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Four opinions in 2003 provide guidance

'Redaction' an important open records tool

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Periodically, our state's attorney general, Jay Nixon, opines on the Sunshine Law. While his opinion doesn't carry the weight of the courts, these opinions are helpful in offering guidance to public officials regarding the interpretation of the law in terms of access to public records.

Four opinions dealt with Sunshine Law and related issues in 2003. One dealt with juvenile records; another with quasi-public bodies and access to records in the hands of a consultant. A third dealt with access to election registration records. The last dealt with release of the addresses of members of not-for-profit corporations.

The earliest opinion arose from the request from Warrensburg Mayor Mike Rich regarding handling of identifiable information in records of juvenile court proceedings. The mayor asked the AG's office to interpret the relationship between the provisions of Chapter 610, the Sunshine Law, with the provisions in Chapter 211 on juvenile records.

In particular, the mayor sought a clarification as to release of arrest and incident reports containing identifiable information on juveniles.

The AG's office clarified first that it spoke only in terms of records from juvenile court proceedings, as opposed to, say, police or sheriff's records. In looking at the provisions of Chapter 610 that mandate openness in arrest and incident reports, and Chapter 211, which closes records regarding the identity of juveniles, the AG's opinion concluded that if a record otherwise should be open under Chapter 610, then the agency must redact all identifying information regarding juveniles and make the balance of the report public.

It acknowledged that in making these redactions more than just the identity of the juvenile might have to be redacted to fully protect the juvenile's identity.

The important part of this opinion for us is the clarification of the AG's office of the duty of REDACTING information from an otherwise open report.

In short, if an incident report contains the name of juvenile witnessses, only that portion of the report that contains identifiable information concerning the juvenile can be closed. The balance must remain open.

Further, if a report is released containing the name of a juvenile, remember that the provisions of Chapter 211 apply only to juveniles under the supervision of the court and not to the public at large.

T he second opinion relating to records access focused on names and addresses of members of not-for-profit corporations collected pursuant to Chapter 355. Those names and numbers are to be made available to permit members to communicate with each other prior to the annual meeting and to permit members to identify other members.

Sen. John Russell (District 33), wrote to ask the Attorney General if any federal privacy law conflicted with the state law requiring disclosure of those records. The AG's office looked particularly at 5 U.S.C. Section 552a, which it noted applied to agencies that maintain information.

Because the information kept by the state did not fall within the records identified in the federal law, the AG's opinion was that the federal law did not prohibit disclosure under state law of the information when the state collects.

In November, two decisions were issued by the AG's office on the same date, both of some significance to MPA members. The first, issued at the request of Sen. Chuck Gross, looked at election laws, in particular at the

voter registration list in an electronic format.

Two questions arose in this context: First, whether the election authority should provide electronic access, and second, whether the paper's request would constitute use for "commercial purposes" prohibited by Section 115.158. It is important to note here that this statute excludes from "commercial purposes" a use of the list for campaign purposes, for candidate purposes or for "ballot measures," all of which mean that those involved in elections and campaign mailing have a right to this data.

The St. Louis Post-Dispatch, the entity seeking access, had affirmed in a letter that the use was for the newsroom and not for the advertising department. Therefore, the AG opinion concluded that this clearly was not for commercial purposes and that the list must be made available. In this context, it noted that any penalty for commercial use attached to the user and not to the election authority for its release of the list.

Further, the opinion pointed out that there was precedent in its opinions for the fact that the list must be made available in an electronic format if it was so available.

Finally, on that same date, the Attorney General's Office released an opinion at the request of Sen. John Loudon. I detailed this opinion in my column that ran in December, so I will not dwell on it again.

Suffice it to say that the opinion concluded that a citizens advisory committee appointed by the city to make recommendations about the city's land use plan was subject to the Sunshine Law and had to keep minutes and a record of its votes. Further, if a record was created for presentation to a public governmental body by a consultant, then that was a public record and must be produced upon request.

All of these 2003 opinions are available from the AG's web page at ago.state .mo.us/opinions/opinions.htm.