

1 **Final agency action regarding decision below:**

2  
3 **ALJFIN ALJ Decision final by statute**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 JOHN and DEBORAH SELLERS

8 Petitioners,

9 vs.

10 THE CROSSINGS AT WILLOW CREEK

11 Respondent.

**No. 08F-H078005-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

12  
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14  
15 **HEARING:** December 3, 2007

16 **APPEARANCES:** John Sellers on his own behalf; Deborah Sellers on her own  
17 behalf<sup>1</sup>

18 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

19  
20 **Procedural Background**

21 The Crossings at Willow Creek ("Association") filed a Motion for Summary  
22 Judgment and John and Deborah Sellers ("Petitioners") filed a Response to the Motion.  
23 Respondent filed a Reply. At the commencement of the hearing, the parties stipulated  
24 to the facts and relied on their written submissions for their legal arguments  
25 supplemented by additional oral argument made in closing in support of their respective  
26 position.

27 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

28 1. Petitioners submitted a request for documents with the Association on  
29 August 16, 2007 requesting copies of certain records of the Association.  
30

<sup>1</sup> Mrs. Sellers deferred to the presentation made by her husband in support of her case.



1 charge a fee for making copies of not more than fifteen cents  
2 per page.

3 B. Books and records kept by or on behalf of the association  
4 and the board may be withheld from disclosure to the extent  
5 that the portion withheld relates to any of the following:

6 \* \* \*

7 4. Personal, health or financial records of an individual member  
8 of the association, an individual employee of the association or  
9 an individual employee of a contractor for the association,  
10 including records of the association directly related to the  
11 personal, health or financial information about an individual  
12 member of the association, an individual employee of the  
13 association or an individual employee of a contractor for the  
14 association.

15 4. Petitioners maintained that the Association did not comply with the  
16 abovementioned statute and has not provided all of the documents they have requested  
17 within ten business days of the request for documents. In contrast, the Association  
18 maintained that it has complied with the statute and did not disclose one document in an  
19 unredacted form because the document falls within the exclusion provided in A.R.S. §  
20 33-1805(B)(4) in that names and addresses of lot owners who receive communication  
21 from the Association regarding violations of the Association documents constitutes  
22 “personal information” that should not be disclosed. The Association also argued that it  
23 does not have an obligation to enforce the violations of the Association documents but  
24 may do so in its discretion.

25 5. The parties, by analogy, referred to public records law and both addressed  
26 the balancing test applied by the courts between the need of the person seeking  
27 information in contrast to a person’s right to privacy. The Association asserted that  
28 under the Arizona Constitution and cases cited in its Motion for Summary Judgment, the  
29 document is excluded from disclosure because it contains information of a personal  
30 nature.

6. The Administrative Law Judge concludes that none of the authorities cited  
by the parties are directly on point.

7. The Association’s relied on *Chantiles v. Lake Forest II Master  
Homeowner’s Assoc.*, 37 Cal. App. 4<sup>th</sup> 914(1995) wherein a director of an association  
requested ballots from a recent election. In *Chantiles*, although the director relied upon  
a California statute providing a director with a right to inspect and copy records support

1 of the request for ballots, the Court held that the privacy rights under the California  
2 constitution outweighed the inspection rights under the statute.

3  
4 8. The powers and duties of administrative agencies such as the Office of  
5 Administrative Hearings are limited to those granted by statute and do not have any  
6 common law or inherent powers. *Ayala v. Hill*, 136 Ariz. 88, 664 P. 2d 238 (App. 1983).  
7 *Chantiles* is distinguishable from the instant matter because jurisdiction of the Office of  
8 Administrative Hearings over homeowner association matters is limited in cases such  
9 as the instant one and the Administrative Law Judge can only determine whether the  
10 Association violated provisions of the planned community documents, i.e. Articles of  
11 Incorporation, Bylaws, Covenants Conditions and Restrictions or has violated A.R.S.  
12 Title 33, Chapter 9 or 16. See A.R.S. §§ 41-2198 and 41-2198.01(B). The Office of  
13 Administrative Hearings has limited jurisdiction. This Tribunal lacks the authority to  
14 determine alleged violations of A.R.S. Title 10 and cannot consider the provisions of the  
15 Arizona Constitution or any other legal authority, other than A.R.S. § 33-1805, cited in  
16 the Petition.

17 9. The Administrative Law Judge concludes that, based on the language set  
18 forth in A.R.S. § 33-1805(B), it is evident the Arizona Legislature intended to include as  
19 an exclusion to disclosure records that contain personal information of an individual  
20 member other than those that contain financial or health information of the member. The  
21 legislative history of A.R.S. § 33-1805 relied upon by Petitioners does not shed any light  
22 on whether the Arizona Legislature intended to keep information such as that being  
23 sought by Petitioner as being subject to disclosure or subject to remain confidential.

24 10. The term personal is not defined in A.R.S. § 33-1805. Personal is defined  
25 as “[o]f or relating to a particular person.” WEBSTER’S II NEW RIVERSIDE UNIVERSITY  
26 DICTIONARY 877(1994). In interpreting A.R.S. § 33-1805 and the terms used therein  
27 including personal information, one must look at it in the context of what is being  
28 regulated. According to the Association, the fact that in subsection B of the statute it  
29 states that what is not subject to disclosure are personal records of an individual  
30 member of the association with the focus being on an individual member’s privacy

1 rights. However, the Association fails to recognize that when an individual who moves  
2 into a development that has a homeowner's association, that person enters into a  
3 contract with the association and agrees to be bound by the Association's Declaration of  
4 Covenants, Conditions and Restrictions.

5 11. A function of a homeowner's association is enforcement of its Declaration  
6 of Covenants, Conditions and Restrictions, By-laws and Rules. In the instant  
7 proceeding, the Association asserts that it is not mandatory but discretionary. For  
8 purposes of deciding this matter, the Administrative law Judge concludes that such  
9 distinction does not matter.

10 12. According to the Association's Compliance Policy with respect to the  
11 Association's governing documents ( Articles of Incorporation, By-Laws, declaration of  
12 Covenants, Conditions, and Restrictions, Rules and Regulations) the identity of the  
13 person who observed a violation is made known to the alleged offending lot owner in  
14 the First Notice of Non-Compliance that is issued by the Association. If the  
15 Administrative Law Judge were to adopt the Association's position then if an association  
16 member files a complaint against another member, the complaining party would not be  
17 able to determine if the association had taken any action against the offending lot owner  
18 based on the "personal" exclusion it relies on in A.R.S. §33-1805(B)(4).

19 13. The identity of a lot owner within a homeowner's association is public  
20 information that is available through various public entities. There is no basis in law for  
21 concluding that a violation of Association's governing documents is confidential  
22 information because it is personal. By analogy, civil and criminal cases involving  
23 alleged violations of law, including administrative proceedings, unless specifically  
24 identified as confidential by statute, are public proceedings.

25 14. The Administrative Law Judge concludes that certain information such as  
26 when a member will be away from his home, social security numbers, birth dates, and  
27 sensitive information such that a reasonable person would expect such information to  
28 remain confidential would fall within the classification of personal records that would not  
29 be subject to disclosure. Consequently, the Administrative Law Judge finds that an  
30 association member should be able to inspect homeowner's association documents

1 reflecting the business of the association, including citations or notices of violations,  
2 which are not of such a personal nature so as to remain confidential.

3 15. The Administrative Law Judge concludes that the document that was not  
4 produced by the Association in an unredacted form, which was viewed *in camera* by the  
5 Administrative Law Judge, is the type of information that does not fall within the  
6 classification of personal records of an individual and was subject to disclosure upon  
7 request.

8 16. The weight of the evidence of record established that the Association  
9 submitted in redacted form one document and the document production was not within  
10 ten business days of Petitioners' request . Further, the Association did not provide an  
11 unredacted copy of the document to Petitioners. Petitioners proved by a  
12 preponderance of the evidence that the Association failed to fulfill Petitioners' request  
13 within ten business days of the request and violated the provisions of A.R.S. § 33-  
14 1805(A).

15 17. Petitioners are the prevailing party and are entitled to their filing fee of  
16 \$550.00 pursuant to A.R.S. § 41-2198.02.

17 **ORDER**

18 **IT IS ORDERED** that the Association is to provide to Petitioners within forty days  
19 of the date of this Order an unredacted copy of the Courtesy Notice dated July 12, 2007  
20 that it did not provide to Petitioners in response to the August 16, 2007 records request;  
21 and

22 **IT IS FURTHER ORDERED** that the Association is to reimburse Petitioners their  
23 filing fee of \$550.00 within forty days of the date of this Order.<sup>2</sup>

24 Done this day, December 13, 2007.

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27 \_\_\_\_\_  
28 Lewis D. Kowal  
29 Administrative Law Judge  
30

<sup>2</sup> Pursuant to A.R.S. § 41-2198.04 A, this Order is the final administrative decision and is not subject to a request for rehearing. It is enforceable through contempt of court proceedings. A.R.S. § 41-2198.02 B.

1 Original transmitted by mail this  
2 \_\_\_\_\_ day of \_\_\_\_\_, 2007, to:

3  
4 Department of Fire Building and Life Safety - H/C  
5 Robert Barger, Director  
6 ATTN: Debra Blake  
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18 By \_\_\_\_\_  
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