

Publishing public records and the right to privacy

Editor's note: *Jean Maneke's column was submitted prior to the June 24, announcement of the U.S. Supreme Court's decision on *Dobbs v. Jackson Women's Health Organization* case. While it could not be updated in time for printing, the questions Maneke discusses in the final paragraphs are likely to be debated for some time.*

We sit at the moment in the abyss of uncertainty over change. The moment between a bill passing in the Missouri legislature and then knowing whether it will be signed by the Governor, ignored by the Governor or, at times, vetoed by the Governor. It's hard to give good legal advice during such times.

One of those change situations involves an issue that has long been a concern for reporters in the state. Early in my career representing Missouri Press Association, I remember Jeff Schrag, publisher of the *Springfield Daily Events*, butting heads with Springfield City Utilities over publication of its list of new customers, both business and residential, including their addresses.

It was 1995, nearly 30 years ago, and the City didn't want to release that information, so it sued for a court determination, arguing, "[the City Utilities board] maintains a wide variety of records containing information on its customers including, without limitation, the following: names, addresses, phone numbers, social security numbers, dates of birth, places of employment, payment history, utility usage, credit histories, bank account information, information on when the customer will be at home so that indoor meters can be read, information on gaining access to houses so that meters can be read, records of conversations with customers, forwarding addresses, and names, addresses, and phone numbers of customers' relatives. Many, if not most, customers consider this

information confidential."

The *Daily Events* certainly didn't intend to publish all of that information. But one finds it amazing that the city was retaining such information in its records. That was back in the days when folks would leave their back doors open for utility workers to walk into the house and proceed to the basement to read the meter in an empty house in Springfield. No, I'm not kidding!

Long story short, the *Daily Events* agreed that it would only publish information about new business customers and new residential customers who consented to release of their data. The trial judge entered an order that these limited records were public, yet that decision left confusion as to whether other data held by City Utilities was closed or open, so an appeal went to the Southern District Court of Appeals for Missouri.

The Appellate Court's decision contains amazing nuances today, given what is potentially happening in the U.S. Supreme Court. The Court of Appeals found that residential customers' names and addresses were not private information unless the customer had specifically requested it be kept private. "If a residential customer has an expectation of privacy in his or her name and address — a question we need not and do not decide — that customer may request that this name and address not be revealed under the judgment as amended," the Appellate Court opinion stated.

Recently, municipally-owned utilities in this state made an effort to get all records of customer names, addresses and usage information closed under provisions in Chapter 610.

Bills passed by the Missouri legislature in this last session would add a new exception to Section 610.021 closing "Individually identifiable customer usage and billing records for customers of a municipally owned

utility unless the records are requested by the customer or authorized for release by the customer, except that a municipally owned utility shall make available to the public the customer's name, billing address, location of service, and dates of service provided for any commercial service account." Two bills containing such language are sitting on Governor Mike Parson's desk waiting either for his signature or for the calendar to hit August 28, 2022, when they will become law. There has been no indication at the moment that he will choose to veto either of these bills.

But ... All of us are waiting for the U.S. Supreme Court to decide *Dobbs v. Jackson Women's Health Organization*. How would the abortion-focused decision impact state law on utility information? Well, the *Dobbs* decision is very likely to address an individual's right to privacy. Constitutional lawyers are pondering to what degree the well-developed individual right to privacy will be impacted by a decision overturning a woman's right to an abortion, which has as its foundation a personal right to privacy.

This is not just a Missouri issue. Late in June, an article crossed my desk about citizens in Central Oregon upset their local water district would not disclose the names of the district's largest water users. The extended drought in the Western United States brought the issue of use into focus for this community. A local judge in that community found residents who are water users had no right to protect their addresses from public disclosure.

So many angles to think about.



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