

Local Government Data v. Public

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Why is this issue important?

- The creation and maintenance of GIS data can be a financial burden upon any local government
- There are relatively few ways to recoup the costs associated with GIS data
- There are limited funding assistance options for GIS data creation, so most costs are passed onto the tax payer

Potential Rulings on GIS Data

- GIS data is considered a public record and thus free to be given to the public for only the cost of duplication
- GIS data can have copyright protection. Licensing fees and end-user agreements can be used
- GIS data is not a public record. Due to exemptions in Missouri Sunshine Law GIS data is not deemed a public record

If GIS data is a public record...

- GIS data must be provided to the public upon request
- The only fee that can be charged is the cost of duplication for the data
- Local government can not restrict use of the data

If GIS data can have copyright...

- The local government can restrict who can have access to the data
- The local government can charge licensing fees to help fund the cost associated with the data
- The local government can restrict the use of the data through end-user agreements

If GIS data is not public record...

- The data does not have to be made public upon any request
- Possible Exemptions
 - The release of the data has the possibility of hindering response to an act of terrorism
 - This exception expires December 31, 2012
 - Data contains personal information about individuals
 - 610.024.1
 - "If a public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying."
 - GIS data is part of GIS software
 - 610.021.10
 - "Software codes for electronic data processing and documentation"

Current Case Law

- California- County of Santa Clara, California v. California First Amendment Coalition, 2009
- Florida- Microdecisions Inc. v. Skinner, 2001
- New York- County of Suffolk, New York v. First American Real Estate TRW, 2001
- Wisconsin- Wiredata Inc. v. Village of Sussex, 2008
- South Carolina- George H. Seago III & Real Estate Information Service, Inc. v. Horry County, 2008
- Connecticut- Director, Department of Information Technology of the town of Greenwich v. Freedom of Information Commission, 2005

County of Santa Clara, California v. California First Amendment Coalition

- Issue:
 - GIS data is protected by Homeland Security Act disclosure
 - GIS data is exempt due to a software program exemption
- Ruling:
 - GIS data is not protected under the Homeland Security Act
 - GIS data does not meet the software exemption

Microdecisions Inc. v. Skinner

- Issues:
 - Tax maps can have copyright protection
- Ruling:
 - County's can not have copyright protection on any records in the state of Florida
 - In Florida's Constitution

County of Suffolk v. First American Real Estate Solutions

- Issues:
 - Tax maps are not original enough to be protected by copyright
 - Tax maps exist in the public domain
 - Tax maps are a public record and can not have copyright
- Ruling:
 - The courts ruled that tax maps were unique enough to have copyright protection
 - The tax maps are public records but can have copyright protection without conflict

Wiredata Inc. v. Village of Sussex

- Issue:
 - Can open record laws be avoided by using an independent contractor to create, maintain, and store the data
- Ruling:
 - The database is still considered public information even though it is created, maintained, and stored by an independent third party. The third party can not copyright the information because it belongs to the village

George H. Seago III & Real Estate Information Services v. Horry County

- Issue:
 - Whether information gathered through the freedom of information act can have copyright restrictions enforced
- Ruling:
 - GIS data gathered through the freedom of information act can have copyright restrictions placed on it. The use of the data can be restricted

Director, Department of Information Technology of the town of Greenwich v. Freedom of Information Commission

○ Issue:

- GIS data contains trade secrets and is exempt
- GIS data would reveal structure of the computer system and compromise it

○ Ruling:

- GIS data does not contain trade secrets
- GIS data does not compromise the security of the computer system

Ongoing Case

- Sierra Club v. Superior Courts (Orange County)
 - Is the GIS data part of the “computer mapping system” or is limited to just the GIS program
 - The previous rulings in this case found that GIS data is considered part of GIS program
 - This conflicts with ruling in County of Santa Clara, California v. California First Amendment Coalition

A Check on Missouri Laws

- There are no good exemptions that cover GIS data
- The definition in the sunshine law puts GIS data as a public record
 - 610.010.6
 - " "Public record", any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body.."
- There is nothing in the Missouri Constitution forbidding state and local governments from having copyright privileges

The Case Most Similar to Missouri's Current Laws

- George H. Seago III & Real Estate Information Service, Inc. v. Horry County
- Why?
 - The state of South Carolina has a similar sunshine law in that there is not an exemption that clearly covers GIS data
 - Also there is nothing in the constitution denying state and local governments the right to hold copyright privileges
 - So, even the though the data had to be turned over for only the price of duplication, the use of the data can be restricted through normal copyright means

End the Mystery

- The prior slide is just opinion based on current legislation. The status of GIS data in Missouri could be clarified in two simply ways:
- 1) Pass a law clearly defining the GIS data as a public record or exempt
- 2) Wait for a test case to work through Missouri courts
 - Until either of these scenarios play out the best that can happen is an opinion written by the attorney general on this subject

Citations

- The Sunshine Law
- The Missouri Constitution
- Sparks J & Estes D (2012, May 8). PowerPoint “Legalities of GIS”. 2012 Indiana GIS Conference