

ARIZONA SUPERIOR COURT, SANTA CRUZ COUNTY
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FILED

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JUDGE: HON. KIMBERLY A. CORSARO

CASE NO. **CV14-383**

DATE: **SAN** October 17, 2014

**AMERICANS UNITED FOR DEMOCRACY
INTEGRITY AND TRANSPARENCY IN
ELECTIONS –AUDIT-AZ, an unincorporated
association; JOHN BRAKEY, a natural person;
SERGIO ARELLANO-OROS, a natural person;
ROBERT ROJAS, a natural person; OLGA
VALDEZ, a natural person; JESUS “HENRY”
OLGUIN, a natural person; and RUTH
MATHESON, a natural person; JACK
SCHOLNICK, a natural person; and CESAR
PARADA, a natural person,**

Plaintiffs,

vs.

**SANTA CRUZ COUNTY BOARD OF
SUPERVISORS, a public body; MELINDA MEEK,
in her official capacity as clerk/director of the Santa
Cruz County Board of Supervisors; SANTA CRUZ
COUNTY RECORDER’S OFFICE, a public body;
and SUZANNE SAINZ, in her official capacity as
county recorder,**

Defendants.

**UNDER ADVISEMENT RULING
Special Action**

The matter of Plaintiff’s *Verified Compliant Statutory Special Action A.R.S. §39-121.02* having come before this court for bench trial and concluded on October 15, 2014; and the parties and their legal counsel having had the opportunity to present evidence and argument, the matter was taken under advisement. The Court having reviewed the Court’s file and the pleadings filed in the case, and having considered the testimony of the witnesses and the exhibits admitted during trial, the Court **FINDS AND ORDERS** as follows:

Pursuant to A.R.S. §39-121.02 this court has jurisdiction to adjudicate Plaintiff’s Complaint via special action.

COUNT I: VIOLATION OF A.R.S. §39-121 – FAILURE TO ALLOW INSPECTION OF PUBLIC RECORDS:

The public records request made by Plaintiffs on July 9, 2014 contained ten separate requests. Defendants responded in writing to the Plaintiffs on August 7, 2014. Defendants indicated that Items 1-4 do not exist, that Items 5-9 request disclosure of information that would compromise system security, and that with regard to Item 10 the server is not connected to the local area network. No records were provided to Plaintiffs.

A.R.S. §39-121 provides as follows:

Public records and any other matters in the custody of any officer shall be open to the inspection by any person at all times during office hours.

After commencement of the hearing the Defendants acknowledged that Items 1 through 4 constitute public records, but affirmed that Santa Cruz County does not do business with Runbeck, Inc. and no such documents exist. Without conceding that Items 5-9 constitute public records, Defendants provided Plaintiffs with a CD of said records on the second day of the hearing. At the conclusion of the trial, the only remaining issues were whether or not Item 10 is a public record subject to inspection, and whether Plaintiffs are entitled to an award of attorneys fees.

Public records are defined broadly under Arizona law. There is a presumption requiring disclosure of public documents. However, disclosure of every document held by a public entity is not mandated. Only documents with a substantial nexus to government activities qualify as public records, and the nature and purpose of a document determines whether it is a public record. Even if a document qualifies as a public record, it is not subject to disclosure if privacy, confidentiality or the best interest of the State outweighs the policy in favor of disclosure. Metadata is an electronic version of a public record and is subject to disclosure under public records laws. *See Lake v. City of Phoenix*, 222 Ariz. 547, 218 P.3d 1004 (2009). Items 5-9 of Plaintiff's public records request constitute metadata and are public records subject to disclosure. These records were disclosed to Plaintiffs on day two of a three day trial.

Item 10 is a request for network settings on the County's central tabulators. Expert witness, Michael Duniho, testified that Item 10 is not relevant unless the tabulators are hooked up to the internet. As the Defendants have shown that the tabulators are not connected to any network, the court need not determine if Item 10 constitutes a public record, or not. Absent a connection to the internet, there would be no substantial nexus between network settings and operation of the

tabulators. Therefore, the Defendants are not required to comply with Item 10.

Therefore, Plaintiffs prevail under Count 1 only as to Items 5-9 of their public records request.

COUNT II: VIOLATION OF A.R.S. §39-121.01(b) – FAILURE TO PROPERLY MAINTAIN PUBLIC RECORDS:

Plaintiffs have failed to establish that Defendants have violated their duty to “maintain all records . . . reasonably necessary or appropriate to maintain an accurate knowledge of their official activities . . .” Therefore, Defendants are awarded judgment in their favor on Count II.

ATTORNEY FEES:

Pursuant to A.R.S. §39-121.02 the court may award attorney fees and other legal costs reasonably incurred in any action brought to obtain public records if the requesting party substantially prevails in the action.

A.R.S. §39-121 requires that public records be open to inspection at all times during business hours. Plaintiffs made a written request on July 9th. Defendants did not provide a formal response for one month, until August 7th. Defendants were put on notice by Plaintiffs on July 28th of their intent to pursue a special action, and again on August 18th, if their public records request was not satisfied.

Defendants argued that they had inadequate time to consult with the Board of Supervisors, however Ms. Meek testified that it was the Board of Supervisors who made the decision of how to respond on August 7th after consultation with their IT Department and presumably the County Attorney’s office. It was not until after the first day of trial that the County Attorney acknowledged seeking advice from the Secretary of State’s office on how to respond, and thereafter provided disclosure of Items 5-9. It was at this time that Defendants disclosed that rather than doing business with Runbeck, Inc., they do business with an individual (Bill Doyle) for the same purpose. The Defendants agreed to provide disclosure of records relating to Bill Doyle as it relates to Items 2 and 3. With respect to Item 4, the Defendants agreed to disclose records by October 15th, the last date set for trial in this matter.

Plaintiffs did not meaningfully comply with the spirit of the law in their written response to Plaintiffs on August 7th. In the spirit of public records access, Defendants should have immediately notified Plaintiffs that they did not do business with Runbeck, Inc., giving Plaintiffs an opportunity to amend their request. Instead, Defendants waited until trial to provide this information and

disclose Bill Doyle's connection to Items 2 & 3.

Public records requests merit prompt attention. Because Defendants did not take Plaintiff's public records request seriously and delayed appropriate response thereto, Plaintiff's were obligated to seek recourse from the court in order to obtain relief. Defendants unnecessarily delayed in responding and thereafter in disclosing the requested records.

With regard to Items 2-9, Plaintiffs substantially prevailed and are entitled to reasonable attorneys' fees.

Plaintiffs are directed to lodge a form of judgment consistent with the orders herein.

DATED this 17 day of October, 2014.




KIMBERLY A. CORSARO
Judge Pro Tempore

COPY of the foregoing, mailed/delivered this 17th day of October, 2014, as follows:

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by: 

Laura D. Perez, Judicial Administrative Assistant