

1 Joseph J. Popolizio, Bar #017434  
Justin M. Ackerman, Bar #030726  
2 JONES, SKELTON & HOCHULI, P.L.C.  
40 North Central Avenue, Suite 2700  
3 Phoenix, Arizona 85004  
Telephone: (602) 263-1700  
4 Fax: (602) 200-7876  
jpopolizio@jshfirm.com  
5 jackerman@jshfirm.com

6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF ARIZONA**

9 Johnny Wheatcroft and Anya Chapman, as  
husband and wife, and on behalf of minors J.W.  
and B.W.,

10  
11 Plaintiffs,

12 v.

13 City of Glendale, a municipal entity; Matt  
Schneider, in his official and individual  
14 capacities; Mark Lindsey, in his official and  
individual capacities; and Michael Fernandez, in  
15 his official and individual capacities,

16 Defendants.

NO. 2:18-cv-02347-MTL

**MOTION FOR RULING RE:  
PROTECTIVE ORDER IN LIGHT  
OF PUBLIC RECORDS  
REQUESTS**

17  
18 Defendants City of Glendale, Matthew Schneider, Mark Lindsey, and Michael  
19 Fernandez (“Defendants”) respectfully request that this Court issue a ruling on whether  
20 Defendant City of Glendale must comply with the Order of Protection (Doc. 44) in light of  
21 public records requests that Defendant City of Glendale received from Dave Biscobing, a  
22 reporter with ABC15 Arizona, and Michael Doudna, a reporter with NBC12 News.<sup>1</sup>

23  
24  
25 <sup>1</sup> Undersigned counsel submits this Motion under the good faith belief that it does not  
26 qualify as a discovery dispute. The issue in this Motion is whether the protective order covers  
27 certain documents requested in a public record request filed by a non-party to this action. As a  
28 result, undersigned counsel does not believe the Court’s discovery dispute procedure is  
implicated.

1 **I. FACTS**

2 This Court granted the Parties' Joint Motion for Protective Order on May 22,  
3 2019 for the purpose of protecting the identity of an Officer who is the complainant in an  
4 internal workplace harassment complaint within the Glendale Police Department ("Officer").  
5 The Parties agreed that "the Officer's identity shall remain confidential and not available for  
6 dissemination to the general public, *including the media*, but shall instead remain confidential . .  
7 . ." (Doc. 42, ¶ 1) (emphasis added).

8 The Court granted the Joint Motion and ordered the Parties to designate items  
9 containing the Officer's information as confidential by affixing the word  
10 "CONFIDENTIAL" on such items. (Doc. 44, ¶ 2). Pursuant to the Court's Order, the  
11 Parties can neither disclose the identity of the subject Officer, nor the documentation  
12 associated with an investigation known as DI No. 2017-055. Pursuant to the Order, the  
13 parties must not disclose such confidential items to any person other than designated  
14 individuals. (*Id.* at ¶ 4).

15 Defendant City of Glendale received a Public Records Request from Dave  
16 Biscobing, a reporter with ABC15. Defendant City of Glendale has responded to this  
17 request; however, in its response, Defendant City of Glendale did not disclose DI No. 2017-  
18 055, because of the mandate of this Court's Order. In its response to the Public Records  
19 Request, Defendant City of Glendale informed Mr. Biscobing that it intended to seek the  
20 Court's ruling with regard to his Public Records Request vis-à-vis this Court's Order. At this  
21 time, Defendant City of Glendale is in the process of preparing non-confidential documents  
22 to respond to Mr. Doudna's request, which places Defendant City of Glendale in the same  
23 predicament as Mr. Biscobing's request with regard to the mandate of the Court's Order.

24 **II. ABSENT WRITTEN CONSENT OF DEFENDANTS OR THIS COURT'S**  
25 **ORDER, THE ORDER OF PROTECTION PRECLUDES DISCLOSURE**  
26 **OF THE IDENTITY OF THE COMPLAINANT AND "CONFIDENTIAL"**  
**DOCUMENTS RELATED TO DI NO. 2017-055, IN ANY FORM.**

27 Under Federal Rule of Civil Procedure 26(c), any party may move for a  
28 protective order and the court may, for good cause, "issue an order to protect a party or

1 person from annoyance, embarrassment, oppression, or undue burden or expense . . .”  
2 Fed.R.Civ.P. 26(c)(1). This rule appears to be in conflict with Arizona’s public record law,  
3 Arizona Revised Statute § 39-121.01(D)(1), which authorizes any person to request copies “of  
4 any public record not otherwise available on the public body’s website . . .”

5 Defendant City of Glendale received two public records requests under that  
6 statute from members of the media.

7 First, Mr. Biscobing’s request seeks “a copy of all records, photos, audio  
8 interviews, video, and any other documents related to all departmental investigations (DI  
9 cases) involving Officer Matt Schneider. A copy of all initial complaints filed against Matt  
10 Schneider.”

11 Second, Mr. Doudna’s request similarly seeks Human Resources investigations  
12 and communications regarding Defendant Schneider “related to workplace harassment  
13 DI2017-055.”

14 A number of documents relating to DI No. 2017-055 have been designated as  
15 “CONFIDENTIAL” pursuant to this Court’s Order as they contain information regarding  
16 the Officer-complainant’s identity. Those documents include disciplinary memos, audio  
17 recorded interviews and transcripts of interviews, complaint reports, complaints, allegations  
18 summaries, Notices of Investigation, and an event timeline. These documents comprise the  
19 investigation and have been designated “CONFIDENTIAL”. Therefore, pursuant to the  
20 Order, Defendant City of Glendale is not to disclose them to outside parties, including the  
21 media, without prior consent of the Defendants or the Court. Given that the Protective  
22 Order stemmed from Defendants’ and the Officer-complainant’s desire to protect the  
23 identity of the Officer-complainant in DI No. 2017-055, as well as any information related to  
24 that investigation, Defendants’ consent to the disclosure will not be forthcoming. Therefore,  
25 Defendants are unable to comply with the public records requests from ABC15 or NBC12  
26 News.

27 Defendants are unable to identify any case law on this precise issue, but the  
28 Arizona Court of Appeals has held that an entity’s violation of a protective order is only

1 permissible when the violating party is not bound by the order. *See State ex rel. Thomas v. Grant*,  
2 222 Ariz. 197 (App. Ariz. 2009). In *State ex rel. Thomas*, the trial court issued a protective order  
3 in a case between Lennar Communities Development, Inc. and Sonoran Utility Services,  
4 L.L.C. *Id.* at 198. Sonoran designated portions of a deposition transcript as confidential under  
5 the order. *Id.* at 198-99. As part of a separate criminal investigation, the State of Arizona filed  
6 a “Request for Copy of Deposition” and Sonoran objected to the request on the grounds that  
7 the deposition should not be released because the State had not agreed to be bound by the  
8 protective order. *Id.* The State subsequently executed a search warrant of the witness’s office  
9 and recovered a copy of the deposition. *Id.* Later, the State released the transcript to the East  
10 Valley Tribune pursuant to a public records request. *Id.* at 200. Sonoran filed a motion for  
11 sanctions against the State for disclosing the deposition in violation of the protective order.  
12 *Id.* The Court of Appeals concluded that because the State was not bound by the protective  
13 order and had acquired the deposition by other means, the protective order did not bind it  
14 from disclosing the deposition. *Id.* at 204.

15           The outcome in *State ex rel. Thomas* can be distinguished from the position in  
16 which Defendants currently find themselves because here, unlike in *State ex rel. Thomas*, the  
17 party which potentially would disclose these confidential documents to the media, the City of  
18 Glendale, is a party to this action and is, therefore, bound by the protective order. Unlike the  
19 State in *State ex rel. Thomas*, Defendants are bound by this Court’s Order and produced the  
20 confidential documents as part of the discovery process in this action. Therefore, Defendants  
21 are bound by the protective order and precluded from disclosing these confidential  
22 documents.

23           Defendants find themselves in a quandary. Defendant City of Glendale has  
24 already received two public records requests pertaining to confidential documents, and  
25 additional requests may be forthcoming. Of course, Defendants wish neither to violate state  
26 law regarding these public records requests, nor the Court’s applicable Order. Unless this  
27 Court orders the Defendant City of Glendale to disclose documents that might otherwise be  
28 responsive to Mr. Biscobing’s and Mr. Doudna’s Public Record Requests, the Defendant City

1 of Glendale will not be disclosing them in abidance with the Court’s Order.

2 **III. CONCLUSION**

3 Therefore, for the foregoing reasons, Defendants respectfully move this Court  
4 to rule on whether they must disclose confidential documents, in some form, pursuant to the  
5 aforementioned and any prospective public records requests.<sup>2</sup>

6 DATED this 20th day of September 2019.

7 JONES, SKELTON & HOCHULI, P.L.C.

8  
9 By /s/ Joseph J. Popolizio  
10 Joseph J. Popolizio  
11 Justin M. Ackerman  
12 40 North Central Avenue, Suite 2700  
13 Phoenix, Arizona 85004  
14 Attorneys for Defendants

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 20th day of September 2019, I caused the  
15 foregoing document to be filed electronically with the Clerk of Court through the  
16 CM/ECF System for filing; and served on counsel of record via the Court’s CM/ECF  
17 system.

18 I further certify that on 20th day of September 2019, I have mailed and  
19 emailed the forgoing documents to the following:

20 Marc J. Victor  
21 Jody L. Broaddus  
22 Attorneys for Freedom  
23 3185 South Price Road  
24 Chandler, Arizona 85248  
25 Marc@AttorneyForFreedom.com  
26 Jody@AttorneyForFreedom.com  
27 Attorneys for Plaintiffs

28 /s/ Melissa Ward

27 \_\_\_\_\_  
28 <sup>2</sup> Defendants note for clarity of the record that any potentially contemplated disclosure would contain necessary and appropriate redactions.