

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. JAMES E MARNER

CASE NO. C20134963

DATE: November 30, 2017

ENERGY & ENVIRONMENTAL LEGAL INSTITUTE  
Plaintiff

VS.

ARIZONA BOARD OF REGENTS, ET AL.  
Defendant(s)

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**R U L I N G**

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**IN CHAMBERS RULING**

This matter returns from the Court of Appeals on remand. Defendant Arizona Board of Regents (AzBOR) appealed this Court's June 14, 2016 ruling granting Plaintiff's motion requesting disclosure of the withheld emails which were identified in the initial and supplemental logs as prepublication critical analysis, unpublished data, analysis, research, results, drafts, and commentary. The comment in the June 14, 2016 ruling regarding the creation of an academic privilege<sup>1</sup> through legislation seems to have caused much confusion to the point that the Court of Appeals concluded this Court somehow remained ignorant of an argument raised in Defendant AzBOR's answer and amended answer, subsequent pleadings and in at least two amicus briefs. With this ruling, the Court hopes to reassure the Court of Appeals and the parties that all arguments made at the trial level were considered and all relevant law applied.

ARS § 15-1640 creates an exemption from ARS § 39 – 121 for some state university records. The statute does not expressly require a trial court to make written findings and there is no case law imposing such a requirement.<sup>2</sup> Nonetheless, given the confusion/concern on the appellate level created by the June 14, 2016 ruling, the Court finds as follows:

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<sup>1</sup> Given the fervor with which AzBOR argued that the subject emails should be protected from disclosure, the Court intended to equate the term "academic privilege" to other well established privileges, such as the attorney/client privilege, doctor/patient privilege, priest/penitent privilege, etc., rather than as interchangeable with the term "exemption" as used by the Court of Appeals in ¶ 4 of its memorandum decision.

<sup>2</sup> To date, the only Arizona case which cites this statute is the Court of Appeals' September 14, 2017 memorandum decision in this matter.

Kelsey Miller  
Judicial Administrative Assistant

## RULING

- Disclosure of the subject documents is not contrary to the best interests of the State of Arizona.
- To the extent that any of the documents could accurately be described as unpublished research data, manuscripts, preliminary analyses, drafts of scientific papers, plans for future research and prepublication peer reviews, the subject matter of the documents has become available to the general public.
- The subject matter of the remaining documents that cannot be accurately described as unpublished research data, manuscripts, preliminary analyses, drafts of scientific papers, plans for future research and prepublication peer reviews has become available to the general public.

Consequently, ARS § 15-1640 does not preclude disclosure of the subject records.

To the extent that it is consistent with this ruling, the Court incorporates by this reference the June 14, 2016 ruling.

Accordingly,

**IT IS ORDERED** that Plaintiff's motion requesting disclosure of the withheld emails which were identified in the initial and supplemental logs as prepublication critical analysis, unpublished data, analysis, research, results, drafts, and commentary is **GRANTED**.

**IT IS FURTHER ORDERED** that no further matters remain pending and this judgment is entered under Rule 54(c) of the Arizona Rules of Civil Procedure.

  
HON. JAMES MARNER

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