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Oct 29, 6:38 PM EDT

Ariz. court rules records law covers 'metadata'

By PAUL DAVENPORT

Associated Press Writer

PHOENIX (AP) -- Hidden data embedded in electronic public records must be disclosed under Arizona's public records law, the state Supreme Court said Thursday in a groundbreaking ruling that attracted interest from media and government organizations.

The Supreme Court's unanimous decision, which overturned lower court rulings, is believed to be the first by a state supreme court on whether a public records law applies to so-called "metadata."

"This is at the cutting edge -- it's the law trying to catch up with technology," said David R. Merkel, a lawyer for a municipalities group that urged the justices to rule that metadata doesn't have to be disclosed.

Metadata can show how and when a document was created or revised and by whom. The information isn't visible when a document is printed on paper nor does it appear on screen in normal settings.

The Arizona ruling came in a case involving a demoted Phoenix police officer's request for data embedded in notes written by a supervisor. The officer got a printed copy but said he wanted the metadata to see whether the supervisor backdated the notes to before the demotion.

"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 records," Justice Scott Bales wrote.

Disclosing metadata shouldn't be overly burdensome on public entities, Bales wrote.



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Your Questions Answered

Arizona's law generally requires governmental entities to release public records, but they don't have to create them to meet a request.

A Washington state appellate court ruled last year that metadata in e-mail received by a city's deputy mayor was a public record. Unlike Arizona's law, the Washington law specifically says the data is subject to disclosure. That case is pending before the Washington Supreme Court.

The League of Arizona Cities and Towns and other governmental entities filed briefs citing burdens of complying with requests for metadata and urging the justices to uphold a Court of Appeals ruling.

Meanwhile, media organizations, including The Associated Press, cited the media's watchdog role and asked the court to rule that the public records law applies to metadata.

The Arizona decision likely will have a "persuasive effect" on other states' courts, said Dan Barr, an attorney who filed a brief on behalf of the Society of Professional Journalists and other media organizations.

"If there's metadata in there, that's public record," he said.

The ruling also means requested electronic records must be provided in that form rather than paper printouts, which makes them difficult and costly to search, Barr said.

The opinion said some metadata, like other public records, could be withheld for privacy or other reasons.

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The case is Lake vs. City of Phoenix, CV-09-0036-PR.

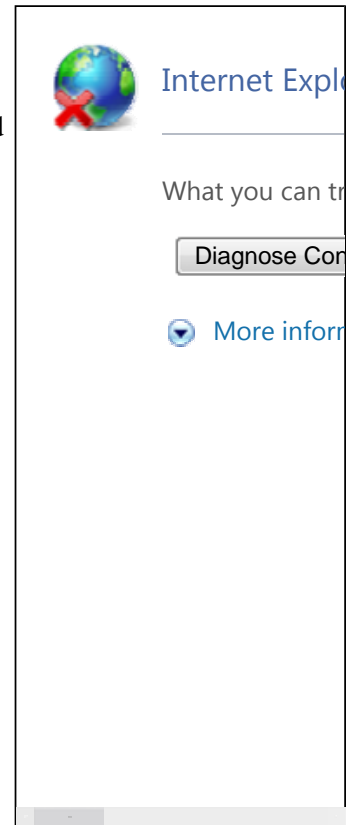
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On the Net:

Arizona Supreme Court: <http://www.supreme.state.az.us>

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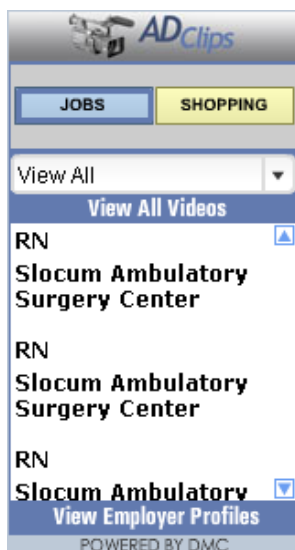
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