

Post-Dispatch gets pay records from city offices

Ruling may suggest that all the records could be obtained from payroll department

A fantastic new opinion issued by the St. Louis Circuit Court will bear watching by all of us over the next few months. Joe Martineau and others in his firm of Lewis, Rice in St. Louis, on behalf of the *St. Louis Post-Dispatch*, obtained this opinion in connection with the paper's request for access to public records data in an unusual set of circumstances.

(A *Post-Dispatch* story about this case is on page 17.)

The Information Technology Services Agency of the City of St. Louis originally was sued by the city collector of revenue and the circuit attorney's office in connection with the agency's work to maintain databases, including the ones for the city's payroll for a number of its city offices.

Back in January 2011, the *Post-Dispatch* sent a letter requesting payroll records for certain city employees, which were housed in several separate city of-

ices. It discovered that several of these offices, specifically in this case the city attorney's office, claimed they were not the "custodian" of that information.



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But, at the same time, the ITS agency also claimed it was not the custodian of that information — that the city attorney's office, for example, was the custodian. In brief, we had two city agencies attempting to claim neither was the place the data being sought was being "retained," as the sunshine law requires.

The court found that the payroll department for the city receives information for each payroll and then requests the ITS agency to process the data. Eventually, ITS agency sends the data to the city treasurer, where the payroll funds are paid.

First, the court addressed whether the paper was entitled to obtain the payroll record information from the

agency or whether it had to request those records from each of the governmental bodies for which the employees work. The court held that the agency clearly "retains" those records and was the proper entity from which the paper could request the data.

The second question that was not specifically directed in the opinion, but which may be inferred from this holding, is an issue of the fees charged. The fees charged by the agency were significantly cheaper than the fees that would have been charged had the paper been required to obtain this information from the various individual city offices.

When the court issued this ruling, it made it clear that there is an opportunity to perhaps do an "end run" around the issue of sizeable fees from one department if the requester for the data can locate another agency that "retains" the information and from which it could be obtained in a cheaper fashion.

In short, this opinion could open some doors for access, particularly in places where the data may be spread throughout several offices. With electronic record-keeping becoming the norm for most, if not all, governmental entities, this decision is a good building-block for those pursuing electronic access.

Now, I must warn that this decision is not final at the moment. There is the possibility it may be appealed, and if so, I believe the decision by the Court of Appeals as to this issue would be very important to our organization. We'll keep our eye on this and keep you informed!