
5 *Pima Cty.*, 141 Ariz. 487, 491 (1984)). The burden of disclosure falls “squarely upon” public
6 officials. *Cox Ariz. Publ’ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993). This burden includes the
7 requirement to “establish the adequacy of [the] search.” *Phoenix New Times*, 217 Ariz. at 539,
8 ¶ 16 (citations omitted).

9 30. County attorneys and their offices are not exempt from the PRL or its promptness
10 requirement: “There is no statutory right created to allow the county attorney to limit the scope
11 of public interest in public business.” *Star Publ’g Co. v. Pima Cty. Attorney’s Office*, 181 Ariz.
12 432, 434 App. 1994). And “[u]nlike public information statutes in some other jurisdictions,
13 Arizona’s statute specifies that when records are subject to disclosure the required response is
14 the *prompt and actual production* of the documents.” *Phoenix New Times*, 217 Ariz. at 538, ¶
15 12 (emphasis added). The plain language of the PRL requires the custodian of public records to
16 “promptly” furnish them upon request. A.R.S. § 39-121.01(D)(1). Arizona law defines the word
17 prompt as “‘quick to act or to do what is required’ or ‘done, spoken, etc. at once or without
18 delay.’” *W. Valley View, Inc. v. Maricopa Cty. Sheriff’s Office*, 216 Ariz. 225, 230, ¶ 21 (App.
19 2007) (citation omitted).

20 31. The Arizona Supreme Court has found that a delay of just 49 days is not prompt
21 and “wrongful.” *Phoenix New Times*, 217 Ariz. at 546, ¶ 45.⁴ Defendants have failed to fully
22 respond to Plaintiffs’ Request for over 200 days.

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⁴ Only one of the Sheriff’s Office’s responses in *Phoenix New Times* was deemed prompt
under the law: the one the office responded to “on the same day as the request.” 217 Ariz. at
544, ¶ 40.

1 Attorney's Fees and Costs

2 32. Upon prevailing in a lawsuit arising out of its public records request, a plaintiff is
3 entitled to an award of attorney's fees and costs. See A.R.S. §§ 39-121.02, 12-348, 12-341, and
4 12-2030.33.

5 33. Access to records is "deemed denied" if the custodians of the records fail to
6 promptly produce them. A.R.S. § 39-121.01(E). This is true here, and therefore Plaintiffs are
7 entitled to attorney's fees and costs.

8 Right to Speedy Return on Order to Show Cause

9 34. Because this is a statutory Special Action, Plaintiffs are entitled to a "speedy return
10 date" on their application for an order to show cause. Ariz. R.P. Spec. Action 4(c); see also Ariz.
11 R. Civ. P. 7.3(a) (authorizing a superior court judge to "issue an order requiring a person to show
12 cause why the party applying for the order should not have the relief it requests in its
13 application").

14 APPLICATION FOR ORDER TO SHOW CAUSE

15 As set forth in Plaintiffs' Complaint for Special Action Relief, Defendants are plainly
16 prohibited by law from withholding the requested records. Accordingly, pursuant to Rule 6(d),
17 Ariz. R. Civ. P., and Rule 4(c), Arizona Rules of Procedure for Special Actions, it is appropriate
18 and proper for this Court to issue an Order to Show Cause why the requested relief should not
19 be granted.

20 **WHEREFORE**, Plaintiffs Sean Holstege and the ACLU of Arizona respectfully request
21 that this Court award the following relief:

- 22 1. Issue an order directing Defendants Maricopa County Attorney William
23 Montgomery and the Maricopa County Attorney's Office to immediately provide
24 copies of the public records requested on October 16, 2018 in Exhibit A, pursuant
25 to A.R.S. §§ 39-121 through 39-121.03;

- 1 2. Award Plaintiffs their taxable costs in this action and reasonable attorneys' fees
2 pursuant to A.R.S. §§ 39-121.02, 12-348, 12-341, and 12-2030.33 and Rule 4(g)
3 of the Arizona Rules for Special Actions, and;
4 3. Grant Plaintiffs such other and further relief as may be just and proper in these
5 circumstances.

6 Respectfully submitted this 22nd day of May, 2019.

7 By /s/ Jared G. Keenan
8 Jared G. Keenan
9 Kathleen E. Brody
 American Civil Liberties Union Foundation of Arizona

10 Somil Trivedi
11 (*pro hac vice application forthcoming*)
12 American Civil Liberties Union
13 Criminal Law Reform Project

14 *Attorneys for Plaintiffs Sean Holstege and*
15 *ACLU of Arizona*

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VERIFICATION

I, Sean Holstege, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. Civ. P., as follows:

I am one of the Plaintiffs in this action. I have read the foregoing Verified Complaint and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of May 2019.



Sean Holstege

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VERIFICATION

I, Jared G. Keenan, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. Civ. P., as follows:

I am an attorney for Plaintiff American Civil Liberties Union of Arizona. I have read the foregoing Verified Complaint and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of May 2019.



Jared G. Keenan

EXHIBIT A

From: [Sean Holstege](#)
To: ["mcaocor@mcao.maricopa.gov"](mailto:mcaocor@mcao.maricopa.gov)
Subject: public records request
Date: Tuesday, October 16, 2018 1:49:00 PM
Attachments: [FINAL FOIA MCAO.docx](#)

Please find attached a request for public records with the Maricopa County Attorney's Office.

Please feel free to call if you have any questions or if I can help clarify or expedite this request.

Thank you.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



PUBLIC RECORDS REQUEST

Custodian of Records

Maricopa County Attorney's Office

301 W Jefferson St, Phoenix, AZ 85003

602-506-3411

via email: mcaocor@mcao.maricopa.gov

Oct. 16, 2018

Dear Sir/Madam,

Pursuant to ARS. Sec. 39-121 through 39-121.03, the Arizona Public Records Law, I formally request that you, in your official capacity, make available to me the following records at the Maricopa County Attorney's Office from Jan. 1, 2013 until present:

Section A: Relating to the case records management system, the following information:

1. List of data fields gathered for and entered into the case records management system
2. Index for data fields entered into the case records management system, explaining contents

Section B: For each criminal case, the following information:

1. Superior Court, Justice Court or Municipal Court Case Number
2. Defendant Name (first, middle, last)
3. Defendant Date of Birth
4. Defendant Race
5. Defendant Ethnicity
6. Defendant Declared Gender
7. Charge ID
8. Charged ARS Code
9. Charged ARS Description
10. Charged Class (severity)
11. Date of Incident
12. Date of Arrest
13. Originating Law Enforcement Agency
14. Originating Departmental Report Number
15. Arresting Agency
16. Other Agencies involved in Arrest
17. Recommended Charges by Arresting Law Enforcement Agency (on booking sheet)

18. Date Charged
19. Method of Charging (Grand Jury, Direct Complaint, etc.)
20. Bond Sought
21. Bond Imposed
22. Release Conditions Sought
23. Release Conditions Imposed
24. Date of Bond Imposed
25. Date of Bond Satisfied
26. Dates of Pre-Trial Detention
27. Risk Assessment Score and Method to Determine Bond
28. Risk Assessment Screener
29. Date of Initial Appearance
30. Date of Arraignment
31. Any Statutory Aggravators
32. Date when Statutory Aggravators were Alleged/Formally Noticed
33. Amended Charges, if any (following superseding or supervening indictments, e.g.)
34. Diversion programs offered (if any)
35. Diversion programs accepted (if any)
36. Terms or Requirements of Diversion
37. Diversion Services Offered
38. Diversion Services Completed
39. Date of Diversion Completion
40. Name of Prosecutor Presenting to Grand Jury
41. Name of Trial or Disposition Prosecutor
42. Name of Sentencing Prosecutor
43. Name of Defense Attorney
44. Name of Trial Judge
45. Name of Disposition Judge
46. Name of Detention Hearing Judge/Commissioner
47. Disposition
48. Disposition Type (e.g., dismissed with/without prejudice, No True Bill, etc.)
49. Disposition Date
50. Disposition ARS Code
51. Disposition ARS Description
52. Disposition Class
53. Plea Offered (Y/N)?
54. Plea Accepted (Y/N)?
55. Plea Agreement Details including:
 - a) Charges Dropped
 - b) Sentence Ranges for Charges Dropped
 - c) Remaining Charges
 - d) Sentence Ranges for Remaining Charges
 - e) Penalties Offered for Taking Plea
 - f) Defendant's Promises (cooperating witness, etc.)

- g) Plea Offered (Guilty, No Contest, or other)
- 56. Date of Plea Agreement
- 57. Court District or Number
- 58. Sentence Length
- 59. Consecutive Years in Prison
- 60. Concurrent Years in Prison
- 61. Terms of Supervision
- 62. Services Required or Provided
- 63. Capital Case (Y/N)?
- 64. Vote of Capital Case Recommending Panel
- 65. Recommendation Memo from Capital Case Panel
- 66. Recommended Sentence
- 67. Risk Factor Scores and Criteria in Pre-Sentencing Investigation
- 68. Minimum, Presumptive and Maximum Terms in Sentencing Guidelines
- 69. Mitigation
- 70. Enhancements
- 71. Defendant Indigent (Y/N)?
- 72. The quantities or amounts of marijuana or dangerous or narcotic drugs, as recorded by the arresting officer, that form the basis of the following charges:
 - a) Possession or use of marijuana or a dangerous or narcotic drug
 - b) Possession for sale of marijuana or a dangerous or narcotic drug
 - c) Possession of equipment or chemicals, or both, for the purpose of
 - d) manufacturing a dangerous or narcotic drug
 - e) Manufacturing a dangerous or narcotic drug
 - f) Administering a dangerous or narcotic drug
 - g) Obtaining or procuring the administration of a dangerous or narcotic drug by
 - h) fraud, deceit, misrepresentation or subterfuge.
 - i) g) Transporting for sale, importing into this state, or offering to transport for sale
 - j) or import into this state, selling, transferring, or offering to sell or transfer,
 - k) marijuana or a dangerous or narcotic drug.
- 73. The dollar value of damages, as recorded by the arresting officer, that form the basis of the following charges:
 - a) Robbery
 - b) Theft
 - c) Burglary
 - d) Other property crimes
- 74. List of all felony cases referred by any Law Enforcement Agency for prosecution, including:
 - a) Unique identifying number in case management system
 - b) LEA departmental or incident report number
 - c) Defendant's name, DOB, gender, race and ethnicity
 - d) Recommended charges
 - e) Disposition of the referral

- f) In cases involving declined prosecutions, reason(s) for the decision
 - g) Date of referral
 - h) Date of decision to prosecute or decline
75. Number of prior felony convictions in Arizona, if any

Section C: Information about any cases in which prosecution was declined (*nolle prosequi*):

1. List of all cases referred by any Law Enforcement Agency for prosecution in which prosecution was declined or suspended, to include the following information:
 - a) Unique identifying number in case management system
 - b) Law Enforcement Agency departmental or incident report number
 - c) Suspect's name, Date of Birth, gender, race and ethnicity
 - d) Charges recommended by Law Enforcement Agency
 - e) Disposition and/or status of cases not prosecuted
 - f) Reason(s) for the decision to decline, suspend or close case without prosecution
 - h) Date of referral from Law Enforcement Agency
 - i) Date of decision to prosecute, decline, suspend or close case

2. List of all cases voluntarily dismissed by the prosecution, to include the following information
 - a) Unique identifying number in case management system and/or court cause number assigned prior to dismissal
 - b) Law Enforcement Agency departmental or incident report number
 - c) Suspect's name, Date of Birth, gender, race and ethnicity
 - d) Charges filed
 - f) Reason(s) for the decision to dismiss.
 - h) Date of referral from Law Enforcement Agency
 - i) Date of motion to dismiss case

Section D: Pertaining to personnel and discipline issues involving any and all prosecuting attorneys:

1. Policies and Procedures for accepting complaints
2. Policies and Procedures for investigating and reviewing complaints
3. Policies and Procedures for resolving or referring complaints
4. Full list of all staff prosecutors, including
 - a) name
 - b) salary
 - c) benefits
 - d) current title and/or assignment
 - e) previous titles and/or assignments
 - f) annual number of cases opened
 - g) annual number of cases closed

- h) manner in which cases were closed (jury trial, bench trial, plea agreement, etc.)
 - i) all promotions
 - j) race
 - k) gender
 - l) ethnicity
5. Policies and Procedures for any merit rewards
 6. List of all misconduct or ethics complaints, including names of prosecutors, and specific allegations
 7. List of any disciplinary actions taken or declined as a result of misconduct or ethics complaints
 8. Policies and procedures for
 - a) hiring
 - b) firing
 - c) promotion
 - d) assignment placement
 - e) rotation of assignments
 9. List of all cases referred to the Arizona Appellate Court involving misconduct allegations against staff prosecutor. Such information shall include
 - a) Appellate Case Number
 - b) Original Trial Court Case Number
 - c) Name of Respondent or Appellant
 - d) Name of Plaintiff or Appellee
 - e) Charges Alleged
 - f) Disposition
 - g) Ruling
 10. List of all cases referred to the Arizona Supreme Court involving misconduct allegations against staff prosecutor. Such information shall include
 - a) Appellate Case Number
 - b) Original Trial Court Case Number
 - c) Name of Respondent or Appellant
 - d) Name of Plaintiff or Appellee
 - e) Charges Alleged
 - f) Disposition
 - g) Ruling
 11. List of all cases assigned to each prosecutor, to include
 - a) Defendant's Name
 - b) Maricopa County Superior Court case number
 - c) Internal ID number in the case management system.

Section E: Rules, procedures, policies, practices or guidelines governing:

1. Bail requests
2. Sentencing schedules and matrices
3. Plea bargaining

4. Grand juries
5. Discovery
6. Witness treatment
7. Prosecuting youth as adults
8. Capital Crimes
9. Death Penalty
10. Fines, fees and restitution
11. Mental Health Screening/Collect Mental Health History
12. Substance Abuse Screening/History
13. Domestic violence survivors
14. Treatment of Veterans who are Defendants
15. Diversion programs, including
 - a) Eligibility
 - b) Program details
 - c) Program funding sources
 - d) Diversions offered pre-filing and pre-plea
 - e) Number of cases diverted each month
 - f) Program Cost
16. Victim Services
17. Restorative Justice Programs
18. Office trainings, including but not limited to the following topics:
 - a) Bias
 - b) Domestic violence
 - c) LGBTQ issues
 - d) Identifying mental health issues
 - e) Restorative justice

Section F: Pertaining to administrative records:

1. List of all revenues from RICO funds
2. List of all grants awarded by MCAO to outside groups, including the source of funds for such grants.
3. List of all grants received, including the received amounts
4. All Annual Budgets
5. All Financial Audits
6. All Performance Audits
7. List of contributions, including amounts, to professional organizations

This request, made in my position as a freelance journalist, is for a non-commercial purpose. I would be willing to pay reasonable costs up to \$100. If the costs are expected to exceed that amount, please contact me at the telephone or email below before incurring the costs.

Furthermore, if portions of this request are releasable more quickly than others, please provide such records on a rolling basis as they become available.

Where possible, please provide records in an electronic format and/or via electronic medium. Records can be copied onto CD-ROM or memory stick or transmitted electronically by other means. Where possible and applicable, please provide data in CSV or other format usable by Excel, such as XLS.

Please provide me a response to my request by no later than the close of business on Oct. 26, 2018.

I firmly believe that the foregoing records are of vital interest to the public. Criminal defendants are prosecuted in the name of the public and few aspects of public life are more vital to a free society than a free, fair and open criminal justice system. These principles have been enshrined in the Constitution and repeatedly protected by the courts.

Thank you for your assistance.

Sean Holstege
Freelance Journalist
(602) 421-3340
seanholstege@cox.net

EXHIBIT B

From: [Sean Holstege](mailto:Sean.Holstege@cox.net)
To: ["mcaocor@mcao.maricopa.gov"](mailto:mcaocor@mcao.maricopa.gov)
Subject: RE: public records request
Date: Wednesday, October 31, 2018 12:18:00 PM

Sir or Madam,

I am writing to follow up on my request for public information dated Oct. 16, 2018.

I have yet to receive any correspondence in connection with this request. I had asked that I be contacted no later than Oct. 26, 2018, five days ago.

Please acknowledge that you are in receipt of my request and advise me when I can expect your office to comply with it.

Thank you.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



From: Sean Holstege [mailto:seanholstege@cox.net]
Sent: Tuesday, October 16, 2018 1:50 PM
To: 'mcaocor@mcao.maricopa.gov' <mcaocor@mcao.maricopa.gov>
Subject: public records request

Please find attached a request for public records with the Maricopa County Attorney's Office.

Please feel free to call if you have any questions or if I can help clarify or expedite this request.

Thank you.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



EXHIBIT C

From: [MCAO Custodian of Records](#)
To: [Sean Holstege](#)
Subject: RE: public records request
Date: Thursday, November 1, 2018 10:50:35 AM

November 1, 2018

Public Records Request #2018-1016-01

Dear Sean,

Your request has been logged in and assigned the request number above. Your request remains in our queue and is not yet assigned. We process requests in the order received and our volume of requests is quite high; it is not uncommon for the turnaround time for most to be 3-5 months. We will notify you when materials are ready for distribution – or you may contact us anytime for a status update. Please reference your request number.

Thank you.

DM
Custodian of Records
Maricopa County Attorney's Office

Phone: 602/506-3411
Fax: 602/594-7171
mcaocor@mcao.maricopa.gov

From: Sean Holstege <seanholstege@cox.net>
Sent: Wednesday, October 31, 2018 12:19 PM
To: MCAO Custodian of Records <mcaocor@mcao.maricopa.gov>
Subject: RE: public records request

Sir or Madam,

I am writing to follow up on my request for public information dated Oct. 16, 2018.

I have yet to receive any correspondence in connection with this request. I had asked that I be contacted no later than Oct. 26, 2018, five days ago.

Please acknowledge that you are in receipt of my request and advise me when I can expect your office to comply with it.

Thank you.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



From: Sean Holstege [<mailto:seanholstege@cox.net>]
Sent: Tuesday, October 16, 2018 1:50 PM
To: 'mcaocor@mcao.maricopa.gov' <mcaocor@mcao.maricopa.gov>
Subject: public records request

Please find attached a request for public records with the Maricopa County Attorney's Office.

Please feel free to call if you have any questions or if I can help clarify or expedite this request.

Thank you.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz

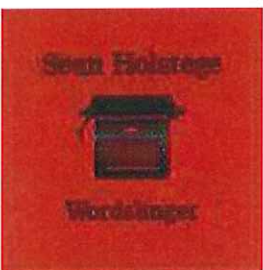


EXHIBIT D

From: [Sean Holstege](#)
To: ["MCAO Custodian of Records"](#)
Subject: RE: public records request
Date: Thursday, November 1, 2018 11:03:00 AM

Thank you for the prompt reply.

Given the volume of this request and the relative simplicity of some items, compared to others, is it possible any of the requested items can be made available sooner?

Thanks.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



From: MCAO Custodian of Records [mailto:mcaocor@mcao.maricopa.gov]
Sent: Thursday, November 1, 2018 10:50 AM
To: Sean Holstege <seanholstege@cox.net>
Subject: RE: public records request

November 1, 2018

Public Records Request #2018-1016-01

Dear Sean,

Your request has been logged in and assigned the request number above. Your request remains in our queue and is not yet assigned. We process requests in the order received and our volume of requests is quite high; it is not uncommon for the turnaround time for most to be 3-5 months. We will notify you when materials are ready for distribution – or you may contact us anytime for a status update. Please reference your request number.

Thank you.

DM
Custodian of Records
Maricopa County Attorney's Office

Phone: 602/506-3411
Fax: 602/594-7171
mcaocor@mcao.maricopa.gov

From: Sean Holstege <seanholstege@cox.net>
Sent: Wednesday, October 31, 2018 12:19 PM
To: MCAO Custodian of Records <mcaocor@mcao.maricopa.gov>
Subject: RE: public records request

Sir or Madam,
I am writing to follow up on my request for public information dated Oct. 16, 2018.
I have yet to receive any correspondence in connection with this request. I had asked that I be contacted no later than Oct. 26, 2018, five days ago.
Please acknowledge that you are in receipt of my request and advise me when I can expect your office to comply with it.
Thank you.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



From: Sean Holstege [<mailto:seanholstege@cox.net>]
Sent: Tuesday, October 16, 2018 1:50 PM
To: 'mcaocor@mcao.maricopa.gov' <mcaocor@mcao.maricopa.gov>
Subject: public records request

Please find attached a request for public records with the Maricopa County Attorney's Office.

Please feel free to call if you have any questions or if I can help clarify or expedite this request.

Thank you.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



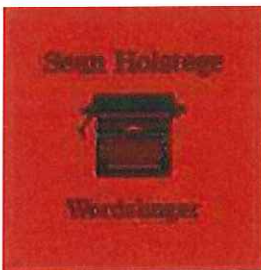
EXHIBIT E

From: [Sean Holstege](#)
To: ["MCAO Custodian of Records"](#)
Subject: RE: status request
Date: Tuesday, February 26, 2019 4:07:00 PM

Debbie,

Understood. Thanks.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



From: MCAO Custodian of Records <mcaocor@mcao.maricopa.gov>
Sent: Tuesday, February 26, 2019 1:40 PM
To: Sean Holstege <seanolstege@cox.net>
Subject: RE: status request

February 26, 2019

Hello Sean,

#2018-1016-01 remains in the queue; as you know the request is voluminous and we have been chipping away at it. Some of the items requested cannot be provided and some can be provided, although in an abbreviated/different format than requested. We will create a detailed response to the different parts of the request and distribute to you shortly.

Thank you.
Debbie MacKenzie
Custodian of Records
Maricopa County Attorney's Office

Phone: 602/506-3411
Fax: 602/594-7171
mcaocor@mcao.maricopa.gov

From: Sean Holstege <seanholstege@cox.net>

Sent: Tuesday, February 26, 2019 1:21 PM

To: MCAO Custodian of Records <mcaocor@mcao.maricopa.gov>

Subject: status request

I am writing to inquire again about the status of my Public Records Request dated Oct. 16, 2018.
(Public Records Request #2018-1016-01)

In your initial response, you informed me that it would take three to five months to get to in the queue.

I send a status request after three months and have heard no reply.

I also called last week and left a voice mail, but got no reply.

So, in case that message got lost somehow, I am renewing my request: Do you have any sense of when you will be able to comply with this request?

Thank you for help in this matter.

Sean Holstege

Freelance Journalist

(602) 421-3340

www.wordslinger.biz



EXHIBIT F

From: [Sean Holstege](#)
To: ["mcaocor@mcao.maricopa.gov"](mailto:mcaocor@mcao.maricopa.gov)
Subject: status of old request?
Date: Monday, April 1, 2019 4:00:00 PM

Debbie,

On Feb. 26, 2019, you responded to my email seeking clarity on the status of my public records request (#2018-1016-01) from Oct. 16, 2018.

In it, you said the request "remained in the queue," and because of its scope that your office had "been chipping away at it." You added that some material may not be provided, and that you would provide a detailed response "shortly."

I am writing today to thank you again for your help on this matter and to seek further clarification.

What does "shortly" mean? It is now more than a month since our last correspondence.

Which items will not be released? And why?

Can you offer a firm estimate on when your office will comply with the original request?

As you know, Arizona's public records laws (ARS. Sec. 39-121 through 39-121.03) require that the custodian of public records "shall promptly furnish" them. On Nov. 1, 2018, you informed me that you process records on first-come, first-served basis and that "it is not uncommon for the turnaround time for most to be 3-5 months." On April 16, my request will be six months old.

The records sought in PRR #2018-1016-01 are essential to the public interest and to the public trust. As I wrote in October, "few aspects of public life are more vital to a free society than a free, fair and open criminal justice system," an idea enshrined in The Constitution and protected, repeatedly, in the courts.

Please let me know when I can expect these records.

Thank you. Sincerely,

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz

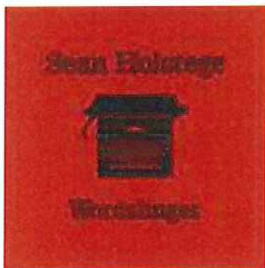


EXHIBIT G

From: mcaocor@mcao.maricopa.gov
To: seanholstege@cox.net
Subject: PRR# 2018-1016-01
Date: Wednesday, April 3, 2019 4:32:28 PM

April 3, 2019

Public Records Request #2018-1016-01

Dear Mr. Holstege,

Please see the link below for your requested materials. We recommend using Internet Explorer only for best results.

This link and passcode will remain active for 7 days.

Please be aware this is a rolling release and you will be notified as more materials are completed.

Thank you,

D.M.
Custodian of Records
Maricopa County Attorney's Office

Phone: 602/506-3411
NEW Fax: 602/594-7171
mcaocor@mcao.maricopa.gov
<http://www.maricopacountyattorney.org/prr>

Your password will be sent in a separate email to protect your account privacy.

Username: TKDSFLDJUK

EID: 270

Download URL:
"<https://cloud.maricopa.gov>"

The login above will expire on 4/10/2019 12:00:00 AM

This message was sent using Globalscape Secure Ad Hoc Transfer system

From: [MCAO Custodian of Records](#)
To: [Sean Holstege](#)
Subject: RE: status of old request?
Date: Wednesday, April 3, 2019 4:12:09 PM

April 3, 2019

Dear Sean,

Your public records request is not completed yet; however there is one datapoint that is ready for release now. Section D, (4) asks for “ ... full list of all staff prosecutors, including ... name, salary ...,”

This material is ready for release now and will be uploaded to our secure, electronic dropbox this afternoon/tomorrow morning. Please watch your email for two notifications – one a passcode and one a secure weblink. These will expire in seven days.

We will notify you as more materials become available for release.

Thank you.
Debbie MacKenzie

Custodian of Records
Maricopa County Attorney's Office

Phone: 602/506-3411
Fax: 602/594-7171
mcaocor@mcao.maricopa.gov

From: Sean Holstege <seanholstege@cox.net>
Sent: Monday, April 1, 2019 4:01 PM
To: MCAO Custodian of Records <mcaocor@mcao.maricopa.gov>
Subject: status of old request?

Debbie,

On Feb. 26, 2019, you responded to my email seeking clarity on the status of my public records request (#2018-1016-01) from Oct. 16, 2018.

In it, you said the request “remained in the queue,” and because of its scope that your office had “been chipping away at it.” You added that some material may not be provided, and that you would provide a detailed response “shortly.”

I am writing today to thank you again for your help on this matter and to seek further clarification.

What does “shortly” mean? It is now more than a month since our last correspondence.

Which items will not be released? And why?

Can you offer a firm estimate on when your office will comply with the original request?

As you know, Arizona’s public records laws (ARS. Sec. 39-121 through 39-121.03) require that the custodian of public records “shall promptly furnish” them. On Nov. 1, 2018, you informed me that you process records on first-come, first-served basis and that “it is not uncommon for the turnaround time for most to be 3-5 months.” On April 16, my request will be six months old.

The records sought in PRR #2018-1016-01 are essential to the public interest and to the public trust. As I wrote in October, “few aspects of public life are more vital to a free society than a free, fair and open criminal justice system,” an idea enshrined in The Constitution and protected, repeatedly, in the courts.

Please let me know when I can expect these records.

Thank you. Sincerely,

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



EXHIBIT H

From: [Sean Holstege](#)
To: ["MCAO Custodian of Records"](#)
Subject: RE: status of old request?
Date: Wednesday, April 10, 2019 10:33:00 AM

Debbie,
Thanks.

Any more you can say about the timetable for the rest? And whether you plan to release it all at once or in tranches?

Thanks again.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



From: MCAO Custodian of Records <mcaocor@mcao.maricopa.gov>
Sent: Wednesday, April 3, 2019 4:12 PM
To: Sean Holstege <seanholstege@cox.net>
Subject: RE: status of old request?

April 3, 2019

Dear Sean,

Your public records request is not completed yet; however there is one datapoint that is ready for release now. Section D, (4) asks for " ... full list of all staff prosecutors, including ... name, salary ...,"

This material is ready for release now and will be uploaded to our secure, electronic dropbox this afternoon/tomorrow morning. Please watch your email for two notifications – one a passcode and one a secure weblink. These will expire in seven days.

We will notify you as more materials become available for release.

Thank you.
Debbie MacKenzie

Custodian of Records
Maricopa County Attorney's Office

Phone: 602/506-3411

Fax: 602/594-7171

mcaocor@mcao.maricopa.gov

From: Sean Holstege <seanholstege@cox.net>

Sent: Monday, April 1, 2019 4:01 PM

To: MCAO Custodian of Records <mcaocor@mcao.maricopa.gov>

Subject: status of old request?

Debbie,

On Feb. 26, 2019, you responded to my email seeking clarity on the status of my public records request (#2018-1016-01) from Oct. 16, 2018.

In it, you said the request "remained in the queue," and because of its scope that your office had "been chipping away at it." You added that some material may not be provided, and that you would provide a detailed response "shortly."

I am writing today to thank you again for your help on this matter and to seek further clarification.

What does "shortly" mean? It is now more than a month since our last correspondence.

Which items will not be released? And why?

Can you offer a firm estimate on when your office will comply with the original request?

As you know, Arizona's public records laws (ARS. Sec. 39-121 through 39-121.03) require that the custodian of public records "shall promptly furnish" them. On Nov. 1, 2018, you informed me that you process records on first-come, first-served basis and that "it is not uncommon for the turnaround time for most to be 3-5 months." On April 16, my request will be six months old.

The records sought in PRR #2018-1016-01 are essential to the public interest and to the public trust. As I wrote in October, “few aspects of public life are more vital to a free society than a free, fair and open criminal justice system,” an idea enshrined in The Constitution and protected, repeatedly, in the courts.

Please let me know when I can expect these records.

Thank you. Sincerely,

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



EXHIBIT I

From: [Sean Holstege](#)
To: ["MCAO Custodian of Records"](#)
Subject: demand letter for PRR #2018-1016-01
Date: Friday, April 26, 2019 11:12:00 AM
Attachments: [FINAL PRL Demand Letter MCAO.docx](#)

Debbie,

Please find attached (and sent separately via regular mail) my letter demanding immediate release of records pursuant to this request.

Thanks again for your attention to this matter.

Sean Holstege
Freelance Journalist
(602) 421-3340
www.wordslinger.biz



April 26, 2019

Maricopa County Attorney Bill Montgomery
Maricopa County Attorney's Office
301 W. Jefferson St.
Phoenix, AZ 85003

Debbie MacKenzie
Custodian of Records
Maricopa County Attorney's Office
301 W. Jefferson St.
Phoenix, AZ 85003

Re: Demand to Produce Records Responsive to Public Records Request No. #2018-1016-01

Dear County Attorney Montgomery and Ms. MacKenzie:

It has been over six months since I submitted public records request #2018-1016-01. In that time, you have produced a solitary record and given no clear indication of when the vast majority of responsive documents and information will ultimately be produced, if ever. This is unacceptable and illegal. I therefore write to demand the immediate release of all records responsive to the request, or I will file a lawsuit to compel it.

Request #2018-1016-01 sought records related to six categories of information from Jan. 1, 2013 to the present:

1. The office's case management system;
2. Information about each criminal case, including the case number, charge(s), disposition, and demographic information of the defendant;
3. Information about charges declined;
4. Personnel and discipline issues related to prosecuting attorneys in the office;
5. The office's policies, procedures, guidelines, and training materials covering topics like bail, plea bargaining, and bias; and
6. Administrative and budgeting information.

This information should be easily attainable, as it is central to the functioning of your office. It is also necessary for the public to determine how their elected county attorney's office is operating. As I wrote in October 2018, "few aspects of public life are more vital to a free society than a free, fair and open criminal justice system." This is a principle enshrined in the Constitution and protected repeatedly in the courts.

To be sure, it is a voluminous request. But I have repeatedly offered reasonable accommodations, including accepting more readily available information first, and other information on a rolling basis. These offers have been rejected in favor of vague assurances like "we have been chipping away." Even more troubling, you have responded with quasi-denials

like “some of the items requested cannot be provided and some can be provided, although in an abbreviated/different format than requested.” I have asked for clarification of these statements without reply.

Once again, this is unacceptable and illegal.

Your office’s failure to release responsive documents and information violates Arizona’s public records law (“PRL”). When public records are requested, the responsive agency is legally obligated to make those records available without improper delay. “Unlike public information statutes in some other jurisdictions, Arizona’s statute specifies that when records are subject to disclosure the required response is the prompt and actual production of the documents.” *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 538 (App. 2008). The plain language of the PRL requires the custodian of public records to “promptly” furnish records upon request. A.R.S. § 39.121.01(D)(1). Arizona law defines prompt as “‘quick to act or to do what is required’ or ‘done, spoken, etc. at once or without delay.’” *W. Valley View, Inc. v. Maricopa Cty. Sheriff’s Office*, 216 Ariz. 225, 230 (App. 2007). The PRL “further specifies that to the extent the party does not receive a prompt response, ‘[a]ccess to a public record is deemed denied.’” *Phoenix New Times, L.L.C.*, 217 Ariz. at 538, quoting A.R.S. § 39–121.01(E). “A denial of access to public records is deemed wrongful if the person requesting the records was, in fact, entitled to them.” *Id.*

The purpose of Arizona’s PRL is to allow the public to monitor the performance of elected officials and government agencies. *Griffis v. Pinal Cty.*, 215 Ariz. 1, 4 (2007); *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 (App. 2001). That purpose is impermissibly hindered if government officials are allowed to improperly defer the release of records to the public to delay or impede scrutiny, while simultaneously using those same records to advance the agenda of government officials.

This is especially troubling for a county attorney’s office so clearly and deeply involved in legislative efforts that have direct bearing on the office itself. Arizonans deserve to know how you, Mr. Montgomery, are currently operating your office so they can make informed decisions on legislation affecting and potentially reforming that office.

Your office has had over 180 days to comply with this request. It’s failure to fully do so by now violates the law. *See W. Valley View, Inc.*, 216 Ariz. at 230 (holding MCSO’s failure to immediately release records that they had access to upon request violated Arizona public records law); *Phoenix New Times*, 217 Ariz. at 538, 545 (holding that a delay of 49 days and 141 days based on the justification of “inattention by the employee of a public body” violated Arizona public records law).

There is no justification for continued delay. While I hope to work with your office amicably going forward, the office must also comply with the law by immediately releasing all responsive records and explaining denials with reference to applicable legal exceptions. If not, I will pursue litigation.

If there are any questions, please contact me at (602) 421-3340 or seanholstege@cox.net.

Sincerely,

Sean Holstege
Freelance Journalist
(602) 421-3340
seanholstege@cox.net