

Just to read a record shouldn't cost money

Decision could have huge impact on access

I was in court a couple of weeks ago arguing a sunshine law case for a non-media client. As I worked on the argument, I worried about what the future holds for the sunshine law if we are unsuccessful in convincing our judge as to what we believe the right decision should be.

The case relates to the St. Louis Metropolitan Police Department. It has computerized its accident reports and, I assume, its incident reports. If you want to see an accident report, you must identify what record you want and pay for a copy to be made. They then print out the copy and charge you for it.

There are no paper copies available to look at — to “inspect,” in sunshine law terms — in order to decide which reports you might want to pay to have copied. And there is no public computer terminal to review them, like the courts make available at courthouses to look for court files and docket sheets.

Why are there no paper copies, and why is there no computer terminal available? Because, the police department says, it cannot afford to provide these to the public. Therefore, they argue, when the sunshine law talks about your right to “inspect and copy” records, those two terms go together. You can only “inspect” the record if you can afford to copy it.

This doesn't work for my client, who inspects a lot of records and is very interested in accident reports. My client wants to see all of the reports, choose the ones she wants and pay for copies of those specific records. Paying for copies of every accident report in St. Louis quickly becomes cost-prohibitive.

If the St. Louis Police Department

wins this argument, all of us will be losers. If you then want to read the minutes of a city council meeting, you could have to pay for a copy to read them. If you want to see your town's financial report, you could have to pay for a copy just to read it.

If I want to see a liquor control department filing, I may have to pay for a copy of it (I remember going in and just asking to inspect the record so I could make a few notes about what a filing needed to say, but not needing a copy to take back to the office with me).

If you are a low-income person who wants to know about your city government, you might not be able to find out anything, because if you cannot pay for a copy, access to government information could be denied to you. Your access to government could depend on how much you can afford to pay.

The fundamentals of government in the United States have never been based upon the cost of freedom and access. Closing records is based upon certain criteria that relates to a proper basis to prohibit access, and the sunshine law says those restrictions are to be “strictly construed.”

The inability to pay for access to records is not — and never has been — a reason to deny access to public records to individuals.

The police department argues that printing all these copies of the accident reports, and taking time to review them to redact anything that is closed, is going to cost them time and money. But these reports are computerized. A bit of programming would allow the police to



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limit what is made public to the fields of data that are specifically designated as open under the sunshine law. Then they could simply push a “print” button, all the records would be printed and the staff person assigned to this job could be on to other tasks.

We aren't talking about a person standing over a photocopy machine using white-out on individual records to redact information, then hand-photocopying every accident report.

What an affront to the intent of the sunshine law their position on this issue is!

The basic policy of the sunshine law, as you know, is that records of public bodies are open. It doesn't say that they are open to only those with pockets deep enough to cover the government's record-making cost.

Your Press Association filed for amicus status at the circuit court level in this matter.

We are waiting for a decision in this case. That decision will impact both those seeking access to records and those producing records for us.

If this court holds that government agencies need to produce records only for those paying for them, I expect there will be a huge shift in the policies of public bodies in Missouri.

I'll keep you posted on this one! Either way the decision goes, I won't be surprised if this isn't just the beginning of this argument.

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