The permanency of paper public records

Just before Thanksgiving, the Eastern District Court of Appeals for Missouri issued a new Sunshine Law opinion that clarified an important issue for those who seek public records – if a record no longer exists in paper form, does that mean a public body can claim it has no need to "recreate" it when a request comes in.

Without a doubt this decision benefits from, and rests upon, the fact that so many records today are generated by and retained in computer data format. Very few records today are generated only on paper. And that's the beauty of this decision.

A St. Louis resident sought certain records related to law enforcement traffic stops which are required by state statute (Section 590.650, R.S.Mo.) to be created and reported to the Missouri Attorney General's office, in its effort to review and assess if law enforcement offices are overly focused on race in terms of stops made by its officers.

In this case, both St. Louis County and Webster Groves were reporting this data to the Regional Justice Information Services Commission (REJIS). REJIS retained this data for a two-year period for St. Louis County and could generate those reports for the resident. Those reports were generated and produced on behalf of St. Louis County.

Webster Groves, however, was in the practice of receiving monthly reports of its data from REJIS in paper form, and then it did not retain those reports on an ongoing basis. (However, that didn't mean REJIS didn't retain the data contained in the reports in its data system.)

But Webster Groves told the citizen that because it didn't have the paper report copies, it was not obligated to produce the information in response to a Sunshine request. This would require it to "create a record not presently in existence," the City claimed, citing a case from 2005 where the Western District Court of Appeals in the state had held that a public body is not required to generate a new report derived from raw data held by a public body that it does not generally create.

But that argument ignored the fact that the Sunshine Law provides that a public body retains control over data turned over to a third party under an agreement with that third party. Specifically, the Court pointed out that a public body is required by provisions in the Sunshine Law to "retain" a record prepared for it by a professional service at its request. Therefore, the Court said, this is not "creating a wholly new, custom report not typically prepared."

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But, at the same time, the majority opinion said that just because REJIS might have in its database the information as to the police officer's identification number did not mean the report it generated had to include that information, because it was not required to be reported under Section 590.650, cited above.

This was exactly the holding the Court had earlier issued under another case decided in 2005 by the Eastern District appellate court where it said that not everything contained in a police incident report had to be made public because the statute defining such a report limited it to "date, time, place, name of victim and immediate facts and circumstances" of the incident and did not state that the victim's address was part of that public report.

That was the majority opinion issued by the Court. But don't stop there. There's a very interesting dissent included with this opinion that will catch your eye. Judge Thomas C. Albus, writing alone in this dissent, notes that the data collected by REJIS is data provided by the public body and that the report REJIS generates for Webster Groves admittedly does include individual officer identification numbers, so if the requester were getting the report he requested, the report Webster Groves receives each month from REJIS, he would be receiving that information.

One critical factor in this dissenting judge's analysis of the case was that the requester here sought "raw data" and that data was in fact available within the database from which the information was sought. But the court noted that the requester asked only for data kept according to Section 590.650. Did that mean that he couldn't have the additional information that was in the data base?

Because officer identification numbers were tracked so trends in law enforcement stops could be analyzed on a racial basis, and because Section 610.010 includes as a "public record" any record retained by a public body, this dissenting judge believes the language in Section 610.010 overrides Section 590.650.

This is not necessarily the "last stop" for this case. It is conceivable the Missouri Supreme Court will find it coming for consideration. This is a case to watch-more may come! But it's exciting to know that there's a holding that a public body cannot necessarily destroy public access by simply destroying a paper record.

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