IN THE

SUPREME COURT OF THE STATE OF ARIZONA

MATTHEW ABRAHAM, PHD,
Plaintiff/Appellant,

v.

ARIZONA BOARD OF REGENTS, A LEGALLY ESTABLISHED AGENCY AND POLITICAL SUBDIVISION OF THE STATE OF ARIZONA,
Defendant/Appellee.

No. CV-25-0020-PR
Filed September 18, 2026

Appeal from the Superior Court in Pima County
The Honorable Wayne E. Yehling, Judge
No. C20214306
REVERSED AND REMANDED

Opinion of the Court of Appeals, Division Two
259 Ariz. 158 (App. 2025)
VACATED IN PART

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JUSTICE BOLICK authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER, VICE CHIEF JUSTICE LOPEZ and JUSTICES BEENE, MONTGOMERY, CRUZ, and BERCH (Retired)[1] joined.

JUSTICE BOLICK, Opinion of the Court:

¶1 In this opinion, we answer three important questions relating to Arizona's public records statutes. First, we affirm that a trial court must review de novo an agency's determination as to whether requested public records are statutorily exempt from disclosure, as well as the extent to which the exemption applies to specific disputed records. Second, we hold that where a public entity destroys a record after it is requested, that amounts to a denial of the public records request. Finally, we hold that although a requester must file a legal action to establish eligibility for an attorney fee award in a public records dispute, whether the requester has "substantially prevailed" encompasses results from the entirety of the dispute.

BACKGROUND

¶2 In 2017, Dr. Matthew Abraham ("Abraham"), a tenured English professor at the University of Arizona (the "University"), served as a member of the University's "Committee of Eleven," which is responsible for "evaluating shared governance structures and practices" at the University. During this time, Abraham raised concerns that his colleagues were not "following Proposition 107, an amendment to the Arizona state constitution that prohibits hiring someone for a position or admitting anyone to the University based primarily on the basis of their race, sex or gender."

[1] Justice Kathryn H. King is recused from this matter. Pursuant to article 6, section 3 of the Arizona Constitution, Justice Rebecca White Berch (Retired) of the Arizona Supreme Court was designated to sit in this matter.

¶3 After Abraham was rejected for certain program director positions, he submitted a series of public records requests to the University between November 2018 and September 2020 seeking information about "transparent appointment and hiring practices at the University." The requests fell into two primary categories: records concerning Qualtrics Survey data used in the hiring and appointment of certain University positions, and records relating to the search and selection processes for those positions.

¶4 The University produced some records in full, some with partial redactions, and some were withheld outright. For those withheld or redacted, the University cited concerns of confidentiality, privacy, or the best interests of the state. It also denied Abraham's request for an audio recording of an October 2019 Committee of Eleven meeting, again citing confidentiality. In correspondence with Abraham, the University indicated that it would use the recording for "transcription purposes only" to create the minutes of the meeting and that it would be "deleted shortly after." The University offered to let Abraham listen to the recording without obtaining a copy, but he declined to do so and again requested the recording.

¶5 On October 16, 2020, Abraham's counsel sent a consolidated demand letter to the Arizona Board of Regents ("ABOR"), reiterating and demanding that the University fully comply with Abraham's previous requests. Only after receipt of counsel's letter did the University reverse course, acknowledging internally that its prior instruction to withhold some records "was incorrect." On October 28, 2020, the University's General Counsel assured Abraham's counsel that the University would search for and produce the requested records.

¶6 On November 18, 2020, the University's General Counsel wrote to Abraham's counsel that the University had conducted a "diligent and thorough search" for the requested records, but noted that the October 2019 Committee of Eleven audio recording was "no longer available" while other records were still being "withheld or redacted." The University's General Counsel also stated that the University would continue to produce the requested records on a rolling basis. However, the University continued to withhold certain categories of documents, stating that releasing the names of all candidates for the position and their application materials was prohibited by the University's Human Resources policy and ABOR's policies.

¶7 On November 19, 2020, and again on February 17, 2021, Abraham's counsel wrote to the University's General Counsel to request that it comply fully with all previous requests. On February 26, 2021, the University's General Counsel wrote to Abraham's counsel, acknowledging receipt of the demand, defending the University's prior conduct, and asserting that the University would continue to conduct its own assessment of its statutory disclosure obligations.

¶8 In September 2021, Abraham filed a Special Action Complaint against ABOR under Arizona's Public Records Law, A.R.S. § 39-121.02(A). The complaint alleged ten counts and sought an order compelling ABOR to produce additional documents for each, along with a request for damages and attorney fees. It was not until November 29, 2021, that the University produced more than 1,700 pages of additional documents, including the Qualtrics Survey results and search committee records for the Interim and permanent Writing Program Director positions. Many of the newly disclosed documents were duplicates of each other.

¶9 ABOR moved to dismiss, arguing that some claims were time-barred and that it had fulfilled others by providing all available records. The motion also asserted that the request for audio recordings failed to state a claim because they no longer existed. It further contended that any claim for money damages was defective because Abraham had failed to serve a notice of claim under A.R.S. § 12-821.01 prior to filing suit.

¶10 The superior court dismissed counts two (relating to the recording) and six (relating to the Qualtrics Survey) for failure to state a claim, determining that no relief could be granted for nonexistent records and that ABOR had already fully satisfied the records request under the other count. Additionally, the court found that Abraham's failure to file a notice of claim was fatal to his request for any damages other than attorney fees under A.R.S. § 39-121.02.

¶11 Both parties thereafter moved for summary judgment on the remaining eight counts. After addressing the limitations period for each of the complaint's ten counts, the superior court summarily dismissed count one as time-barred and count eight for Abraham's failure to present substantial evidence that the "document may have existed."

¶12 The superior court proceeded to hold a three-day bench trial on the remaining claims, ultimately denying Abraham relief. The court found that Abraham had not established that the audio recording requested under count seven "currently exists or previously existed." It thus dismissed that count, along with count ten for being "duplicative of Counts Four and Nine."

¶13 The superior court divided the remaining counts into two groups: claims involving survey data related to various candidates for employment (counts three, four, and five), and claims involving documents related to searches for certain job positions (counts four and nine). Regarding the survey data, the trial court found that the University's public records team had "*eventually* provided . . . Plaintiff" nearly all the records that Abraham had requested and that the few documents withheld "for privacy reasons" were "not significantly at controversy in this matter."

¶14 The superior court found that although the University had initially "abused its discretion" before Abraham procured counsel and sent a demand letter, the University had thereafter "cured its impermissible actions" by providing documents. The court also found the University's record keepers had not abused their discretion in continuing to withhold or redact some of the public records Abraham sought. The court thus denied substantive relief on all remaining counts seeking disclosure of additional records.

¶15 Turning to the attorney fees request under A.R.S. § 39-121.02(B), the superior court noted that Abraham would be entitled to fees "only if he 'substantially prevailed' in any action brought under the Public Records Law." The court stated that it had "not ordered the release of any additional records" because of the complaint.

¶16 Abraham argued that the court "should consider Plaintiff's pre-litigation success in obtaining records initially refused to him," specifically the University's increased response after Abraham's counsel sent the demand letter. The superior court acknowledged that Abraham's October 2020 demand letter "was a crucial turning point in Plaintiff obtaining most of the records eventually provided to him," and found that if Abraham had "not engaged counsel, Defendant would have continued to abuse its discretion and succeeded in violating the Public Records Law." The court ruled, however, that it could only award fees under § 39-121.02(B)

if Abraham had prevailed in an "action," which must include some form of litigation.

¶17 The superior court held that it could "find no authority that would permit it to award attorney's fees under A.R.S. § 39-121.02(B), if, by the time an action was filed, the public body voluntarily provided all the public records it was required to provide, even though it had previously arbitrarily denied production of such public records and did not cooperate until the requestor was forced to retain an attorney." The court noted that such fees could conceivably be recovered as "damages under § 39-121.02(C)," but that such a claim would need to be preceded by "a notice of claim under A.R.S. § 12-821.01(A)." Because Abraham failed to file a notice of claim, the court denied his request for attorney fees.

¶18 On appeal, Abraham raised four arguments. First, he argued that the superior court improperly dismissed the count alleging that the University had improperly destroyed the audio recording of a meeting of the Committee of Eleven. *See Abraham v. Ariz. Bd. of Regents*, 259 Ariz. 158, 164 ¶¶ 12–13 (App. 2025). According to Abraham, before dismissing the claim, the superior court should have permitted him to obtain "the University's sworn testimony admitting the recording existed or, if it did not exist, how and why it was destroyed." *Id.* ¶ 13. The court of appeals rejected this position because, in the motion to dismiss context, "the trial court was required to accept as true the complaint's well-pled factual allegations," including that the "[U]niversity had engaged in the 'clandestine destruction' of the recording." *Id.* ¶ 14. Because Abraham "unambiguously pled that the recording had been destroyed," the court of appeals held that it could find "no authority allowing him to avoid dismissal simply to obtain confirmation of a fact he alleged." *Id.*

¶19 Second, Abraham argued that the ruling would leave him without a remedy for the recording's destruction. *Id.* ¶ 15. The court rejected that position because "Abraham could have brought a claim against ABOR under A.R.S. § 39-121.02(C)" had he filed a notice of claim. *Id.* But because Abraham did not file a notice of claim, the court affirmed the trial court's ruling that he was "ineligible for money damages." *Id.* ¶ 16.

¶20 Third, Abraham contended that the superior court had erroneously concluded that count one had been "filed beyond the one-year statute of limitations imposed by A.R.S. § 12-821." *Id.* at 164–65 ¶ 18. The

court rejected his argument, holding that prior cases "do[] not mean that all actions brought under the special-action rules are exempt from statutes of limitations." *Id.* at 165 ¶ 24. Further, the court stated that while case law established that "no time limits apply" to "seeking an appellate court's review of a trial-court decision," such rulings had "no bearing on the application of Section 12-821, which by its plain language, applies to '[a]ll actions' against public entities and employees." *Id.* (alteration in original) (citation omitted). After analyzing when Abraham's cause of action accrued, the court affirmed the superior court's determination that count one was time-barred. *Id.* at 165–66 ¶¶ 25–27.

¶21 Fourth, Abraham contended that the trial court erred by "reviewing the [U]niversity's responses to the records requests for an abuse of discretion" because it should have instead reviewed them de novo. *Id.* at 166 ¶ 28. The court of appeals held that Arizona case law imposes the following two-pronged analysis when an officer or public body seeks to withhold or redact public records based on confidentiality, privacy, or the best interest 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, the trial courts apply abuse-of-discretion review in evaluating the withholding and redaction decisions for specific documents." *Id.* at 169 ¶ 46 (citation modified).

¶22 Applying this new standard on the merits, the court of appeals held that ABOR had sufficiently explained its withholding of survey data as fitting within the "confidentiality" exception to disclosure. *Id.* at 170 ¶¶ 49–52. As for ABOR's "withholding and redacting" certain documents, the court of appeals concluded that it "acted within its discretion," because it had redacted "information that could identify the commenter on a survey." *Id.* ¶¶ 54, 56. And because "Abraham did not request an in-camera review," the court held that "second guessing" would be "especially inappropriate." *Id.* at 170–71 ¶ 56. Accordingly, the court of appeals affirmed the trial court's ruling that ABOR was not required to provide any documents or data that it had withheld or redacted.

¶23 Lastly, the court of appeals turned to Abraham's challenge to the trial court's denial of his request for attorney fees under § 39-121.02(B). The court held that § 39-121.02(B) "concerns only litigation—the 'action'—not efforts that occur before the action begins," thus concluding

that the "statutory context does not support interpreting 'substantially prevailed' by looking to a party's success in pre-litigation negotiations." *Id.* at 173 ¶¶ 71–72. Given this, the court concluded that the trial court properly denied Abraham's request for fees, and that ABOR was the "prevailing party on appeal," "entitled to an award of costs" upon compliance with Arizona Rule of Civil Appellate Procedure 21. *Id.* ¶ 75.

¶24 The legal standards applicable to public records requests are matters of statewide concern. We granted review on the following 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; and (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 requester hires counsel and files a complaint. We have jurisdiction pursuant to article 6, section 5(3) of the Arizona Constitution.

DISCUSSION

¶25 "In reviewing findings of fact and conclusions of law, we must recognize a trial court's findings of fact unless they are clearly erroneous." *Ariz. Bd. of Regents v. Phoenix Newspapers, Inc.*, 167 Ariz. 254, 257 (1991). However, "[w]e are not bound by the trial court's conclusions of law and are free to draw our own conclusions of law from the facts found by the trial court." *Id.* We consider legal rulings de novo. *Cox Ariz. Publ'ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993) (citing *Phoenix Newspapers, Inc.*, 167 Ariz. at 257).

¶26 This Court recently reiterated the principles that guide our determination of public records disputes in *Barry Goldwater Institute for Public Policy Research Center v. City of Phoenix* ("*Goldwater*"), 592 P.3d 764 (Ariz. 2026). "The purpose of Arizona's public records statute, § 39-121, is to open agency action to the light of public scrutiny." *Id.* at 770–71 ¶ 24 (quoting *Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 302 ¶ 21 (1998)) (citation modified). The public records laws exist so that citizens can be informed about what their government is doing. *Id.* "Accordingly, when a document qualifies as a public record, Arizona's 'public records law creates a strong presumption in favor of disclosure.'" *Id.* (quoting *Griffis v. Pinal Cnty.*, 215 Ariz. 1, 5 ¶ 12 (2007)); *accord Mathews v. Pyle*, 75 Ariz. 76, 81 (1952). The obligation of the public body is to

"promptly furnish" public records that are eligible for production. § 39-121.01(D)(1).

¶27 As will appear below, the provisions at issue here are a bit of a statutory marshland. In some instances, they lack clarity; in others, they do not seem to optimally promote the public records laws' objectives. Our role is not to try to improve the statutes, but to apply the words the Legislature adopted unless doing so leads to an absurd result. *See Hernandez v. Loarca*, 587 P.3d 1266, 1269 ¶ 11 (2026). Our interpretation takes into account the entire context of the overall statutory scheme. *State v. Ariz. Bd. of Regents*, 253 Ariz. 6, 11 ¶ 14 (2022) ("Context is a primary determinant of meaning.") (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012)).

¶28 We apply those interpretive principles below to each of the questions presented. We have changed the order of those questions to address first the standard of review, then the specific inquiry into whether a document that no longer exists constitutes a public record, and finally the matter of attorney fees.

I. STANDARD OF REVIEW

¶29 The court of appeals held that when a public body seeks to withhold or redact public records on the basis of confidentiality, privacy, or best interests of the state, the question of whether the entity has sufficiently identified a specific, legally sufficient harm is a legal question subject to de novo review by the trial court. *Abraham*, 259 Ariz. at 169 ¶ 46. But if the public body satisfies that standard, whether the entity has properly withheld or redacted specific documents is subject to abuse of discretion review by the trial court. *Id.* We disagree with the court of appeals' second determination and hold that whether a specific document is properly withheld or redacted is a legal question subject to review de novo.

¶30 We need not linger long on this issue because a similar question was presented in *Goldwater* in the context of the best interests of the state exception. We held the determination of whether a specific document is subject to redaction or nondisclosure is a legal determination that is subject to de novo review. *Goldwater*, 592 P.3d at 775 ¶ 45. Thus, the reviewing court should independently apply the balancing test set forth in *Carlson v. Pima County*, 141 Ariz. 487, 491 (1984), to determine whether the

risk of harm as to a specific document outweighs the presumption of disclosure.

¶31 A standard of review that defers to agency determinations, especially over whether a nondisclosure or redaction serves the best interests of the state, "would defeat the strong presumption of transparency and public access embodied in our public records statutes." *Goldwater*, 592 P.3d at 773 ¶ 39. Thus, this Court has consistently reviewed disclosure determinations as a question of law. *See Mathews*, 75 Ariz. at 81 ("The Governor should be given the authority to deny in the first instance the right of inspection . . . but under no circumstances should his determination be final. It rests within the jurisdiction of the courts of the state to determine these questions."); *Cox*, 175 Ariz. at 14 ("Whether the denial of access to public records is wrongful is an issue of law which we review de novo."); *Scottsdale*, 191 Ariz. at 300 ¶ 9 (applying de novo review to a disclosure determination). It was error for the superior court, affirmed by the court of appeals, to apply an abuse of discretion standard to the agency's individual disclosure determinations. But we note that trial courts, and the public entities seeking to prevent or limit disclosure, have broad latitude regarding in camera inspections by the trier of fact to ensure that the interests invoked by the public entity are protected. *Goldwater*, 592 P.3d at 775–76 ¶ 51.

II. RECORD DESTRUCTION AS A PUBLIC RECORD DENIAL

¶32 It is axiomatic that when a public agency destroys a record after receiving a public records request for it, the effect is to deny the request, for the requester will not have access to the record or the right to copy it under § 39-121.02(A). Indeed, post-request destruction of a document is the ultimate denial. The more salient questions are whether the denial is wrongful and whether a remedy exists.

¶33 The duty to maintain public records is clearly set forth in § 39-121.01(B)–(C), subject to the exception in subsection (C) for records disposed of in accordance with A.R.S. §§ 41-151.15 and 41-151.19, which is not at issue here. Subsection 41-151.15(C) directs that "[r]ecords may not be destroyed or otherwise disposed of by any agency of this state unless it is determined by the state library that the record has no further administrative, legal, fiscal, research or historical value." Here, Abraham requested the recording at issue and was informed he could listen to it but

not copy it. When Abraham declined this offer, the agency destroyed the recording, ostensibly pursuant to its retention policy.

¶34 That destruction of the recording seems an obvious violation of the statutes. All agree it was a public record. Abraham had a statutory right under § 39-121.01(D)(1) not only to listen to it but also to copy it. ABOR had an obligation to maintain it after receiving the request. Given that it was the subject of a public records request, it surely had further legal value, making its destruction improper under § 41-151.15(C). An agency's retention policy must yield to the statute. The destruction and concomitant failure to produce were therefore a wrongful denial of a public record.

¶35 The court of appeals ruled that Abraham was not entitled to a determination that the destruction was a denial of his public records request because he alleged that the record was destroyed, and in the context of a motion to dismiss, the court must accept those allegations as true. The court concluded that Abraham "has pointed to no authority allowing him to avoid dismissal simply to obtain confirmation of a fact he alleged." *Abraham*, 259 Ariz. at 164 ¶ 14.

¶36 We disagree and conclude that Abraham was entitled to adjudication of his allegation that the record was destroyed. A factual allegation, even if taken as true, is an order of magnitude different from a judicial determination that a requester's public record rights have been violated and that an agency violated its legal obligations. Moreover, the statute makes that judicial determination the predicate for a remedy. First, § 39-121.02(A) provides a right of appeal from denial of a public records request. Subsection (B) provides for attorney fees for any action if the person seeking records has substantially prevailed. Finally, subsection (C) provides that any person who is wrongfully denied access to public records has a cause of action for damages against the official or agency.

¶37 The court of appeals affirmed the trial court's dismissal of Abraham's damages claim because he failed to file the requisite notice of claim to seek damages against a public agency. *Abraham*, 259 Ariz. at 164 ¶ 16; *see* § 12-821.01(A) (setting forth notice of claims obligations). We do not understand Abraham to contend otherwise; hence, we agree with the court of appeals that Abraham has no remedy regarding the recording because it no longer exists and he failed to perfect his damages claim. Nonetheless, the trial court should not have dismissed

Abraham's claim for a judicial determination that ABOR violated its duties and Abraham's rights. Not only would such a ruling determine that ABOR violated its statutory obligations, but such determination is necessarily part of the calculus in determining whether Abraham substantially prevailed in the action for purposes of attorney fees (*see* Part III).

III. ATTORNEY FEES

¶38 The most difficult and contentious issue is whether Abraham is entitled to attorney fees because ABOR produced extensive records before the lawsuit commenced but only after he hired an attorney to pursue the matter. The key statutory language is in § 39-121.02(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." The parties disagree over whether records produced after the requester hires counsel but before a lawsuit is filed count toward whether a party has "substantially prevailed" for purposes of attorney fees. We conclude they do.

¶39 The court of appeals observed that the language of § 39-121.02(B), in isolation, does not necessarily limit "substantially prevail" to documents produced after litigation is filed. *Abraham*, 259 Ariz. at 172 ¶ 69. But a lawsuit is required, and the fees are necessarily limited to those "incurred" in the action.

¶40 Because we read statutes *in pari materia*—that is, in concert with other statutes addressing the same subject, *see, e.g.*, *S. Ariz. Home Builders Ass'n v. Town of Marana*, 254 Ariz. 281, 286–87 ¶ 31 (2023)—we conclude that fees "incurred in any action" pertains to a lawsuit in which the party has substantially prevailed. The Legislature defines *action* as "any matter or proceeding in a court, civil or criminal." § 1-215. As the court of appeals noted, not only does subsection 39-121.02(B) refer to an "action," but subsection (A) provides that the requester may pursue a special action, and subsection (C) provides a "cause of action" for damages. *Abraham*, 259 Ariz. at 173 ¶ 72. All plainly refer to legal action. None authorizes pre-litigation expenses, and Abraham cites no cases providing recovery for costs other than those incurred in an action in which the party has substantially prevailed.

¶41 But that does not resolve whether "substantially prevail" can refer back to documents obtained prior to litigation. The parties dispute

whether the lawsuit was the catalyst to produce documents or whether disclosure was already in progress. If the parties were actively contesting disclosure, it would seem that whether Abraham substantially prevailed should not depend on the magic moment when the lawsuit was filed. While the term "incurred in" is temporal in nature, "substantially prevailed" is not. Indeed, it is in the nature of litigation that important disputed issues can be resolved in advance of a lawsuit; and if so, that does not detract from a plaintiff's overall success.

¶42 We held precisely that in the context of § 39-121.02(B) in *ACLU of Arizona v. Arizona Department of Child Safety* ("*ACLU*"), 251 Ariz. 458, 461 ¶ 14 (2021). There we held that a party has substantially prevailed "if, after a comprehensive examination by the trial court, [the party] was more successful than not in obtaining the requested records, defeating the government's denial of access to public records, or securing other relief concerning issues that were contested *before litigation was initiated*." *Id.* (emphasis added). A contrary reading would frustrate the purposes of the public records laws by allowing a public entity to stonewall a request until just before a lawsuit is filed without financial penalty. Thus, the court should consider the requester's overall success, not merely any additional success that might accrue after the lawsuit is filed.

¶43 Once a trial court has concluded that the requester substantially prevailed, it has broad discretion in awarding attorney fees. *Id.* ¶ 11. At that point, the court should consider the extent to which the public entity delayed or resisted disclosure, and whether it promptly produced documents over which no serious or good faith dispute existed, among any other relevant factors.

¶44 Both parties contend *Paradigm DKD Group, LLC v. Pima County Assessor*, 246 Ariz. 429, 433–34 ¶ 12 (App. 2019), is instructive on the question of attorney fees. There, the requester filed a special action early in a public records dispute. *Id.* at 431–32 ¶ 3. Thereafter, the superior court expanded the scope of the public records request, and at some point, the assessor began cooperating with the requests. *Id.* at 432 ¶ 4, 434 ¶ 14. The trial court awarded attorney fees under § 39-121.02(B). *Id.* at 433 ¶ 10. The court of appeals vacated the order and remanded to the trial court, holding that it should consider the extent to which production exceeded the original request, and the point at which the assessor ceased acting as an adversary. *Id.* at 435 ¶ 18. Here, by contrast, the action was filed after a protracted

dispute between Abraham and ABOR, the original public records request was not expanded after the action was initiated, and ABOR did not abandon its adversarial role. Thus, although *Paradigm* is instructive in considering the adversarial posture of the public entity in awarding attorney fees, its holdings are otherwise inapplicable to the facts here.[2]

¶45 We recognize our reading of the statute may lead to results at odds with public records laws' goal of disclosure of public records. Public records laws are intended to be self-effectuating, so that recourse to litigation should in most cases be unnecessary. But no matter how contentious or costly the dispute over public records, and even if the requester hires counsel, attorney fees cannot be recovered unless litigation is commenced. Public entities lack a financial incentive to fully and promptly comply with public records requests absent the threat of attorney fees for incorrectly denying the request. Members of the public who cannot afford to file a lawsuit may be denied their right to inspect public records. But these concerns are for the Legislature to address, not the Court. We reiterate, however, that contested or delayed documents produced prior to the initiation of the lawsuit here will count toward whether Abraham has substantially prevailed.

CONCLUSION

¶46 To recap, a public agency has a duty to promptly disclose all public records that are not statutorily exempted. In the first instance, the public entity must determine whether exemptions to disclosure apply. Where a record is requested and destroyed while the parties are disputing the matter, the destruction amounts to denial of the request. A party seeking disclosure may seek to compel production or may seek damages if procedural prerequisites are satisfied. The trial court must review de novo both the public entity's conclusions regarding exemptions to disclosure, and whether specific documents satisfy those exemptions, always with a presumption of disclosure. The public entity may seek, and the trial court may conduct, an in camera review of contested documents. A requester that files a lawsuit may obtain attorney fees and costs incurred in that action if it substantially prevails on matters contested over the course of the dispute.

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[2] Our opinion in *Silverman v. Arizona Department of Economic Security*, 257 Ariz. 384 (2024), is inapplicable here because it dealt with a specific statutory exemption, A.R.S. § 46-460(D), that is not before us.

¶47 On remand, the trial court should consider de novo ABOR's legal justifications for withholding or redacting specific documents, reviewing documents in camera where necessary.

¶48 Abraham requests attorney fees here under § 39-121.02(B). As Abraham has not yet substantially prevailed, it is premature to rule on his request. After the trial court conducts its examination of specific documents, it may award attorney fees if it concludes that Abraham has substantially prevailed in this dispute, taking into account the important legal determinations on which he prevailed here. *See ACLU*, 251 Ariz. at 462 ¶ 16 (stating that "[s]ecuring a legal precedent may well be as important, if not more so, than the desired documents").

¶49 We therefore vacate paragraphs 28–62 of the court of appeals decision, reverse the trial court's judgment, and remand to it for further proceedings consistent with this opinion.