

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-018383

08/07/2025

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
P. McKinley
Deputy

EMILIE HENRICHSEN

KEVIN E O'MALLEY

v.

CITY OF CHANDLER, et al.

DAWN M GINGERICH

SHANNON L CLARK
MATTHEW E KELLEY
KIM MILES
MARIA T RACITI
JOSEPH I VIGIL
D&C MATERIALS-CSC
ELECTRONIC RECORD SERVICES
JUDGE WHITTEN

HEARING / ORAL ARGUMENT

****This Minute Entry contains a "Later"****

East Court Building – Courtroom 413

10:02 a.m. This is the time set for Oral Argument on *Defendant-Intervenor Phoenix Newspapers, Inc. 's Motion to Order Release of Redacted Chandler Police Report and Memorandum in Support*, filed July 29, 2025. Plaintiff Emilie Henrichsen is represented by Counsel Shannon L. Clark and Maria T. Raciti. Defendant City of Chandler is represented by Counsel Dawn M. Gingerich, who appears virtually. Intervenor Phoenix Newspapers, Inc., is represented by Counsel Matthew E. Kelley. Kim Miles, counsel for Defendant Maricopa County Office of the Medical Examiner, has waived her appearance today.

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A record of the proceedings is made digitally in lieu of a court reporter.

On the Court's own motion,

IT IS ORDERED sealing these proceedings, not to be opened or transcribed without further order of the Court.

The Court has received and reviewed the response and reply to Defendant-Intervenor's *Motion* which were delivered to this Division but were not filed with the Clerk of Court. Discussion is held as to the need to file under seal or redact the motion, response and reply.

The Court's Judicial Assistant received an email yesterday, August 6, 2025, from Plaintiff's counsel requesting additional redactions from the Chandler Police Report. Discussion is held regarding same.

The Court also received and reviewed copies of the Chandler Police Department Police Reports.

IT IS ORDERED directing the Clerk of the Court to seal the Chandler Police Department Police Reports, not to be opened without further order of the Court.

Oral argument is presented.

IT IS ORDERED taking under advisement *Defendant-Intervenor Phoenix Newspapers, Inc.'s Motion to Order Release of Redacted Chandler Police Report and Memorandum in Support*, filed July 29, 2025.

Defendant City of Chandler poses questions to the Court as the City's responsibilities and obligations with regard to responding to public records requests. Discussion is held.

Defendant City of Chandler further informs the Court that the search warrants are not sealed and discussion is held.

Discussion is held as to steps forward

11:03 a.m. Matter concludes.

FILED: Chandler Police Department Police Reports

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LATER:

The Court has reviewed Phoenix Newspapers, Inc.'s ("PNI") Motion to Order Release of the Redacted Chandler Police Report, filed, July 29, 2025. Following that filing, Plaintiff requested, and all parties agreed, that the response and reply be sent electronically directly to the Court.¹ The Court has also received and reviewed the response, delivered electronically on August 5, 2025 and Intervenor's reply, delivered electronically on August 6, 2025. The Court further benefited from oral argument on the motion on August 7, 2025.

This case requires a difficult balancing between two strong but competing interests: the strong right the public has in examining government records under Arizona's Public Records Law, and the profound privacy rights of a grieving mother.

PNI asks the Court to compel release of the City of Chandler's 55-page police report with only the City's limited redactions for personal identifying and medical information.

Plaintiff does not object to the release of the report for the most part, but seeks to redact two and a quarter pages² and one sentence³ that contain graphically detailed descriptions of the video capturing the final moments of Plaintiff's son's life.⁴

The Court has reviewed the entire police report *in camera*.⁵

¹ At the August 7, 2025 oral argument the Court indicated it would separately consider whether the response and reply brief should be filed under seal. PNI opposes the request.

² Det. Rietz' Supplemental Report, starting on the fourth page under "Surveillance Video," and continuing to the end of that section on page six of his supplemental report, just before the Section titled "(Redacted) Medical Treatment."

³ On the 49th page of the report in a "Probable Cause Addendum" - the last sentence of the third full paragraph – the paragraph that begins with "Video evidence shows ...".

⁴ Plaintiff added this sentence to her request for redaction informally, by an August 6, 2025 email to counsel and the Court. She is ordered to file a formal request to include this sentence in the information she seeks to protect from dissemination. Such pleading needn't be filed under seal, as it only references pages and lines of the reports and contains no other detail.

⁵ In order to create a good record, the entire report shall be filed under seal.

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Arizona's Public Records Law creates a presumption that public documents should be disclosed. Law enforcement records, including police reports, generally fall within that presumption.

However, this right of access is not absolute. Courts recognize that privacy concerns can outweigh the public's right to know when disclosure would cause specific and material harm. *Smith v. Town of Marana*, 254 Ariz. 393, 397 ¶ 12 (App. 2022). The balancing test is fact-specific: the proponent of non-disclosure must show a probability of harm that is significant enough to override the presumption of access.

Arizona courts have consistently recognized a family's right to prevent public release of graphic or intimate records involving a loved one's death. *Schoeneweis v. Hamner*, 223 Ariz. 169, 175–76 (App. 2009) (privacy interests must yield only to the extent necessary to inform the public of the government's investigation); *A.H. Belo Corp. v. Mesa Police Dep't*, 202 Ariz. 184, 188 (App. 2002).

PNI interprets *Schoeneweis* and *Belo* as favorable to its position in that both draw a distinction between the written descriptions of audio, video or photographic recordings and the actual recordings themselves. *Schoeneweis* found that the written description *may* not carry the same emotional impact as the recordings themselves and therefore *might* not warrant the same level of protection. Similarly, *Belo* suggested that written accounts of graphic content *may* be less intrusive than direct images or video. PNI's point is well taken – written words *can be* less impactful than images and sounds.

But the context here is quite different. The portions of the reports at issue in this case do not merely summarize or paraphrase a video recording, they offer a moment-by-moment written depiction of a video capturing a young child's death. In form, the material may be a written description, but in substance and effect, it functions as a surrogate for the video itself. The vivid and granular nature places it closer to the kind of graphic, emotionally disturbing material that *Schoeneweis* and *Belo* recognized may justifiably be shielded from public release.

PNI argues that the public cannot fully evaluate the police investigation and the County Attorney's decision not to file charges without seeing every portion of the report, including the contested portions. It contends that the public interest here is particularly strong because the investigation briefly involved a recommendation for criminal charges.

Plaintiff, by contrast, has agreed to release 53 of the 55 pages of the report, including detailed investigative findings and timelines. She only seeks to protect two pages that contain a real-time transcript of surveillance footage showing the moments leading to and during the drowning. Plaintiff argues that these pages add little, if any, information relevant to evaluating

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the government's actions, while posing severe and ongoing harm to her family's privacy and dignity.

The Court agrees with Plaintiff's position. The public can fully understand the scope of the investigation and the rationale for the County Attorney's decision through the unredacted 53 pages, which describe the events, timeline, witness accounts, and law enforcement conclusions. The transcript on the disputed sections are not necessary for public accountability. Its disclosure would serve no purpose other than satisfying morbid curiosity and, as Plaintiff persuasively argues, would risk exploitation by bad actors.

Under the balancing standard announced in *Smith* and *Schoeneweis*, Plaintiff has shown a probability of specific, material harm to her and her family that outweighs the negligible public interest in those particular portions of the report. The narrow redaction of those sections strikes an appropriate balance between transparency and human dignity.

ACCORDINGLY, IT IS ORDERED that PNI's Motion to Order Release of the Redacted Chandler Police Report is granted in part and denied in part. The City of Chandler shall release the 55-page police report, as previously redacted for personal identifiers and medical information, with the additional redactions of those portions described in footnotes 2 and 3 of this order.

IT IS FURTHER ORDERED that the parties meet and confer about which parts of the response and reply briefs can be filed under seal, consistent with this order. To the extent that they cannot agree, they shall contact the Court to set up an expediated manner for resolution of their disagreement.

IT IS FURTHER ORDERED that the Chandler Police Report submitted to this Court is to be filed under seal. The Clerk has done so on this day.

This ruling does not modify the Court's prior orders regarding non-dissemination of any other materials still under review or dispute.