

# Ariz. Supreme Court rules electronic data is public record

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In a major public-records victory, the Arizona Supreme Court ruled Thursday that government agencies must release hidden data embedded in electronic documents that provides greater insight into the actions of government agencies.

The court found that electronic records are no different than paper records and must be released to the public in their native form. The Arizona ruling is among the first appellate-court decisions to address the question and could set a precedent on public-records laws nationally.

"I think this goes a long way toward accessibility and openness," said Caroline Pilch, an attorney for Phoenix police Sgt. David Lake, who sued the city to obtain the electronic records.

Metadata is embedded in electronic records and can reveal such information as who authored a report, when it was written and how it was revised. The data also can include a code of other information that would not be listed on printed records but can be used to reveal trends.

Newspaper reports have used the data to reveal that banks in Atlanta were rejecting loans for Blacks at a higher rate than Whites and that predatory teachers in Florida were protected by a system that allowed them to move from school to school, according to a brief filed by Stephen K. Doig, an Arizona State University journalism professor.

"It would be illogical, and contrary to the policy of openness underlying the public-records law, to conclude that public entities can withhold information embedded in an electronic document, such as the date of creation, while they would be required to produce the same information if it were written manually on a paper public record," Justice W. Scott Bales wrote in the unanimous ruling.

The decision overturns a 2-1 Arizona Court of Appeals ruling that found metadata is not a public record.

As the result of Thursday's unanimous ruling, Lake will now learn whether documents were created and backdated to justify his failure to pass a probationary period as a sergeant in 2005, Pilch said.

Lake was demoted to officer but eventually promoted to sergeant a year ago, she said. The delayed promotion potentially could have cost Lake thousands of dollars in pay.

"When you strip it all away, however a record is kept, that's the public record," said Dan Barr, an attorney for the First Amendment Coalition, which filed a friend-of-the-court brief in support of Pilch's position.

"The law doesn't change as technology changes. The application of the law is the same," he said.

City Attorney Gary Verburg said the ruling updates an old statute and recognizes that technology has changed how people communicate.

He said Phoenix thought it had complied with Lake's public-records request by providing a print copy and didn't want to go through the extra work of retrieving electronic records.

"It wasn't like we were trying to hide anything," Verburg said.

David Bodney, an attorney for The Arizona Republic, said the ruling should allow reporters or anyone else to obtain public records on a compact disc much faster and for a fraction of the cost of printed documents.

He said Phoenix has refused to hand over electronic documents and the ruling should overturn that policy.

"It should allow reporters to maintain their watchdog role and allow the public to stay informed in an electronic age," Bodney said.

In the future, computer technicians may be required to redact such personal information as Social Security numbers that are exempt from the public-records law, he said.

The ruling also recognizes that even public records can be withheld if the state can make a case that privacy, confidentiality or the best interests of the state outweigh disclosure.

That provision would allow municipalities to reject requests that are overly broad and burdensome, Verburg said.

<http://www.azcentral.com/arizonarepublic/local/articles/2009/10/30/20091030metadata1030.html>