

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RAYMOND J. CONROY, *Plaintiff/Appellant*,

v.

AMANDA BUNGER, et al., *Defendants/Appellees*.

No. 1 CA-CV 19-0060
FILED 1-14-2020

Appeal from the Superior Court in Maricopa County
No. LC2018-000419-001
The Honorable Rosa Mroz, Judge

AFFIRMED

COUNSEL

Raymond J. Conroy, San Luis
Plaintiff/Appellant

Tempe City Attorney's Office, Tempe
By Judith R. Baumann, Michael R. Niederbaumer, Sarah R. Anchors
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Chief Judge Peter B. Swann joined.

C A T T A N I, Judge:

¶1 Raymond J. Conroy appeals from the superior court’s dismissal of his public-records claim against the City of Tempe and its employee Amanda Bungler (collectively, the “City”). For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In October 2018, Conroy filed a statutory special action in superior court alleging that the City had wrongfully denied him access to public records. *See* A.R.S. § 39-121.02(A). According to the petition, Conroy, who is incarcerated, began requesting information from the City in mid-2018, and the City initially provided him some documents free of charge. He then requested information he alleged was available in the Tempe Police Department’s computer system, in particular, the purchase price of a specific make and model of radios and microphones installed in two specific police cars, along with the dates the equipment was installed. Conroy alleged that the City responded by “trying to charge [him] for documents” that he did not want and by refusing to compose “a simple one paragraph letter providing the requested information” free of charge.

¶3 The City moved to dismiss for failure to state a claim, noting that Conroy’s petition acknowledged the City’s offer to produce responsive public records, Conroy’s refusal to accept the records for a fee, and his insistence that the City instead compile and summarize the information for him. *See* Ariz. R. Civ. P. 12(b)(6). After full briefing, the superior court granted the motion and dismissed Conroy’s petition with prejudice.

¶4 Conroy timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶5 Dismissal under Arizona Rule of Civil Procedure 12(b)(6) for failure to state a claim is proper if, “assum[ing] the truth of all well-pleaded

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factual allegations and indulg[ing] all reasonable inferences from those facts,” the plaintiff nevertheless “would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶¶ 8–9 (2012) (citation omitted). We review de novo whether dismissal was warranted on this basis. *Id.* at 355, ¶ 7.

¶6 Arizona law requires that public records be open to inspection by any person. See A.R.S. § 39-121. To that end, “[a]ny person” may request to examine public records in person or may request that the custodian mail a copy of the public record, and the custodian must “promptly furnish such copies, printouts or photographs” as requested. A.R.S. § 39-121.01(D)(1). Subject to exceptions not implicated here, the custodian may charge a fee in advance for copying and postage charges. *Id.* The law “defines ‘public record’ broadly and creates a presumption requiring the disclosure of public documents.” *ACLU v. Ariz. Dep’t of Child Safety*, 240 Ariz. 142, 146, ¶ 9 (App. 2016). Nevertheless, the statutory obligation to search for and furnish public records upon request “do[es] not require [the public body] to tally or compile previously untallied and uncompiled information or data to respond to a public records request.” *Id.* at 148, ¶ 17 (citing *Judicial Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 400, ¶ 31 (App. 2011)).

¶7 Here, Conroy’s petition did not allege facts that show any public-records law violation. Conroy alleged that he requested information relating to radios and microphones installed in two specific police cars. The petition implicitly acknowledged that the City searched its records and gathered responsive documents, which the City offered to copy and provide to Conroy for an apparently nominal fee. And the City was statutorily authorized to require advance payment for copying and postage charges. See A.R.S. § 39-121.01(D)(1). Although Conroy suggests that the right to access records outweighs the minimal expense the City would incur by providing copies of the documents free of charge, he offers no authority exempting inmates (or indigent individuals) from the generally applicable rule that a public body may require the requesting party to pay for copying and mailing. Accordingly, the City’s requirement that Conroy pay for copies of the documents requested did not result in the wrongful denial of access to public records.

¶8 The alternative proposed in Conroy’s petition and reiterated on appeal—that the City should have compiled data from its computer system into a letter as a free alternative to producing existing records—is similarly unavailing. The City’s statutory obligation was to query its system to gather and offer responsive documents, not to research and

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compile data from those documents and create a new document summarizing that information for Conroy. *See ACLU*, 240 Ariz. at 148, 150, ¶¶ 17, 24; *see also Judicial Watch*, 228 Ariz. at 400, ¶ 31. Even as alleged in the petition, the City met its obligation under the public-records statute. Accordingly, the superior court did not err by dismissing Conroy's petition for failure to state a claim.

CONCLUSION

¶9 The judgment is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA