

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-053499

08/08/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

WE THE PEOPLE ARIZONA ALLIANCE

CHARLES R JOHNSON

v.

STEPHEN RICHER, et al.

JACK O'CONNOR III

JOSEPH EUGENE LA RUE
ROSA AGUILAR
JUDGE BLANEY

UNDER ADVISEMENT RULING

Before the Court is Plaintiff's statutory special action to secure access to public records from Defendants. The Court has reviewed and considered the arguments and evidence received at the June 12, 2024 evidentiary hearing/trial on the merits, which includes the testimony and demeanor of the witnesses, the exhibits, and the case history.

This case arises out of a September 8, 2022 public records request submitted by Plaintiff We the People Arizona Alliance ("WTPAA") to Maricopa County Recorder Stephen Richer (the "Recorder") seeking, *inter alia*, identification of each employee, permanent or temporary, who came in contact with any ballot or ballot envelope for the purpose of verification from January 2020 through the present. The Recorder produced the majority of the other requested documents on a rolling basis from October 28, 2022 through November 11, 2022. But the Recorder withheld the names of lower level and non-managerial employees, citing the best interest of the state exception to the Public Records Law. The Recorder based this decision on threats and harassment received by this specific class of employees and the effect that such threats and harassment have on recruiting, retention, and employee safety.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-053499

08/08/2024

The Recorder does not dispute that the information requested falls under the Public Records Law. The Recorder's withholding of the information is based entirely on the best interest of the state exception.

THE COURT FINDS AS FOLLOWS:

1. As part of its election responsibilities, the Maricopa County Recorder's Office maintains voter files for more than 2.6 million active registered voters in Maricopa County. In conjunction with the County Elections Department, the Recorder plans for and holds county, state, and federal level elections for all eligible Maricopa County voters. The Recorder's Office also conducts signature verification for mail-in ballots, among many other specific tasks.
2. The Recorder's Office utilizes approximately 800 county employees to meet its obligation to oversee Maricopa County elections, along with approximately 2,500 temporary or "seasonal" employees.
3. As part of the present public records request, Plaintiff sought the identification of each employee, permanent or temporary, who came in contact with any ballot or ballot envelope for the purpose of verification from January 2020 through the present, including those who verified all ballot envelope signatures.
4. Plaintiff submitted evidence at the hearing that some of the signature verifiers worked remotely during recent elections, comparing and verifying signatures from home. Some of the verifiers moved through their verifications at an unbelievably rapid pace and others confirmed 100% of their verifications, which appears highly improbable. Plaintiff seeks the identities of some of the verifiers to interview them about training and procedures.
5. In responding to the present records request, Recorder Richer made the decision to deny the portion of the request that sought employee identities because it would have a chilling effect on the hiring and retention of employees and could expose them to threats and harassment. More specifically, Recorder Richer agreed to release the identities of employees at the manager level or higher, but protect from disclosure the names of lower-level employees, including temporary employees.
6. The Court received credible, uncontested, sworn testimony from at least two defense witnesses – Recorder Richer and Former Assistant Director Kristi Passarelli – of alarming threats that they personally received arising from their positions and activities

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-053499

08/08/2024

in the Recorder's Office. At the time of the hearing, the United States Department of Justice had already charged three individuals for their threats to Recorder Richer, and one had pleaded guilty.

7. Prior to ending her 30-year tenure at the Recorder's Office, Ms. Passarelli received approximately fifty threats and harassing messages accusing her of committing a crime and stealing the 2020 election. Ultimately, the Maricopa County Sheriff's Office installed a filter on her work email to reduce the number of threatening communications. She was also forced to lock down her Facebook account. She routinely needed to be escorted to her vehicle after work.
8. The Court received additional credible, sworn testimony regarding threats generally, such as the testimony of Recorder Richer and Elections Director Scott Jarrett. Both witnesses provided uncontested testimony regarding the frequency, intensity, and alarming nature of threats and harassment directed at employees, and signature verification employees in particular. Although this more generalized testimony did not identify specific employees who had received threats or the specific threats themselves, that lack of specificity is relevant to the weight the Court gives the testimony, not its admissibility. The Court ultimately found the testimony to be both reliable and compelling based upon the tangible actions the Recorder's Office took in response to the threats, including, *inter alia*: (1) installation of a new black fence outside the facility; (2) the addition of drones to surveil the area around the facility; (3) the addition of snipers on the roof of the facility; (4) the addition of security guards inside the facility; (5) the installation of bullet-proof glass; (6) active shooter training for employees; and (7) active monitoring of social media for threats. It is not reasonable to assume that the Recorder's Office would take such extreme safety measures if the threats had not been as frequent, intense, and alarming as the Defense alleged.
9. The Court further received uncontested, sworn testimony from Mr. Jarrett, who as part of his duties as Elections Director oversees the recruitment of all temporary workers. Mr. Jarrett testified that threats and harassment of employees negatively impacts hiring and retention. According to Mr. Jarrett, employees were scared because of the threats and harassment received by the office, and applicants often asked whether their names would be released to the public. Mr. Jarrett further testified that if he cannot hire and retain enough temporary workers, the Recorder's Office will be unable to administer elections. Recorder Richer agreed, testifying that temporary employees are essential to the Office's mission. A reduction in temporary workers would diminish the number of available polling locations and would create a challenge to finishing signature verification by the time of the canvass.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-053499

08/08/2024

10. The Recorder has offered Plaintiff an alternative avenue for obtaining the information they seek without disclosing the employees' names. The Court received evidence that this can be accomplished by assigning unique identifiers for each of the employees so their data can be tracked.
11. It is notable that despite the opportunity, Plaintiff did not actively engage in discovery in this case. The Court questions whether some of the information Plaintiff sought in its records request could have been obtained through a properly worded request for production, interrogatory, or subpoena during the pendency of this litigation. The Court would have been amenable to issuing a limited, mutually-agreeable protective order for the information.

Pursuant to the Arizona Public Records Law, A.R.S. §§ 39-121 *et seq.*, the public has a right to inspect public records. A.R.S. § 39-121.01(D). Arizona recognizes a well-established presumption favoring disclosure of public records. *Griffis v. Pinal County*, 215 Ariz. 1, 4, ¶ 8 (2007). Thus, the public official seeking to withhold public records from disclosure bears the burden of overcoming the presumption favoring disclosure. *KPNX-TV v. Superior Court*, 183 Ariz. 589, 592 (App. 1995). “To justify denying access to public records, the public official must demonstrate specifically how production of the records would violate rights of privacy or confidentiality or would be detrimental to the best interests of the state.” *Id.*

THE COURT FINDS that the Recorder has established in this case legitimate security concerns about public disclosure of the identities of lower level and non-managerial employees. The threats and harassment that these employees face are both alarming and pervasive. Relatedly, the Recorder also has a legitimate concern about the chilling effect that the threats and harassment have on the Recorder's Office's ability to recruit and retain employees. The Recorder's Office could not accomplish its critical mission without sufficient temporary workers. These concerns outweigh the public's right to know the identities of these lower level, non-managerial employees. The Court notes that the list of identities withheld from production by the Recorder is narrowly tailored to only include lower level, non-managerial employees. The Court further notes that the Recorder has offered to provide unique identifiers for each of the employees in lieu of their actual identities.

The Court does not arrive at this conclusion lightly. To the contrary, the Court is reluctant to deny Plaintiff's requested relief out of respect for Arizona's strong presumption of disclosure of public records. *Griffis*, 215 Ariz. at 4, ¶ 8; *KPNX-TV*, 183 Ariz. at 592. In applying this exception, the Court is concerned that any agency wishing to withhold the names of key employees – or even the names of employees that are accused of misconduct – could simply argue that disclosure of the names would potentially subject the individual employees to ridicule, harassment, or threats. Neither the plain language of the Act, nor the cases interpreting the Act, suggest that

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-053499

08/08/2024

the Act is meant to broadly shield against disclosure based merely upon a fear of public ridicule or hypothetical threats applied in a blanket fashion.

But here, Defendants do not seek to shield their employees from ridicule or *hypothetical* threats. Defendants' line employees have been the target of actual, credible threats, and the causal connection between the employees' duties and the threats is far from tenuous. The protection that Defendants seek is not for employees simply because they are employees, it is for employees who *but for* their duties associated with elections would not be the target of threats and harassment. The evidence of threats and harassment received at the hearing is sufficient to trigger the exception. Moreover, disclosure of line employees' identities would have a detrimental impact on hiring and retention; a fact that further buttresses the best interests of the state in this case.

Good cause shown, and in the Court's discretion:

IT IS ORDERED denying the relief sought in Plaintiff's *Verified Complaint for Statutory Special Action to Secure Access to Public Records from Defendants*.

IT IS FURTHER ORDERED denying Maricopa County Defendants' *Motion to Reopen Evidence and Take Judicial Notice*. The Court declines to unnecessarily expand these proceedings beyond the straight-forward public records issue discussed above.

IT IS FURTHER ORDERED directing Defendants to prepare and lodge a proposed form of Order on or before **August 23, 2024**. Defendants shall file any application for attorney's fees and statement of taxable costs by this deadline as well. Plaintiff shall file any objections or responses to the form of Order or to the request for attorney's fees and costs no later than **September 6, 2024**.