

MAR 18 2014



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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF ARIZONA

COUNTY OF MARICOPA

CV 2014-005959

GALLAGHER & KENNEDY, P.A.

No. _____

Plaintiff,

**COMPLAINT FOR STATUTORY
SPECIAL ACTION UNDER A.R.S. §
39-121.02(A)**

v.

AND

THE MARICOPA COUNTY COMMUNITY
COLLEGE DISTRICT, a political subdivision
of the State of Arizona; TERESA TONEY, in
her official capacity; LEE COMBS, in his
official capacity,

**APPLICATION FOR ORDER TO
SHOW CAUSE**

Defendants.

(Non-Classified Civil)

Plaintiff Gallagher & Kennedy, P.A. ("G&K") petitions for special action relief under A.R.S. § 39-121.02(A) and applies for an Order to Show Cause, alleging as follows:

PARTIES, JURISDICTION, AND VENUE

1. G&K is an Arizona Professional Association with its principal place of business in Phoenix, Arizona. G&K represents individual clients who have been affected by the actions of the Defendants as described below, some of whom have already served Notices of Claim on Defendant Maricopa County Community College District ("the District").

1 2. The District is a political subdivision of the State of Arizona and a “Public
2 body” as defined in A.R.S. § 39-121.01.

3 3. Defendant Teresa Toney is the Manager of the District’s Office of Public
4 Stewardship, and is sued in her official capacity.

5 4. Defendant Lee Combs is the District’s General Counsel, and is also sued in his
6 official capacity.

7 5. This Court has jurisdiction under A.R.S. § 12-2021 and Rules 1 through 4 of
8 the Arizona Rules of Procedure for Special Actions (“ARPSA”), and venue is proper in
9 Maricopa County under ARPSA 4(b).

10 **FACTS GIVING RISE TO THIS ACTION**

11 6. This action arises from Defendants’ complete failure to produce public records
12 as required under Arizona’s Public Records Law, A.R.S. § 39-121 *et seq.* The records in
13 question concern two data security breaches that occurred in 2011 and 2013, a matter of
14 widespread public concern which has already been the subject of substantial media coverage.

15 **The Breaches**

16 7. The District operates ten community colleges, two skill centers, and a number
17 of other education centers across Maricopa County. For decades, it has collected
18 confidential, personal identifying information (“PII”) from applicants and students, their
19 parents, and others. The PII provided to MCCCDC, to be held in strictest confidence,
20 includes names, addresses, telephone numbers, e-mail addresses, Social Security numbers,
21 dates of birth, demographic information, and other as-yet-unidentified “enrollment, academic
22 and financial information.”

23 8. In late November 2013, the District began sending form letters on a rolling
24 basis to approximately 2.5 million individuals, disclosing a security breach that had resulted in
25 the unauthorized access and disclosure of those persons’ PII (the “2013 Breach”).

26 9. The District’s notification letter was scant on details and carefully crafted to
27 mislead the recipients about the background of what had happened and give them a false
28 sense of security. But in a separate, contemporaneous letter to the Attorney(s) General of

1 one or more states, the District's counsel disclosed a few additional, damning details about
2 the background of the massive breach.

3 12. For example, the District's counsel disclosed that there had, in fact, been an
4 earlier security breach. Specifically, the Federal Bureau of Investigation had notified the
5 District in January 2011 that one or more of the District's databases were available for sale on
6 the Internet ("the 2011 Breach"). According to the District's counsel, the District
7 subsequently determined that employees had been involved in the incident, and
8 commissioned a report from third-party security consultants which identified significant
9 security vulnerabilities in the District's systems, but did not implement the necessary steps to
10 protect against future data breaches.

11 13. The District's counsel also disclosed that the District learned of the 2013
12 Breach in April 2013, seven months before it even began notifying victims. It was then that
13 the FBI informed the District that its databases were (again) for sale on the Internet. The
14 fourteen databases in question included names, addresses, telephone numbers, e-mail
15 addresses, Social Security numbers, dates of birth, demographic information, and other
16 "enrollment, academic and financial information" that the District has yet to specify.
17 According to the District's counsel, the District chose not to notify victims at the time, but
18 instead spent seven months engaged in attempted remediation which, among other things,
19 destroyed evidence regarding the sale and unauthorized access of the victims' PII.

20 14. Once the 2013 Breach was finally disclosed, it naturally received considerable
21 media attention as a matter of widespread public importance. Although the District
22 remained unwilling to disclose the truth about the events leading up to the 2013 Breach
23 (including, for example, the 2011 Breach and the expert report issued at that time), the
24 District did admit publicly that the 2013 Breach "was due to substandard performance of [the
25 District's] IT workers," and that the vulnerabilities that led to the 2013 Breach "resulted from
26 employee conduct that did not meet Maricopa's standards and expectations."

27 15. On December 30, 2013, G&K served the District with a Notice of Claim on
28 behalf of one of the victims of the 2013 Breach, both individually and as a representative of

1 the class of all similarly-situated persons. The District did not respond, and thus is deemed to
2 have denied the claim.

3 16. On January 30, 2014, G&K served the District with a Notice of Claim on
4 behalf of another victim of the 2013 Breach, both individually and as a representative of the
5 class of all similarly-situated persons. The District has not responded.

6 **The Public Records Requests**

7 17. On January 13, 2014, G&K served Defendants with two separate public
8 records requests under A.R.S. § 39-121. The first pertained to the 2013 Breach, and is
9 attached as Exhibit A (the “2011 Security Incident Public Records Request”). The second
10 pertained to the 2011 Breach, and is attached as Exhibit B (the “2013 Security Incident Public
11 Records Request”).

12 18. Defendants have a statutory duty to make public records available for
13 inspection during normal business hours, and to furnish copies of public records “promptly.”
14 A.R.S. § 39-121. G&K asked for access to (or production of) the records by February 14,
15 2014. Recognizing that the records might be voluminous, G&K offered Defendants the
16 option of producing documents on a rolling basis, rather than in a lump sum production. In
17 other words, G&K gave Defendants more than a month to begin providing access to (or
18 producing) its public records.

19 19. In addition to maintaining hard copy documents, each of the District’s colleges
20 and Skill Centers, along with its District Office, is required to maintain electronic records
21 systems capable of meeting 12 minimum standards for access, which include, among other
22 things, and “[c]apability to search for words or terms within headers and message or
23 document text” and the ability to “[p]ull records within a reasonable period of time after the
24 initiation of the search command.” See *MCCCD Public Records Request Handbook*.

25 20. G&K is also informed and believes that long before the 2013 Breach, the
26 District implemented a records retrieval program that included installing “software that will
27 establish a centralized approach for the search, retrieval and disclosure of records to be
28 conducted at the District level when public records requests, subpoenas, or warrants that

1 involve electronic communications have been presented to any Maricopa location as part of
2 litigation, grievance, investigation, or general records request.” See MCCCCD’s Office of
3 Public Stewardship’s *Records & Information Management Handbook*.

4 21. Thus, in addition to being able to make documents available for review during
5 business hours, Defendants have the ability to retrieve documents promptly, both in hard
6 copy and electronic form.

7 **Defendants’ Failure To Produce A Single Document**

8 22. To this day, nearly sixty days since being served with the public records
9 requests, Defendants have failed to provide access to, or produce, even a single responsive
10 document.

11 23. On February 19, 2014, the District, through its counsel, sent G&K a letter. In
12 it, the District did not even address, let alone respond to, the 2011 Security Incident Public
13 Records Request. As to the 2013 Security Incident Public Records Request, the Department
14 asserted broadly that “pending employment actions,” and the risk of providing hackers with a
15 “roadmap,” somehow justified denying G&K access to, or production of, every single public
16 record related to the 2013 Breach. The District did not identify any particular public record
17 or explain how the nature of such a record would justify withholding it. Meanwhile,
18 according to an article published in the Arizona Republic, even while stonewalling G&K,
19 Defendants have produced at least a few public records regarding the 2013 Breach to the
20 media. See Mary Beth Faller, *Costs of MCCCCD Computer Breach Escalate*, Ariz. Rep., Mar. 3,
21 2014 (commenting on letters from IT employees to Chancellor Rufus Glasper produced in
22 response to the newspaper’s public records request).

23 24. By letter dated March 7, 2014, G&K invited the District to reconsider its
24 position so as to avoid the necessity for litigation over the District’s obligation to produce
25 public records.

26 25. In response, the District, through its counsel, took the position that it was
27 working with “an e-discovery vendor” because of the volume of data involved “it will take
28 additional time for MCCCCD to complete the work necessary to facilitate the disclosure of

1 these materials.” Again, notwithstanding G&K’s offer to permit a rolling production, the
2 District refused to give access to, or produce, even a single document, and did not actually
3 commit to producing anything in the future, let alone promptly.

4 26. In short, as of the date of this Special Action, the defendants have failed to
5 provide access to, or produce, any public records requested in the 2011 or 2013 Security
6 Incident Public Records Requests.

7 **COUNT I**
8 **(Violation of A.R.S. §§ 39-121, *et seq.* - Failure to**
9 **Produce or Provide Access to Public Records)**

10 27. G&K incorporates the allegations in paragraphs 1 through 26 by reference.

11 28. Under Arizona’s Public Records Law, “public records” include “all records . . .
12 reasonably necessary or appropriate to maintain an accurate knowledge of . . . activities which
13 are supported by funds from the state or any political subdivision of the state.” A.R.S. § 39-
14 121.01(B). “Records” include “all books, papers, maps, photographs or other documentary
15 materials, regardless of physical form or characteristics, including prints or copies of such
16 items produced or reproduced on film or electronic media pursuant to section 41-1348, made
17 or received by any governmental agency in pursuance of law or in connection with the
18 transaction of public business and preserved or appropriate for preservation by the agency or
19 its legitimate successor as evidence of the organization, functions, policies, decisions,
20 procedures, operations or other activities of the government, or because of the informational
21 and historical value of data contained therein.” *Id.*

22 29. Defendants are obligated by law to make all public records “open to inspection
23 by any person at all times during office hours,” A.R.S. § 39-121, and any person may request
24 to examine public records “during regular office hours.”

25 30. Any person may also request to be furnished with “copies, printouts or
26 photographs” of any public records, and defendants are obligated by law to “promptly
27 furnish such copies, printouts or photographs.”

28 31. If a public agency withholds access to or copies of any public record, it is
obligated by law to “furnish an index of records or categories of records that have been

1 withheld and the reasons the records or categories of records have been withheld from the
2 requesting person.”

3 32. “Access to a public record is deemed denied if a custodian fails to promptly
4 respond to a request for production of a public record or fails to provide to the requesting
5 person an index of any record or categories of records that are withheld from production.”

6 33. All records requested in the 2011 and 2013 Security Incident Public Records
7 Requests are “public records” within the meaning of Arizona’s Public Records Law.

8 34. Defendants never responded at all to the 2011 Security Incident Public
9 Records request, and did not make any of the public records requested in either the 2011 or
10 2013 Security Incident requests (or any portions of such records) available for inspection, nor
11 furnish copies of any of the records. Nor did Defendants furnish an index of records or
12 categories of records that were being withheld, and the reasons why particular records or
13 categories of records were being withheld. Defendants are therefore deemed to have denied
14 the 2011 or 2013 Security Incident requests.

15 35. Defendants have violated A.R.S. §§ 39-121, *et seq.* by, among other things:
16 improperly failing to permit access to and inspection of public records; failing to provide
17 copies of public records; failing to furnish an index of records or categories of records that
18 have been withheld; and failing to furnish specific explanations as to why particular records
19 or categories of records have been withheld.

20 36. G&K has no equally plain, speedy, and adequate remedy at law from the
21 actions taken by Defendants. G&K will suffer irreparable injury and damage from these
22 ongoing violations of its rights and public breaches of law unless the requested relief to
23 enforce G&K’s statutory rights is granted.

24 37. The public has an acute interest in access to the Records, which concern
25 numerous reports, communications, investigative findings, and other records between and
26 among MCCCCD agents and employees or with third parties about the extent of MCCCCD’s
27 2011 and 2013 Security Incidents.


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A. Set an Order to Show Cause Hearing with a speedy return date ordering Defendants to appear and show cause why this Court should not grant the relief requested in this Complaint;

B. Order Defendants to promptly produce all requested public records; and

C. Such other and further relief as the Court deems appropriate.

GALLAGHER & KENNEDY, P.A.

ALLAGHER & KENNEL
: 
: _____
: _____

Paul L. Stoller
Mark A. Fuller
Jeffrey T. Pyburn
Kiersten A. Murphy
Christopher W. Thompson
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Plaintiff

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EXHIBIT A

**Custodian of Record**

- ☒ Office of Public Stewardship
☐ Media Relations at
☐ Admissions and Records (Enrollment Services) at
☐ Other (please specify):

Public Record Request Form

Email to OPS

Contact Information

Name: Paul Stoller Date: January 13, 2014
Mailing Address: Gallagher & Kennedy, P.A., 2575 E. Camelback Road, Suite 1100
City: Phoenix State: AZ Zip: 85016
Phone Number: 602-530-8220 FAX: 602-530-8500
Email Address: paul.stoller@gknet.com

Public Record(s) Requested

Please see attached letter (Exhibit "1") re 2011 Security Breach Incident.

Please check one of the following: Total Number of Pages/Sections: _____ # faxed pgs _____ Postage _____

- ☐ I want to view the public record(s) at MCCC at no cost.
☒ I want to purchase copies of the public record(s). Copied documents may be picked up or mailed upon receipt of payment. Paper copies are \$0.25 per page, fax transmittals are \$1.00 per page, copying large electronic reproduction of documents that already exist is \$15.00 for a USB Drive (i.e. Word, Excel, PDF, digital media files, etc.), charge for reproduction of audio or video files on a CD is \$3.00. Mailed documents are subject to postage fees. Requests for special reports or for commercial use will be assessed an appropriate value.

Indicate whether you are using the public record for a commercial or non-commercial purpose.

- ☐ Commercial* ☒ Personal ☐ Media

Commercial Purpose

ARS §39-121.03D—Commercial purpose includes any use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records to another for the purpose of solicitation or for any purpose where the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of the record. When a person requests copies of public records for commercial purposes, a statement setting forth the commercial purpose for which the copies will be used must be provided.

Commercial Purpose Statement

Notary verification is required only for commercial purposes.

Sworn (or affirmed) to before me this _____ day of _____ 20____.

My commission expires: _____

Notary's Signature _____

Payment—Make checks payable to MCCC. Information release is subject to check clearance.

Method of Payment: ☐ Check ☐ Cash ☐ Credit Card ☐ No Fee Check Number: _____ Total \$ _____

Credit Card Type: _____ Please deposit funds to: _____

For MCCC Use Only☐ Approved☐ Not Approved

Paid \$ _____

Paid Date _____

Please Note: Active public records are in various locations within the District. The District requests that a reasonable amount of time be allowed for responding to any request to copy or inspect records. The District may require additional time to process more difficult requests and if so, an estimated time frame will be provided to the requestor.

☐ 1Q ☐ 2Q ☐ 3Q ☐ 4Q ☐ Pending _____

Custodian of Record Signature _____

EXHIBIT 1



Paul L. Stoller
Attorney
Direct: (602) 530-8220
Email: paul.stoller@gknet.com

January 13, 2014

Maricopa Community College District
Attn: Custodian of Records
District Office, Office of Public Stewardship
2411 W. 14th Street
Tempe, AZ 85281

Re: Request for public records relating to 2011 data breaches of Maricopa County Community College District information technology systems and databases

Dear Custodian of Records:

Pursuant to Arizona's Public Records Law, A.R.S. §§ 39-121, *et seq.*, please produce any and all records (however stored or maintained) that relate or refer to the potential exposure in 2011 of certain personal information maintained by the Maricopa County Community College District's ("MCCCD") Information Technology systems described in the attached (as Exhibit A) November 27, 2013 letter from Wilson, Elser, Moskowitz, Edelman & Dicker, LLP ("Wilson Elser"), on behalf of the MCCCD, to the North Carolina Attorney General's Office as the "2011 Security Incident." As used in this request, the term "2011 Security Incident" means the data breach of MCCCD's databases in 2011 as described on page 2 (Section I.A.i.) of the Wilson Elser letter attached as Exhibit A.

This request is for any and all records and documents that relate or refer to the 2011 Security Incident and data breaches, including but not limited to what the data breaches are or were, their extent, how they happened, their cause or causes, any investigation(s) into the data breaches, the retention of any experts or third parties to assist in the investigation of the breaches, or the review and implementation of corrective measures, all findings or reports relating to the data breaches, and any communications within the MCCCD or with individuals or entities outside of the MCCCD relating to them.

The following categories are express examples of items included within this request but do not limit its scope as articulated above:

- (1) With respect to both public and executive session meetings, any and all MCCCD meeting agendas, minutes and materials containing items related to the 2011 Security Incident and data breaches (from 2011 to present).

- (2) Any and all documents, including but not limited to, correspondence, briefing materials, presentations, and reports reflecting MCCCCD's communications with the Arizona Auditor General with respect to the 2011 Security Incident.
- (3) Any and all documents, including but not limited to, correspondence, briefing materials, presentations, and reports reflecting MCCCCD's communications with the Higher Learning Commission with respect to the 2011 Security Incident.
- (4) Any and all documents, including but not limited to, correspondence, briefing materials, presentations, and reports reflecting MCCCCD's communications with the Federal Bureau of Investigation, and any state, local or federal law enforcement entity related to the 2011 Security Incident data breaches.
 - This request includes, but is not limited to, the April 29, 2013 communication from the FBI "inform[ing] MCCCCD that fourteen of its databases, which were located on MCCCCD web servers, were listed for sale on a website," as referenced at page 2 (Section I.A.ii) of the Wilson Elser letter attached as Exhibit A, the May 6, 2013 communication from the FBI referenced at page 3 (Section I.D.) of the same letter, and any other communications with the FBI relating to that subject;
 - This request includes, but is not limited to, any records related to MCCCCD's correspondence with the various state attorneys general regarding the data breaches, such as or similar to the Wilson Elser letter, sent on MCCCCD's behalf, attached as Exhibit A;
 - This request also includes, but is not limited to, any records related to MCCCCD's correspondence with consumer reporting agencies.
- (5) Any and all documents related to the investigation conducted by MCCCCD personnel of the 2011 Security Incident, including any and all investigation materials, and any reports, memoranda, communications, presentations, or suggested remedial steps.
- (6) Any and all documents related to MCCCCD's retention of Stach & Lui (now Bishop Fox), including:
 - The entire public procurement file related to MCCCCD's procurement of Stach & Lui's services (and all procurement files if there was more than one engagement);
 - MCCCCD's retention letter(s) and/or contract(s) with Stach & Lui;

January 13, 2014

Page 3

- (7) Any and all documents related to the investigation by Stach & Lui as referenced on page 2 (Section I.A.i.) of the Wilson Elser letter attached as Exhibit A, including any and all correspondence with Stach & Lui, its investigation materials, and any reports, presentations, or suggested remedial steps.
 - o This request includes, but is not limited to the report by Stach & Lui issued to "certain MCCCCD employees identifying significant securities vulnerabilities" as referenced at page 2 (Section I.A.ii) of the Wilson Elser letter attached as Exhibit A.
- (8) Any and all documents related to the implementation of the One Maricopa Network Enhancement ("OMNE") initiative as referenced at page 4 of the Wilson Elser letter attached as Exhibit A and its relation to the 2011 Security Incident.
- (9) Any and all documents relating to the Breach Response Team ("BRT") implemented "to assist the executive team in accomplishing action items related to the investigation" as referenced at page 4 of the Wilson Elser letter attached as Exhibit A, including documents relating to its creation or implement, actions, any actions or investigation undertaken by it, and any reports or conclusions relating to the 2011 Security Incident.
- (10) Any and all documents regarding remedial measures recommended to MCCCCD or taken by MCCCCD, including employment action, in response to the 2011 Security Incident.
- (11) Any and all documents reflecting communications regarding the 2011 Security Incident between, among, or with any MCCCCD employees, agents, intermediaries, and independent contractors, including communications between high-level management, the MCCCCD Board, MCCCCD IT employees, etc.
- (12) Any and all documents reflecting MCCCCD communications during the course of the internal investigations into the 2011 Security Incident, including any documents regarding which of MCCCCD's servers may have been compromised.
- (13) Any and all insurance policies MCCCCD has in place to cover its negligent retention and maintenance of its electronic information relating to the 2011 Security Incident.
- (14) Any and all public records requests received by MCCCCD seeking public records related to the 2011 Security Incident.

GK

January 13, 2014

Page 4

This request is for a non-commercial purpose. If you can provide copies of the records electronically, please send them via email to paul.stoller@gknet.com. We will pay reasonable costs of photocopying or reproducing the records, in accordance with Arizona law.

As you know, Arizona courts construe "public records" broadly in favor of public access to information and transparency in government. All public records are presumed open to public inspection, absent a specific statutory exemption to the contrary. The Arizona Attorney General's Office has specifically determined that any doubts about the scope of the public's right of access "should be resolved in favor of disclosure."

If you believe that any portion of the records sought is exempt from disclosure, the law requires that you segregate or redact those portions of the records and make the non-exempt records available for inspection and copying. If you believe that any of the records are not subject to inspection, please provide a privilege log, including a brief written explanation of the basis and authority for withholding the records, with citation to the appropriate statutory exception.

Recognizing that we are seeking what is potentially a large volume of materials, we request that you provide the documents on a rolling basis (rather than waiting to produce them until all categories have been gathered). Because Arizona's Public Records law requires that public bodies provide access to public records "promptly," please produce all of the requested records no later than February 14, 2014.

If you will be unable to meet this deadline, please contact us as soon as possible.

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Stoller", written over a horizontal line.

Paul L. Stoller

PLS:njk
Enclosure
3958132v1/99-8763

GK

EXHIBIT B

**Custodian of Record**

- ☒ Office of Public Stewardship
☐ Media Relations at
☐ Admissions and Records (Enrollment Services) at
☐ Other (please specify):

Public Record Request Form

Email to OPS

Contact Information

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Mailing Address: Gallagher & Kennedy, P.A., 2575 E. Camelback Road, Suite 1100
City: Phoenix State: AZ Zip: 85016
Phone Number: 602-530-8220 FAX: 602-530-8500
Email Address: paul.stoller@gknet.com

Public Record(s) Requested

Please see attached letter (Exhibit "1") re 2013 Security Breach Incident.

Please check one of the following: Total Number of Pages/Sections: _____ # faxed pgs _____ Postage _____

- ☐ I want to view the public record(s) at MCCCCD at no cost.
☒ I want to purchase copies of the public record(s). Copied documents may be picked up or mailed upon receipt of payment. Paper copies are \$0.25 per page, fax transmittals are \$1.00 per page, copying large electronic reproduction of documents that already exist is \$15.00 for a USB Drive (i.e. Word, Excel, PDF, digital media files, etc.), charge for reproduction of audio or video files on a CD is \$3.00. Mailed documents are subject to postage fees. Requests for special reports or for commercial use will be assessed an appropriate value.

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**ARS §39-121.03D—Commercial purpose includes any use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records to another for the purpose of solicitation or for any purpose where the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of the record. When a person requests copies of public records for commercial purposes, a statement setting forth the commercial purpose for which the copies will be used must be provided.*

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Notary verification is required only for commercial purposes.

Sworn (or affirmed) to before me this _____ day of _____ 20____.

My commission expires: _____

Notary's Signature _____

Payment—Make checks payable to MCCCCD. Information release is subject to check clearance.

Method of Payment: ☐ Check ☐ Cash ☐ Credit Card ☐ No Fee Check Number: _____ Total \$ _____

Credit Card Type: _____ Please deposit funds to: _____

For MCCCCD Use Only	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved	Paid \$ _____	Paid Date _____
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Please Note: Active public records are in various locations within the District. The District requests that a reasonable amount of time be allowed for responding to any request to copy or inspect records. The District may require additional time to process more difficult requests and if so, an estimated time frame will be provided to the requestor.

☐ 1Q ☐ 2Q ☐ 3Q ☐ 4Q ☐ Pending _____

Custodian of Record Signature _____

EXHIBIT 1



Paul L. Stoller
Attorney
Direct: (602) 530-8220
Email: paul.stoller@gknet.com

January 13, 2014

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2411 W. 14th Street
Tempe, AZ 85281

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This request is for any and all records and documents that relate or refer to the 2013 Security Incident and any other data breaches of the MCCCD information technology systems and databases, including but not limited to what the data breaches are or were, their extent, how they happened, their cause or causes, any investigation(s) into the data breaches, the retention of any experts or third parties to assist in the investigation of the breaches, or the review and implementation of corrective measures, all findings or reports relating to the data breaches, and any communications within the MCCCD or with individuals or entities outside of the MCCCD relating to them.

The following categories are express examples of items included within this request but do not limit its scope as articulated above:

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- (2) Any and all documents, including but not limited to, correspondence, briefing materials, presentations, and reports reflecting MCCCCD's communications with the Arizona Auditor General with respect to the 2013 Security Incident and any other data breaches.
- (3) Any and all documents, including but not limited to, correspondence, briefing materials, presentations, and reports reflecting MCCCCD's communications with the Higher Learning Commission with respect to the 2013 Security Incident and any other data breaches.
- (4) Any and all documents, including but not limited to, correspondence, briefing materials, presentations, and reports reflecting MCCCCD's communications with the Federal Bureau of Investigation, and any state, local or federal law enforcement entity related to the 2013 Security Incident and any other data breaches.
 - This request includes, but is not limited to, the April 29, 2013 communication from the FBI "inform[ing] MCCCCD that fourteen of its databases, which were located on MCCCCD web servers, were listed for sale on a website," as referenced at page 2 (Section I.A.ii) of the Wilson Elser letter attached as Exhibit A, the May 6, 2013 communication from the FBI referenced at page 3 (Section I.D.) of the Wilson Elser letter, and any other communications with the FBI relating to that subject;
 - This request includes, but is not limited to, any records related to MCCCCD's correspondence with the various state attorneys general regarding the data breaches, such as or similar to the Wilson Elser letter, sent on MCCCCD's behalf, attached as Exhibit A;
 - This request also includes, but is not limited to, any records related to MCCCCD's correspondence with consumer reporting agencies.
- (5) Any and all documents related to the investigation conducted by MCCCCD personnel of the 2013 Security Incident and any other data breach, including any and all investigation materials, and any reports, memoranda, communications, presentations, or suggested remedial steps.
- (6) Any and all documents related to MCCCCD's retention of Wilson Elser with respect to the 2013 Security Incident and any other data breaches, including:
 - The entire procurement file related to MCCCCD's procurement of Wilson Elser's services (and, all procurement files if there was more than one engagement);

- MCCCCD's retention letter(s) and/or contract(s) with Wilson Elser;
 - Any and all billing statements, invoices and correspondence re same.
- (7) Any and all documents related to any investigation conducted by Wilson Elser relating to the 2013 Security Incident and any other data breaches, including any and all correspondence relating to such investigation, its investigation materials, and any reports, presentations, or suggested remedial steps.
- (8) Any and all documents related to MCCCCD's retention of Kroll Advisory Services ("Kroll"), including:
- The entire procurement file related to MCCCCD's procurement of Kroll's services (and, all procurement files if there was more than one engagement, e.g., for forensic investigation and separately for consumer protection/monitoring services);
 - MCCCCD's retention letter(s) with Kroll;
 - Any and all billing statements, invoices, and correspondence re same.
- (9) Any and all documents related to Kroll's investigations into "the District and Colleges' web servers" and MCCCCD "employee conduct" related to the data breaches as referenced at page 2 (Section I.A.ii) of the Wilson Elser letter attached as Exhibit A and/or "to forensically review the District and Colleges' servers, analyze the information obtained, and reach a determination with respect to what data, if any, was exposed" as referenced at page 4 (Section I.D.) of the Wilson Elser letter attached as Exhibit A;
- This request includes, but is not limited to, documentation and correspondence regarding both the 2011 Security Incident and 2013 Security Incident as described in the Wilson Elser letter attached as Exhibit A, including interviews of current and former District IT employees, interviews of outside security consultants, and any other investigatory materials;
 - Kroll's final and any intermediate reports regarding its independent investigation concluded on October 18, 2013, including the November 19, 2013 report issued by Kroll (referenced at page 2 [Section I.B.] of the Wilson Elser letter attached as Exhibit A) and any and all documents related to Kroll's report and findings (including any documents regarding the data breaches and possible data exfiltration).

(10) Any and all documents related to Kroll's provision of "continuous credit monitoring and identity theft consultation and restoration," including, but not limited to:

- The entire procurement file related to MCCCCD's selection of Kroll as the vendor to provide credit monitoring and identify theft protection services;
- The financial terms between MCCCCD and Kroll for credit monitoring and identify theft protection services; any and all documents reflecting the negotiation of same; and the overall anticipated cost to MCCCCD for provision of Kroll's credit monitoring and identity theft protection services;
- Any documents, materials, information or access provided to Kroll regarding the subjects of the 2011 Security Incident, the 2013 Security Incident, and any other data breach (*i.e.* the employees, students, MCCCCD vendors whose information may have been impermissibly accessed);
- Documents reflecting the number of persons who have inquired into and/or subscribed to Kroll's credit monitoring and identity theft protection services to date (whether by list of individuals, number of individuals, invoices to MCCCCD, etc.);
- Any communications, reports or notes between MCCCCD and Kroll, or to/from Kroll, regarding calls to Kroll's service line (or emails, letters, etc.), including questions by consumers and issues related to the data breaches.

(11) Any and all documents related to MCCCCD's retention of Eagle Creek, as referenced at page 4 (Section I.D.) of the Wilson Elser letter attached as Exhibit A, including:

- The entire procurement file related to MCCCCD's procurement of Eagle Creek's services (and all procurement files if there was more than one engagement);
- MCCCCD's retention letter(s) and/or contract(s) with Eagle Creek;
- Any and all billing statements, invoices, and correspondence re same;
- Any Eagle Creek reports, investigation materials, presentations, communications, or recommendations.

- (12) Any and all documents related to the implementation of the One Maricopa Network Enhancement ("OMNE") initiative, as referenced at page 4 of the Wilson Elser letter attached as Exhibit A, and its relation to the 2013 Security Incident and any other data breaches.
- (13) Any and all documents relating to the Breach Response Team ("BRT") implemented "to assist the executive team in accomplishing action items related to the investigation," as referenced at page 4 of the Wilson Elser letter attached as Exhibit A, including documents relating to its creation, formation, or implementation, its purpose, the appointment and compensation of its members, any actions or investigation undertaken by it, documents reflecting its meetings (agendas, meeting materials, minutes, etc.), and any findings, reports or conclusions relating to the 2013 Security Incident and any other data breaches.
- (14) Any and all documents regarding remedial measures recommended to MCCCCD or taken by MCCCCD, including employment action, in response to the 2013 Security Incident and any other data breaches.
- (15) Any and all documents reflecting communications regarding the 2013 Security Incident and any other data breaches between, among, or with any MCCCCD employees, agents, intermediaries, and independent contractors, including communications between high-level management, the MCCCCD Board, MCCCCD IT employees, etc.
- (16) Any and all documents reflecting MCCCCD communications during the course of the any internal investigations relating to the 2013 Security Incident and any other data breaches, including any documents regarding which of MCCCCD's servers may have been compromised.
- (17) Any and all documents related to any other college CIOs and information technology professionals enlisted to consult with or make recommendations to MCCCCD regarding the data breaches, including the names, payment terms, scope of requested consultation, and resulting reports and recommendations for each such professional.
- (18) Any and all drafts and versions of data breach notification letters sent to consumers, a sample of which is attached to Exhibit B.
- (19) Any and all insurance policies MCCCCD has in place to cover its negligent retention and maintenance of its electronic information relating to the 2013 Security Incident and any other data breaches.

- (20) Any and all Notices of Claim received by the MCCCCD with respect to the 2013 Security Incident and any other data breaches.
- (21) Any and all public records requests received by MCCCCD seeking public records related to the 2013 Security Incident and any other data breaches.
- (22) Any and all documents that relate to data sharing of student, parental, and vendor information among any and all Arizona Community College Districts including, without limitation, policies, guidelines, and agreements.
- (23) Any and all documents that relate to MCCCCD's transfer and/or sale of student, parental, and vendor information to any and all third-parties including, without limitation, governmental and commercial entities.
- (24) Any and all documents relating to policies, protocols, guidelines, internal controls, and/or forms of contract or agreement of MCCCCD or its constituent institutions that relate to the gathering, maintenance, and protections of, and limitations of access to, the personal information of students, student parents, and vendors for any and all individuals affected by the 2013 Security Incident. This includes but is not limited to forms of privacy policies, protocols, and guidelines disseminated by MCCCCD as well as by any agencies or entities that regulate or oversee MCCCCD, and any enrollment or application forms and contracts that address the treatment of personal information by MCCCCD.
- (25) Any and all documents relating to any incidents of unauthorized access to MCCCCD information systems occurring prior to January 1, 2012.

This request is for a non-commercial purpose. If you can provide copies of the records electronically, please send them via email to paul.stoller@gknet.com. We will pay reasonable costs of photocopying or reproducing the records, in accordance with Arizona law.

As you know, Arizona courts construe "public records" broadly in favor of public access to information and transparency in government. All public records are presumed open to public inspection, absent a specific statutory exemption to the contrary. The Arizona Attorney General's Office has specifically determined that any doubts about the scope of the public's right of access "should be resolved in favor of disclosure."

If you believe that any portion of the records sought is exempt from disclosure, the law requires that you segregate or redact those portions of the records and make the non-exempt records available for inspection and copying. If you believe that any of the records are not subject to inspection, please provide a privilege log, including a brief written explanation of the

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basis and authority for withholding the records, with citation to the appropriate statutory exception.

Recognizing that we are seeking what is potentially a large volume of materials, we request that you provide the documents on a rolling basis (rather than waiting to produce them until all categories have been gathered). Because Arizona's Public Records law requires that public bodies provide access to public records "promptly," please produce all of the requested records no later than February 14, 2014.

If you will be unable to meet this deadline, please contact us as soon as possible.

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Stoller". The signature is fluid and cursive, with the first name "Paul" and last name "Stoller" clearly distinguishable.

Paul L. Stoller

PLS:njk

Enclosures

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GK