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Custodian of records needs to get request

One explanation for jump in libel insurance cost

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The Western District Court of Appeals issued a Sunshine Law decision in February that contains some important instructions about the request that is made of a public body for access to public records. Clearly, getting the request into the hands of the custodian is a critical issue in these matters.

A citizen sued the Village of Jackson in Randolph County, claiming the city violated the Sunshine Law for failing to provide him with information regarding its ownership of certain real estate.

He claimed a purposeful violation and asked for a civil fine and his attorneys fees. The Village moved to dismiss the suit. After the matter was dismissed in circuit court, the citizen filed the appeal. The citizen's business sat on property once owned by a railroad, which the city had claimed to now own. When the citizen's attorney asked for proof of the Village's ownership, the village responded asking for a copy of the citizen's lease and the legal description for the land.

In the meantime, the Attorney General's office had intervened, asking the Village about the request and the Village claimed it told the Attorney General's office that it was waiting for additional information before responding. After the citizen got no response, he filed suit against the Village.

The appeals court carefully sets out in its opinion that when you claim a governmental entity has refused to respond to a request in connection with Section 610.023, you must allege the request was made, that the request was received by the custodian of records and that the custodian did not respond within three business days of receiving the request.

The court notes that the letter requesting access to the Village's records requested "proof of ownership of property that is leased" by the citizen and the court found that language sufficient to constitute a request for information. The word "request" was studied by the court, which noted that the Sunshine Law does not define what a "request" involves. The court notes that the statute specifically does not require the request to be in writing, a note that will be helpful in future cases.

The court comments that the words used in making the request must be words that a reasonable person would understand as being a request. That, plus the liberal interpretation required for Sunshine Law matters, meant that the request was sufficient.

However, the court noted that the request must be clear enough that a "reasonably competent custodian of the records would understand." In short, there is no request that the custodian research to determine what might satisfy the request, especially where the request is unclear. All that is required of the custodian is that access be provided.

Another issue considered by the court was whether receipt by the Village's attorney constituted receipt by the custodian of records. The court looked at the definition of "custodian," and determined that the Village's attorney could have informed the citizen that the attorney was not the custodian of records and could have directed the citizen to the proper person.

Finally, the case considered the response time. In this case, it was fatal that the request never was actually received by the custodian, because the response deadline of three days was never triggered. Clearly, the court says, a public body is not under a deadline until the custodian receives the request.

On another note, several MPA members have grumbled to me that their libel insurance premiums have in-

creased substantially this year. I did some exploring this month to see what answers I could find to explain this situation. I contacted two of the major carriers, and while I did not reach anyone at Media/Professional Insurance who could answer my question, I did receive extremely helpful information from Michelle Worrall Tilton, president of First Media Insurance Specialists, Inc.

Everyone is aware that Sept. 11, 2001, constituted a major blow to the world's insurance markets. Because reinsurers carry the market in many ways, those companies have raised their rates, meaning rates also have increased on the primary insurance levels across the board.

Still, this is not the primary factor in the increases. Media insurance is a professional liability insurance category, she told me. This lumps it in with directors and officers insurance (think Enron, folks) and with medical malpractice insurance (remember all the doctors marching on Jeff City in January complaining about their malpractice insurance rates?).

In addition, some carriers have left the market, meaning the remaining carriers are writing the existing coverage, Tilton said. She said that, overall, rates may be up 30 percent, but that she knows in some cases the rates have spiked to 60 percent and in some large markets, she believes that some large risks have been told they cannot get coverage on an occurrence basis but only on a claims-made basis. (Occurrence policies are more expensive, but you only buy one and you are covered forever for matter published in that year. Claims-made policies must be renewed annually as you must have continued coverage for anything published in the past, and therefore those policies tend to be cheaper but you cannot easily quit paying the annual premiums.)

In addition, Tilton noted, the Terrorism Act mandated a 2-3 percent increase for reserves for terrorist claims. While it is difficult to imagine how a libel claim would arise out of a terrorist action, many carriers are not allowing media clients to opt out of this requirement.

Despite this adverse news, Tilton noted, "The media liability situation is stable. Claims are down and claims for damage to reputation are fewer."

She encouraged customers to get their renewal information in early and to get their renewal quotes early so that customers can have time to shop the market.

Finally a quick p.s.: Several months ago I wrote about my concerns regarding these companies who encourage you to place your news photos on their web pages and direct customers seeking to buy those photos to their web pages. I said that I was concerned about increased visibility in these situations (compared to a few sales out of your office that are handled informally) because I believed reprints of photos that ran in the paper (where they were sold to third parties) might raise issues of commercial appropriation of a person's image.

Months after that article ran, a man who said he owned one of those businesses called and told me I was wrong and he was going to get his lawyer to call me and prove to me I was wrong. I told him I hoped he would do that because I knew some MPA members wanted to participate and they were hoping I was wrong. Neither he nor his lawyer has called back.