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Access to records had a bad month

State, federal decisions uphold access limits

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The right of access to public records has received some significant battering in the last month or so, both in Missouri and on a national level.

Recently, the Western District Court of Appeals in Kansas City handed down a long-awaited opinion regarding to what extent the courts must make their computerized data available to the public. Many of you use Case.Net regularly to seek information about particular cases in circuit courts in Missouri.

In addition to what is available to you on the internet, cases are entered into the court's data system under a variety of categories, meaning that theoretically it would be possible to access a list of all cases by, for example, case type. You and I cannot now sort and pull cases based on this criteria under Case.Net.

Instead, the court's own rules limit access to this data bank to only four categories: Case Number, File Date, Party Name and Calendar Date.

Kennedy F. Jones, a Jackson County resident, wanted to access this data according to case type. His attorney argued to the Court that the information was public and that on that basis, the Court should be ordered to produce this data listing in the format requested.

He presented evidence to the trial court that it was indeed both technically and economically feasible to provide these records in the format he requested and that the Court's failure to do this was a violation of the Sunshine law.

The Court of Appeals acknowledged that it was possible to provide the access that the plaintiff sought because this information was indeed available. But, the Supreme Court's rules have restricted access to court records "except on a case by case basis ..."

"Nothing in the Sunshine Law requires the Circuit Court to make the information contained in these electronic case records retrievable by any search method requested.

"Likewise, nothing in the Sunshine Law requires the Circuit Court to make the information available in a format other than that in which it exists," the Appellate Court said.

In short, Mr. Jones lost. And so have you and I. The beauty of computerizing records is that it allows manipulation of data. Access via computerization is of limited value when one must still gather data elements case by case.

While the Court's ruling may be technically correct, it pierces to the heart the mandate in the Sunshine Law that the state's public policy is grounded in a liberal slant that records of public bodies be open to the public.

In other news, last month the U.S. Supreme Court issued a much-awaited opinion on the right of the public (and the media) to access death-scene photographs held by the government.

A Freedom of Information request was filed seeking the photographs of Vincent Foster, Jr.,'s body. The government claimed that these photographs were exempt from disclosure under the exception for records or information compiled for law enforcement purposes if the release of the photos could be seen as an unwarranted invasion of personal privacy.

The Supreme Court had already ruled that a person could assert a privacy interest that would prohibit disclosure under 5 U.S.C. Section 552, Exemption 7(C). The case of National Archives v. Favish, however, involved the issue of whether this right could extend to the family of Foster. If it did, then the court had to weigh whether

that privacy claim was outweighed by the public interest in disclosure.

Lower court rulings on this matter had concluded that the privacy interests of the Foster family outweighed the public interest in disclosure. The plaintiff who was seeking disclosure argued that the exemption covered only a personal privacy interest and that it belonged to Foster, not to his family.

But the Supreme Court said that was too narrow an interpretation. The family seeks "to be shielded by the exemption to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility, not for the sake of the deceased," the Court said.

T his was not to say that the rights of family members were equal to the rights of a private individual. Rather, the court focused its attention on the traditional rights of family members to control disposition of the body of a deceased family member.

"Family members have a personal stake in ...objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rights and respect they seek to accord to the deceased person ..."

T he Court noted also a common law right of privacy dating back to the 19th Century in this country and a long-standing history of opinions of lower courts allowing exemptions to disclosure where the sensitivities of family members would be affected by the public disclosure of certain information relating to a deceased family member.

Then, addressing the balancing test contained in exemption 7(c) in cases where personal privacy is an issue, the Court noted that a citizen must show a significant public interest is sought to be advanced and that access to the information is likely to do that.

The Court stated that "Exemption 7(c)'s public interest requirement is that the information is necessary to show the investigative agency or other responsible officials acted negligently or otherwise improperly in the performance of their duties," setting a clear standard or test for when the public interest may rise to overcome this personal privacy right. "Only when the FOIA requester has produced evidence sufficient to satisfy this standard will there exist a counterweight on the FOIA scale for the court to balance against the cognizable privacy interests in the requested records."