



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Abraham v. Arizona Board of Regents, CV-25-0020-PR

PARTIES:

Petitioner: Matthew Abraham, PHD

Respondent: Arizona Board of Regents (“ABOR”)

Amicus Curiae: Arizona Center for Law in the Public Interest
Goldwater Institute

FACTS:

This case involves a tenured English professor at the University of Arizona who raised concerns about the university’s hiring practices. He filed a series of public records requests seeking information from the university. After the university initially provided only a limited range of materials, he hired legal counsel, which led to the university providing more documents. It also revealed that the university had deleted the audio recordings of meetings he had sought.

In September 2021, Petitioner filed a lawsuit against ABOR, the governing body for the university. Petitioner argued that ABOR had violated Arizona’s public records laws in numerous ways and sought to make ABOR produce more documents and to pay his costs and attorney fees.

The trial court ruled that it could not provide relief for the destroyed audio recordings. The court then held a three-day trial without a jury and found that ABOR had eventually provided Petitioner with nearly all of the documents that he had requested; the court ruled that ABOR had not abused its discretion in deciding which documents to provide. The court found that after Petitioner’s counsel had sent the letter, higher-level university decision-makers had provided the documents he asked for. The court thus denied substantive relief for Petitioner’s records requests.

The trial court concluded that under the statute A.R.S. § 39-121.02(B), the Petitioner had not “substantially prevailed” under the public records laws; it thus ruled that Petitioner was not entitled to any attorney fees. Petitioner then filed an appeal.

The court of appeals agreed with the trial court that because the audio recordings had been destroyed, the courts could not provide relief. It thus affirmed on that claim.

Next, the court addressed Petitioner’s argument that the trial court had erred by looking at whether the university had abused its discretion, rather looking at his arguments completely anew (called “de novo review”). The court of appeals decided that Arizona case law:

imposes the following scope of trial-court review when an officer or public body seeks to withhold or redact public records based on confidentiality, privacy, or the best interests of the state. First, because the determination of whether the officer or public body has invoked a specific, legally sufficient harm is a legal question, trial courts apply de-novo review. Second, if the public officer or body satisfies that

review, trial courts apply abuse-of-discretion review in evaluating the withholding and redaction decisions for specific documents.

Abraham v. Arizona Bd. of Regents, 563 P.3d 632, 643 ¶ 46 (App. 2025). Applying this standard, the appellate court held that ABOR had sufficiently explained why it had withheld some documents and thus it had “acted within its discretion.” *Id.* ¶ 54. The court affirmed the trial court.

Also, the court of appeals decided that attorney fees cannot be awarded based on pre-litigation success alone. The court ruled that the statute, A.R.S. § 39-121.02(B), states that fees can only be awarded after success “in any action,” meaning success must come within a lawsuit before a court can award attorney fees.

Petitioner then filed a petition for review in this Court, which agreed to review the issues listed below.

ISSUES:

1. If a public entity destroys a record after receiving a request for it, does that constitute a denial of access per A.R.S. § 39-121.02(A)—or require a separate claim under A.R.S. § 39-121.02(C)?
2. Is a public entity’s denial of access to a public record a question of law reviewed de novo?
3. Pursuant to A.R.S. § 39-121.02(B), can a party “substantially prevail” and recover fees when a public entity only cures their failure to disclose records after the requestor hires counsel and files a complaint?

STATUTE:

A.R.S. § 39-121.02 provides:

- A. Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.
- B. The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed. Nothing in this subsection shall limit the rights of any party to recover attorney fees, expenses and double damages pursuant to § 12-349.
- C. Any person who is wrongfully denied access to public records pursuant to this article has a cause of action against the officer or public body for any damages resulting from the denial.