



CASE REPORT

PUBLIC RECORDS ACT - METADATA - RECORDS ON PERSONAL COMPUTERS.

The Supreme Court affirms that metadata is a public record that must be disclosed when requested under the Public Records Act (PRA) and that the City has the opportunity to inspect city officials' and employees' personal computers for requested metadata. *O'Neill v. City of Shoreline*, No. 82397-9, ___ Wn.2d ___ (Oct. 7, 2010).

I. Facts. A private citizen, Diane Hettrick, wrote an email to Lisa Thwing, also a private citizen, and possibly others regarding a zoning issue in the City of Shoreline. Thwing forwarded this email to herself and blind carbon copied Shoreline Deputy Mayor Maggie Fimia, City Councilmember Janet Way, and others. As a result, only Thwing's name and email address showed up as recipients on the email header that Fimia received. At a public meeting, Fimia stated that she had been sent a copy of this email by Hettrick and Ms. O'Neill. O'Neill immediately made an oral request for the email and denied authoring it. After the meeting, Fimia forwarded the original Thwing email to her own personal email account. In forwarding the email, she removed the "to" and "from" line listing Thwing as the sender and recipient. Fimia then forwarded this new email to city staff, which provided it in print to O'Neill. This email did not include the sender or recipient information of the email from Hettrick to Thwing, nor did it include the sender or recipient information from Thwing to Fimia. O'Neill then requested all information relating to the email, including how it was received by Fimia, from whom it was received, and the forwarding chain of the email. The City produced the original unaltered email, with all the headers intact. O'Neill then requested the metadata from the email's entire chain, including all metadata pertaining to the email that Thwing had sent Fimia. However, Fimia could not locate the metadata associated with the original email from Thwing, and she concluded that she must have inadvertently destroyed it. Fimia asked Thwing to resend the original email to her, and Fimia provided this email and its metadata to O'Neill. The City also provided O'Neill with the metadata from the identical email that Thwing sent to Councilmember Way. Nevertheless, O'Neill continued to seek the metadata associated with the original email from Thwing.

II. Applicable Law and Analysis. Metadata is hidden information about a document that is generated by a software program. Metadata generally describes the history, tracking, or management of an electronic document, including information such as the dates the email was sent, received, replied to or forwarded, blind carbon copy information, and sender address book information. The Court first concluded that metadata is a public record because it is a writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any local agency. The Court stated that the definition of a public record in Washington includes nearly any conceivable government record related to the conduct of government, which is liberally construed. Because metadata may contain information that relates to the conduct of government,

it is important for the public to have access to it. The Court also held that the State Archivist's Records Management Guidelines, which authorize government agencies to delete certain records once they have been printed, did not justify the City's actions. Because the PRA does not allow agencies to destroy records that are subject to pending records requests, the City could not rely on the Guidelines.¹

However, the Court was unwilling to find that the City had violated the PRA *yet*. The Court stated that it would give the City the opportunity to inspect Fimia's home computer's hard drive for the requested metadata, assuming Fimia gave her consent. The Court reiterated that home computers used for City business cannot be used to circumvent the PRA. The Court then gave further instructions to the trial court for remand, based on the various outcomes of the inspection. The Court first stated that if the City refused to inspect Fimia's home computer for metadata, the trial court on remand should find the City violated the PRA. The majority maintained this holding, despite an emphatic dissenting opinion that cities should not be penalized in the event an employee or public official asserts their right to privacy and refuses to consent to the inspection. The Court further instructed that if the requested metadata is discovered during the inspection, it would have to be provided to O'Neill. However, if the trial court determined that the metadata already provided to the O'Neills was identical to the metadata the O'Neills actually asked for, the already released metadata may be sufficient. If the metadata could not be found or if it was not identical to the already released metadata, the trial court would have to assess penalties accordingly.

III. Conclusion. This case is a good reminder of the dangers of using personal computers for city business. The Supreme Court held that metadata is a public record subject to disclosure. However, the Court clearly held that metadata does not have to be disclosed unless requested. Thus, a public records request for an email does not include a request for its associated metadata unless it is specifically requested. Finally, the Court held that because Fimia used her personal computer for city business, she had subjected her personal computer to a possible inspection for the record. The City would be liable if the record could not be found, if it was not identical to the previously disclosed metadata, or if the City refused to inspect the computer. The majority of the Court, however, did not opine about whether the City has any legal remedy to obtain the record from Fimia's personal computer if she refuses to consent to the inspection. This question was deliberately unanswered. If you have any questions regarding requests for metadata or the PRA in general, please contact your city attorney.

¹ Note that recent regulations went into effect January 1, 2010, which have clarified that agencies must maintain stored copies of emails, including associated metadata. WAC 434-662-150.