

# Electronic public records caught in technical limbo

## *Agencies' computers won't play with ours*

**M**issouri Press Association has tried to get a Sunshine Law provision to require that electronic public records be kept in a format that can be handled with common computer programs. It's not been a proposal that was readily accepted by public bodies.

It's not that public bodies are trying to hide data. Rather, it's a result of the corner that public bodies have boxed themselves into in their efforts to modernize their systems. As we all moved into the computer age, public bodies looked for ways to work with the large number of public records they manage. They needed a method to allow them computerized access to the data they held to make their access to and use of it easier and quicker.

And businesses have jumped to fill that need. Hundreds of companies have invested time and energy in creating programs that they could sell to your county officials, your city officials, your state officials – all public bodies with money to spend and needs to meet. Those programs were highly proprietary. These companies needed to be able to recoup their investment in these programs, so they signed the public bodies to long-term contracts.

**T**hey ensured that the data, in its raw form created by a backup, was not generally adaptable to use in any other program without a significant translation process. It was to their benefit for these customers to face a huge disincentive in any effort to take their data elsewhere.

Of course, that worked to a disadvantage to the public. When someone wanted a copy of the public record

data for use, they were required to pay the computer company a fee for the process of manipulating the data into a format they could use in any other data program, Microsoft Excel for example.

If your newspaper just wanted to see some of the data, you might suffice by getting printouts of the data and working by a hand comparison of the numbers. But if you were involved in a computerized reporting project, the cost of having the data downloaded and manipulated into a useable format was a sizeable hurdle.

**A**nd, of course, enterprising people realized the value of the data. They began requesting copies in order to generate information databases. They knew some people would pay a slight premium to get the data quickly and easily from them rather than dealing with paper records or paying for the public body to create a digital databank for them.

So, the businesses that created the software programs for public bodies don't want the law changed. Public bodies don't want the law changed because it would require them to buy new programs or new forms of programs in order to meet this basic requirement that the public should have ready access to public information.

Other national groups support the effort to standardize digital records, including Sunlight Labs, a part of the Sunlight Foundation in Washington, D.C. It is a non-profit, non-partisan organization focused on digitization of government data to make it more easily accessible.

Even the courts are doing their part.

Several states now have cases on the books where courts have ruled that metadata in public records is open to the public, most recently a supreme court decision issued in Arizona.

Key to the courts' decisions has been principles including that metadata authenticates the record and may reveal fraud. Indeed, an earlier case from the D.C. Circuit noted that a paper record may not be a complete copy of an electronic record due to information it may not disclose that is evident in the electronic record.

Courts have turned away arguments from public bodies that producing metadata will take significantly longer time, noting that the transfer of electronic data is generally quicker and easier than standing in front of a photocopy machine to make copies in response to a request. At the same time, courts have been

open to arguments that some portions of public records may contain confidential information and that there are times the data must be sorted so as to protect some private data (such as credit card information) from disclosure.

The day is coming when we will see public record data easily available in commonly used formats, either because legislatures have changed the law or because courts have mandated that such data be readily available.

Meanwhile, please ask your candidates leading up to the November election for their position on access to public records. Ask them if they would support a Sunshine Law amendment guaranteeing that right. Ask them if they would support language in the Sunshine Law giving an incentive for public bodies to know and honor the language in the law.

They need to clearly understand how important this right of access is to you, and to their constituents.

Thanks for all you do in supporting our efforts on this front, and in Jefferson City!



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