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Q&A On Open Records Act

The last issue of the *AAP Journal* featured a brief overview of the new Open Records Act. We are following up with some helpful questions and answers provided with the permission of the Pennsylvania Newspaper Publishers Association and its General Counsel, Teri Henning.

What is the Right to Know Law?

The Right to Know Law is the Pennsylvania law that guarantees your right to access and obtain copies of public records held by government agencies.

Where can I find the law?

Here is where you can find a copy of the current law at 65 Pa.C.S. 66.1. You can also find a copy of it online at *http://www.pa-newspaper.org/web/2005/10/right_to_know.aspx*. The new law can be found here and is known as Senate Bill 1.

Isn't there a new Right to Know Law in Pennsylvania?

Yes. On February 14, 2008, Governor Rendell signed Act 3 of 2008 into law, which is a complete overhaul of the Right to Know Law. Although some provisions take effect immediately (those establishing an Open Records Office) and others take effect on July 1, 2008 (requiring state-related institutions to make certain financial information public and requiring the on-line posting of state contract information), the bulk of the new law takes effect on January 1, 2009. You can find the new law here: Senate Bill 1.

What are the biggest differences between the old law and the new law?

The new law fundamentally changes the structure of Pennsylvania's Right to Know Law. It begins with the presumption that state and local agency records are open for public inspection and copying and places the burden on a government agency denying access. For the first time since the Right to Know Law was passed in 1957, it will include the General Assembly and will give citizens the ability to appeal open records disputes to an administrative agency, the Office of Open Records, without the need to file a court action. The new law guarantees access to public records in the possession of government contractors performing "governmental functions" on behalf of an agency, establishes an online, searchable database for state contract information, and requires state-affiliated universities to make certain financial information public. The law also shortens agency response times and increases the civil penalties that can be awarded against an agency acting in bad faith.

. . . continued page five

IDEAS FOR YOU

Disarm doubt

You must make a decision but you're not sure which path to take. What do you do? If you said, "Panic," there's a better option: Come up with a script of questions to apply whenever you feel stuck. For example, "*Do I have all the facts? What's my top priority? What's the biggest difference between these two options? What's the worst that could happen if I make the wrong choice?* Devise a list of questions that fit your personal needs, then use them to help you navigate tough choices.

Extend introductions

Of course, you and your team are anxious to make new hires feel welcome. But that doesn't mean you should bombard them with introductions on the first day. Instead, explain that you've arranged for them to spend some quality time with a new person—or a small number of people—each day for the first week. By spreading out the introductions, you give new workers time to make personal connections and get a sense of each employee's role in the organization.

WHAT'S INSIDE

**The President's Report,
Branding,
Solicitor's Report,
Open Records Act,
AAP People,
and more!**

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President's Message

Riding Into The Sunset

I would like to start by saying thank you to Eric Brown for an awesome job well done as President. He has left some awfully big shoes to try and fill. I would like to also say thank you for giving me two opportunities to serve you, the membership, as an officer, and now finally as your President. I hope that I can continue the fine legacy created by all the past Presidents.

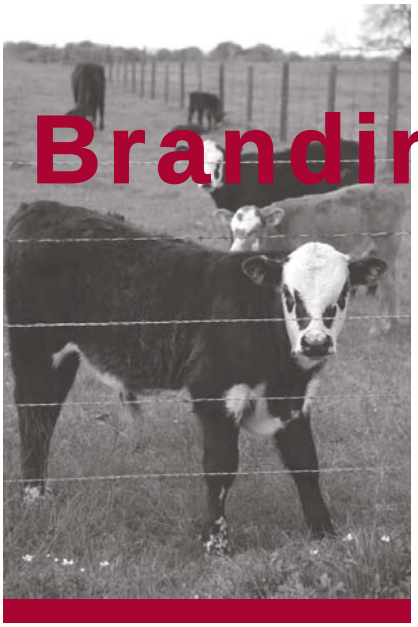
As we move through the summer and school billing, most of us are having our first exposure to the Homestead/Farmstead program having an effect on the tax bill. This is creating some issues in some counties, as we have seen on the list serve. Along with the Homestead/Farmstead program, we're seeing issues arising with oil and gas leases and their effect on enrolled properties in Clean and Green. We're hoping to continue to be proactive at the Association-level with educational offerings as well as attendance at state level meetings on these issues to better serve our members.

Speaking of members, I can't emphasize enough that the strength of the Assessors' Association of Pennsylvania is its membership. If you have questions or concerns on a given issue, present them to your Board representative or to one of the officers. We are here to serve the membership. I would also encourage you to get involved at the board-level. You could serve on a committee or have your local chapter elect you to the Board. If you are interested in serving on any of the committees, please make your interest known to either the chairperson of the committee or one of the officers.

In closing, I'd like e to say that I'm looking forward to serving as your President and I'll do my best to keep the lines of communication open. Please enjoy your summer and be safe.

Randy

Randy Waggoner



AAP Embarks On Branding Project

by Debra S. Tingley APR
Director of Publications
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Association of Pennsylvania

At its recent board meeting in Gettysburg, the Assessors' Association of Pennsylvania delved into the topic of branding and its impact on AAP. Discussions on this topic will continue. President Waggoner is starting a process whereby AAP will assess its brand and make recommendations to the membership. Watch for more information on this important topic.

What Is Branding?

Branding first came into existence in the early days of ranching where burning one's mark on a cow's rear end helped ranchers distinguish their cattle from those of their neighbors. As branding progressed from cattle to commerce, companies began realizing the power of unique brands. While branding does not involve burning anything on anyone's backside, the overarching concept is the same. In the association and county government realm, branding is a business process that is planned, specific in nature and integrated throughout the county or association. Because the county brand is the county's most important asset, the process of branding provides the direction, inspiration, and energy for the brand itself. Branding also influences the county and or association's name, identity, logo, stationery, Web site, visual expression, philosophy and culture…just about everything the county or association stands for, all the way down to the look of its facilities and the behavior of its employees.

Powerful branding also greatly influences customer behavior, motivating consumers to buy your company's product over those offered by your competitors. This, of course, strengthens the bottom line. Overall, the goal of branding is to create the personality of the county or association and associate it with the brand. County and association identity is the visual, outward expression of the county/association brand. It is, in essence, the persona of the county or association. Many organizations will shell out large amounts of money for a clearly distinguishable identity in order to appeal more to its targeted audience. Take, for example, Coca-Cola. Their brand is recognizable in almost all countries and their company identity is tied to that particular color of red and that unique script font. Many other companies have this same type of identity that flows throughout all of their products and merchandise. These include logos, packaging, trademarks, and advertisements…even the nitty-gritty details such as colors, typefaces, and page layouts. These serve to maintain visual continuity and brand recognition all across the board. County and association identity can be viewed as having three distinct parts:

- Company design – As mentioned earlier, this includes such things as logos, letterhead, uniforms, stationery, packaging designs, etc.

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- Company communication – This refers to advertisements, commercials, press releases, and public relations…anything that communicates with the public.
- Company behavior – This encompasses the internal values and characteristics of the entire culture and the employees who make it up.

Are Branding And Identity The Same?

In a word, no. However, they are inexplicably linked. As mentioned earlier, branding is an actual business process – a strategy, if you will – that is purposefully implemented throughout an organization, which, in turn, helps establish the identity. Our brand manifests itself in the look and feel of our association/county, environment, the attitudes, and behaviors of our employees, and in all of our communications, correspondence and advertising. Similarly, it is plays a part in how we treat our employees, partners, vendors and customers. It encompasses the principles upon which our association/county is built and relays to the public what we stand for. It is our personality, and as a result, our identity becomes clearly linked with our brand. Companies build strong brands and a positive identity through consistent delivery at every point of contact. Therefore, a word of caution is appropriate here. It is tempting for many companies to think that by coming up with a new logo or catchy slogan they have changed their brand and thus their identity. However, that is far from the case. Our brand encompasses our company values, which cannot be changed overnight or by simply changing our look. Just as a person cannot change his personality with a different set of clothes, so you cannot change your identity with new artwork.

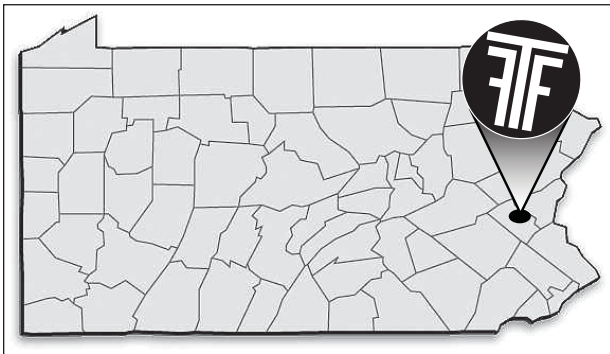
Why Are Branding And Identity Important?

One of the most compelling reasons for a strong branding campaign and a positive identity is that they often single-handedly distinguish a company from the competition. In many ways, they help you carve out a niche in the marketplace that is extremely difficult for your competitors to broach. At the same time, strong branding and a positive image enable your company to create customers for life. While a satisfied customer may take his business elsewhere at some point, a loyal customer is much less likely to do so. Other benefits of branding and identity include long-term profitable growth, increased stakeholder worth and shareholder value, as well as lower marketing costs and sales volatility. In addition, co-branding opportunities with like-minded products or services and brand extensions are other possible outgrowths of strong branding and positive identity. Overall, a good image is both a prerequisite for and byproduct of success. It is both a means and an end in itself. The truth is that, like it or not, the public is already building associations and drawing conclusions from our brand. That, in and of itself, is reason enough to ensure you are portraying an image that will be to your company's overall benefit.

"Our brand encompasses our company values, which cannot be changed overnight or by simply changing our look."

How Do We Begin Building A Strong Brand And Image?

First, we need to start small. Remember that this process takes time and will touch every aspect of our association. We need to begin by identifying the associations or impressions current or potential consumers have about our product or service. This means we need to know our product and product lines inside and out. What are their benefits? How do they meet customer needs? How do they not? Think about our competitors. What do they do well? What do they not do well? Then, put the market research and competitive intelligence together to determine where the needs are not being met in the marketplace and devise a plan to meet them. Consider telling our story. What sets us apart? Most companies have great stories to share. It could be a unique not-for-profit agency that you sponsor. Whatever makes your county/association special, tell it. Finally, be consistent. This means in our interactions with employees, our customers…frankly, everyone we meet. Decide how we want to be viewed as a company and make sure our actions are in line with that. In the end, our positive branding and upbeat image will be our greatest assets.



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Open Records continued from page one

Generally speaking, what records can I get under the new Right to Know Law?

The Right to Know Law guarantees your right to obtain public records from state and local agencies in Pennsylvania. It also guarantees your right to obtain legislative records from the Pennsylvania General Assembly and financial records from Pennsylvania's judicial system. The law does not apply to record requests to federal agencies. If you are interested in obtaining federal agency records, you must make your request under the federal Freedom of Information Act (FOIA). For more information on making a FOIA request, including a letter generator, see *http://rcfp.org/foia/*.

What are some examples of records that will be available under the new law?

- Community colleges are now covered agencies. As a result, their records are presumptively public;
- The PIAA (Pennsylvania Interscholastic Athletic Association) is now expressly covered;
- The Pennsylvania Higher Education Assistance Agency and its related entities are now expressly covered;
- Grant applications are public records (and not just the contracts reflecting funded grants);
- Records reflecting a public employee's demotion or discharge are public;
- The General Assembly is now included as an "agency," and the law expressly identifies a number of legislative records that are public, including financial records, manuals and written policies, and financial audit reports;
- Records that are presented to a quorum of an agency for deliberation at a public meeting (e.g., board packets), are public, with limited exceptions;
- 911 time response logs are public.
- The law provides for the creation of an online searchable database for state contract information.
- State-affiliated universities are now required to publicly disclose certain financial information, including the salaries of all officers and directors and salaries of the highest paid employees.

Many other records will be available as well, since the new law begins with the presumption that all state and local agency records are publicly available. As a result, you should be able to access any record that is not exempt under the law.

What agencies are covered by the new Right to Know Law?

The new law covers the following: Commonwealth agencies, local agencies, judicial agencies, and legislative agencies.

Commonwealth agencies include: state agencies (e.g., the Department of Education), the Governor's office, the Office of Attorney General, the Department of the Auditor General, the Treasury Department, the Pennsylvania Higher Education Assistance Agency (and any entities created by PHEAA), the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, community colleges, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association, the Pennsylvania

. . . continued page eight

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MEMBER ABILIA

Chapter Notes And Other News

Chester County News

Chester County has hired two new assessors – Colleen Madden and Brian Papiernik and has said goodbye to Robert Long, the Assistant Director of Assessment, who recently retired.

Congratulations to Steven Lord who was promoted to Real Estate Appraisers IV, Susan Caldwell who was promoted to Real Estate Appraiser III, and Joseph Finneran who was promoted to Chief Assessor.

Perry County News

Congratulations to Randy and Connie Waggoner on the birth of their grandson, Austin Vance Cousins, on July 2, 2008. Mother (Randy and Connie's daughter Jessica) and son are doing well. Randy is still smiling and proud to report that Austin has his grandfather's appetite.

Philadelphia County News

Eugene P. Davey, Director of Assessments, Board of Revision of Taxes, Philadelphia, Pa. retired on May 23rd, 2008, completing 36 years of service.

Gene holds many designations in the field of Assessment and Appraisal utilizing all of them to further the mission of professionalism for the Board of Revision of Taxes.

As a consequence, Gene garnered the respect of the Mayor, Philadelphia City Council, STEB, IAAO, AAP, Philadelphia Reality Board and numerous other agencies. During Gene's tenure with the Board of Revision of Taxes, he was committed to upgrading his staff's professionalism by providing education and training so that the Evaluators would qualify for the CPE designation, thus enhancing promotional opportunities. In the real estate industry Gene is known as the Titan which makes us realize that his shoes will be difficult to fill.

It has been everyone's pleasure at the Board of Revision of Taxes to work alongside of him. He always was there for everyone if they needed immediate assistance for a simple or complex problem.

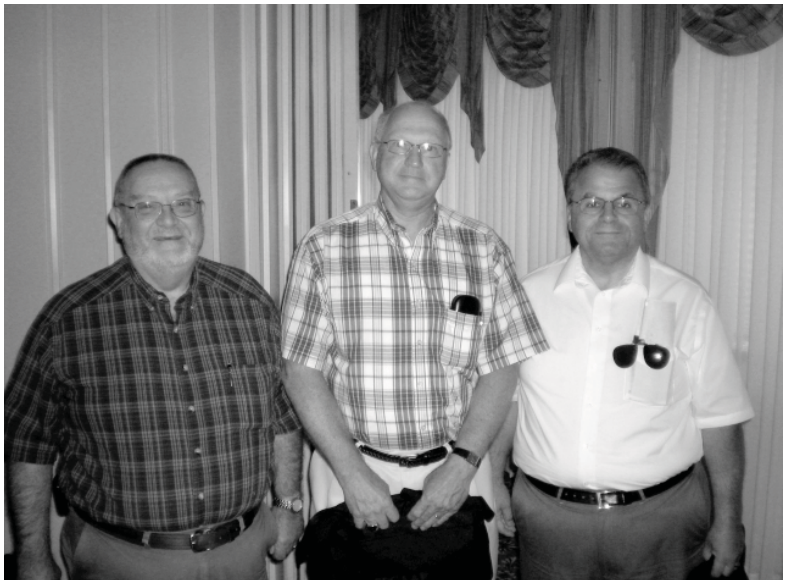
On behalf of the Board of Revision of Taxes, we wish to thank Gene for his ever present, gentlemanly conduct and expertise during his tenure.

We know that Gene and his wife , Joanne will keep themselves busy in the upcoming event of their first grandchild due in September.

Other News

Bob Federico has retired from Verizon and has started his own consulting business, JBLK Properties, Inc. He is currently working with counties.

South East Chapter Honors Three Retirees



At its South East Chapter meeting, the SECAAP Board of Governors honored three retiring Chief Assessors. Those honored include, left to right, Bob McRae, Tom Brauner,, and Gene Davey.

Open Records continued from page five

Educational Facilities Authority, and any other state organization established by law that performs or is intended to perform an essential governmental function.

Local agencies include political subdivisions (e.g., school districts), intermediate units, charter schools, public trade or vocational schools, local, intergovernmental, regional, or municipal governments (e.g., boroughs, counties), and similar governmental entities. Judicial agencies include any court, entity or office within Pennsylvania's unified judicial system-legislative agencies include the Pennsylvania House of Representatives, the Pennsylvania Senate, and a number of specifically listed commissions and entities (e.g., the Capitol Preservation Committee, the Center for Rural Pennsylvania, and the Joint State Government Commission). The term includes the political party caucuses of the state House and Senate.

What records can I obtain from the Commonwealth and local agencies?

Records are presumed open; burden is on agency. The new law begins with the presumption that all records held by Commonwealth and local agencies are publicly available – both for viewing and copying. The burden of proving that a record is non-public (or that an exemption applies) is on the agency denying access. The new law also provides access to public records in the possession of government contractors performing "governmental functions" on behalf of an agency. These records may be requested from the agencies. The presumption of access does not apply to records that are: 1) protected by a privilege (e.g., attorney-client, doctor-patient); 2) exempt from disclosure under federal or state law; or 3) exempt under Section 708 of the Right to Know Law. Section 708 of the Law lists 30 categories of records that are exempt from disclosure.

What records can I obtain from judicial agencies?

Financial records are presumed open; burden is on agency. The new law begins with the presumption that all financial records held by judicial agencies are publicly available – both for viewing and copying. The burden of proving that a financial record is non-public (or that an exemption applies) is on the judicial agency denying access.

Financial records include:

- Accounts, vouchers, and contracts dealing with: 1) the receipt or disbursement of funds by an agency; or 2) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property;
- Salaries and other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee; and
- Financial audit reports.

The presumption of access does not apply to financial records that are: 1) protected by a privilege (e.g., attorney-client, doctor-patient); 2) exempt from disclosure under federal or state law; or 3) exempt under Section 708 of the Right to Know Law. Section 708 of the Law lists 30 categories of records that are exempt from disclosure (*see below*).

What records am I able to obtain from the legislative agencies?

Legislative records are presumed open; burden is on agency. The new law begins with the presumption that all legislative records are publicly available – both for viewing and copying. The burden of proving that a legislative record is non-public (or that an exemption applies) is on the legislative agency denying access.

Legislative records include:

- Financial records (see above for definition);
- Bills or resolutions that have been introduced;
- Fiscal notes;
- Co-sponsorship memoranda;
- Minutes of public hearings and public committee meetings;
- Transcripts of public hearings, when available;
- Executive nomination calendars;
- Rules of a chamber;
- Record of all recorded votes;
- Administrative staff manuals and written policies;
- Audit reports;
- Final and annual reports required to be submitted to the General Assembly;
- Legislative Budget and Finance Committee reports;
- Daily Legislative Session Calendars and marked calendars;
- Records reflecting an appointment of a legislative appointee;
- Proposed regulations, final-form regulations, and final-omitted regulations; and
- Result of public opinion surveys and polls.

The presumption of access does not apply to legislative records that are: 1) protected by a privilege (e.g., attorney-client, doctor-patient); 2) exempt from disclosure under federal or state law; or 3) exempt under Section 708 of the Right to Know Law. Section 708 of the Law lists 30 categories of records that are exempt from disclosure (see below).

Can agencies release records that are "exempt" under the Right to Know Law?

Agencies have discretion to release records. Yes. It is important to note that agencies have the discretion to release records that are exempt under Section 708 of the Law, if: 1) disclosure is not prohibited by some other law or by court order; 2) the record is not protected by a privilege; and 3) the agency head determines that the public interest in disclosure outweighs any need for confidentiality.

What records are exempt from access?

Privileged records. Under the new law, records that are protected by a privilege, such as the attorney-client privilege or the doctor-patient privilege are not public.

Records that are expressly made non-public by another law. Records that are non-public under some other law (e.g., federal law makes student educational records non-public) are not public. Of course, the reverse is also true. If another statute makes a record public, then that record is public, and the Right to Know Law does not change that. For example, the Criminal History Record Information Act (CHRIA) expressly states that police blotters are public records. The Right to Know Law does not change this. Likewise, the law

does not affect access to criminal and civil court records or voter registration records.

Right to Know Law exemptions. Section 708 of the new law contains 30 categories of exemptions. As stated above, agencies may release these records in many circumstances.

With very limited exceptions, the exemptions do not apply to financial records or aggregated data. The exemptions include the following:

- Records that, if disclosed, would result in the loss of federal or state funds;
- Records that, if disclosed, would result in physical harm to an individual or would harm an individual's personal security;
- Records that would jeopardize homeland security or public safety or preparedness;
- Records that, if disclosed, would endanger the safety or security of a building, public utility, infrastructure, or information storage system;
- Records that, if disclosed, would jeopardize computer security;
- Medical, psychological and related records that would disclose individually identifiable health information;
- Personal identification information, including social security numbers, personal financial information, driver's license numbers, and home telephone numbers;
- Home addresses of law enforcement personnel and judges;
- Certain personnel records relating to public employees, including applications of those not hired, academic transcripts, and information regarding discipline (except that final actions of an agency that result in demotion or discharge are public);
- Records relating to collective bargaining strategy or negotiations, except that final contracts and agreements and final awards and orders of arbitrators are public;
- Working drafts of bills, resolutions, and policies;
- Records reflecting internal, predecisional deliberations of agencies, including internal strategies. This exemption does not apply to records reflecting an agency decision, records requesting state funding/grant money, or results of public opinion surveys or polls. In addition, records presented to a quorum of an agency for public deliberation at a meeting subject to the Sunshine Act (e.g., board packets) are public records, with limited exceptions.
- Trade secrets and confidential proprietary information.
- Notes and working papers used by a public official or employee solely for that individual's own personal use.
- Records that would disclose an agency donor, except under certain circumstances;
- Unpublished academic materials;
- Academic transcripts and examination materials;
- Criminal investigative records. This exemption does not apply to information contained in a police blotter or in a traffic report (except for in-depth accident investigations);
- Non-criminal investigative records. This exemption does not apply to fines levied by agencies, license revocations, settlement agreements, or similar agency actions;
- 911 records, except that time response logs are public, and agencies can disclose 911 recordings or transcripts if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure;
- DNA and RNA records;
- Autopsy reports, except that name, cause, and manner of death of a deceased individual are public;
- Draft minutes of an agency until the next meeting and minutes of an executive session;
- Real estate appraisals, environmental reviews, audits or evaluations relating to an agency's proposed lease, acquisition, or disposal of real property. The exemption no longer applies once the decision to lease, acquire or dispose of the property is made.
- Library circulation records and certain archived materials;
- Records identifying the location of an archeological site or an endangered or threatened plant or animal species if not already publicly known;
- Proposals relating to agency procurement or disposal of supplies, services or construction prior to the award of the contract or the opening and rejection of all bids. Financial information of a bidder or offeror;
- Communications between an agency and its insurance carrier, administrative service organization, or risk management office. This exemption does not apply to contracts between agencies and these entities or to financial records relating to the provision of insurance;
- Records identifying individuals who apply for or receive social services or disclosing the social services received by an individual.
- Correspondence between a person and a legislator that would identify a person requesting assistance or constituent services. This exemption does not apply to communications from lobbyists.
- Records identifying the name, home address, or date of birth of a child 17 years of age or younger.

What if a public record has some non-public information in it, such as a social security number, for example?

Redaction. Under the law, the agency is required to release the record. It may redact (strike-out) the non-public information.

What do I do to ask for a record?

Direct requests to an agency's open records officer. The law requires each agency to appoint an "open records officer." Contact information for each agency's open records officer must be posted at the agency and on the agency's Internet Web site if one exists. You must direct your request to the agency's open records officer. If you send our request to the wrong person, public employees must forward it to the open records officer. This may delay the response, however, and should be avoided if possible.

Manner of request. You can make a request in person, by mail, facsimile, or e-mail.

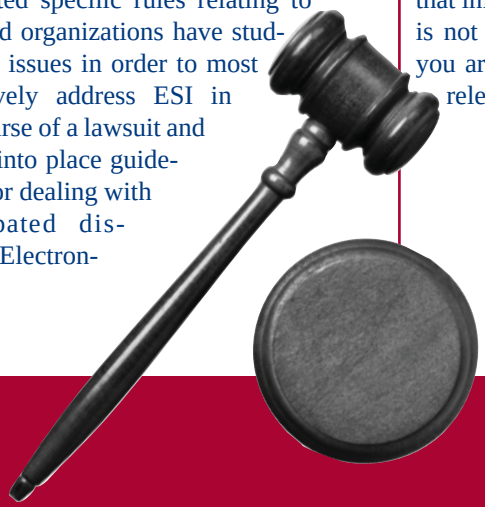
Watch for the conclusion of this special Q&A on the Open Records Act in the next issue of the AAP Journal.

ESI: What Is It And What You Need To Know

What is ESI? Is it a new form of text messaging language? Perhaps it refers to some cutting edge crime unit? Or is it more accurately an abbreviation for electronically stored information? If you chose electronically stored information, pat yourself on the back! Read on to learn what more you need to know about electronically stored information.

In today's technologically savvy environment, electronically stored information (ESI) can refer to anything from an e-mail, a document in draft form, a PDF file, a Web site, to embedded data stored on a computer. It can be information found on a cell phone or PDA, on hard drives, back-up tapes, or in your internet service provider's server. Since the real estate industry, like so many others, is highly dependent on technology, the use of electronically stored information, along with an understanding of the impact of the issues related to ESI in the legal arena, is critical.

In recent years, the courts and legal groups have analyzed issues relating to the creation and storage of electronic data. Courts have generated specific rules relating to ESI and organizations have studied the issues in order to most effectively address ESI in the course of a lawsuit and to put into place guidelines for dealing with anticipated disputes. Electronic discovery, referred to as "e-discovery," has become a critical part of all litigation.



If you become a party to a lawsuit, or if your employer-county is a party to a lawsuit, there is likely to be information in many locations within the county which could be relevant to a case, much if not all of which is stored in electronic form. When information is requested in the course of a lawsuit during the discovery phase (where parties exchange information and must produce data about their respective positions), rules exist to govern how that information must be retained and produced. E-discovery has become a big part of litigation and unfortunately for many parties, an expensive part of the process. Understanding e-discovery guidelines will assist in the defense of any case.

Once parties are aware of the potential for a claim or lawsuit, they are required to secure all information stored in an electronic manner in the event it may become relevant. It is not appropriate to "wait and see" if some type information may be needed later. There is an affirmative duty to ensure that information stored in electronic format is not destroyed and can be retrieved. If you are a party to a lawsuit, or may have relevant information about the issues in a lawsuit, you may receive a letter from an attorney or an insurance entity requesting that you place a "hold" on information so that it can be accessed in the future. You will be asked to interrupt your normal storage and destruction processes so that information relative to any potential claim or litigation can be preserved. County IT departments should be notified as well to ensure that typical storage or destruction processes are interrupted and the relevant data is not destroyed or moved to a location where obtaining the information will become too difficult.

During the course of the litigation, searches of the data may be made, which can be time consuming. IT personnel may not be available to assist in every search. Understanding what data exists and where it is held is therefore critical to ensuring that the data is not destroyed. Penalties for destruction can be harsh, even when the destruction is somewhat inadvertent, as the law assumes that litigants must have at least a general understanding of the e-discovery rules. While it is true that lawyers representing you or your employer-county will have obligations to fulfill relating to e-discovery, the raw data, which forms the factual basis of the case, is in your possession. This data then must be accessible, even if it is from prior years.

Issues surrounding ESI will continue to develop and become clearer as he courts and litigants become more accustomed to addressing them. It is important though to have some basic knowledge about electronic data systems and processes in the workplace so ESI can be accessed and retained during critical times.

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Solicitor's Update

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AAP YEARBOOK REMINDER!

If you have not yet sent your county assessment office pictures for inclusion in the AAP Yearbook, please send them by September 30 to *dtingley@pacounties.org.* Photographs should be black and white, if possible, and sent as a jpg. Please include a left to right listing of individuals in the photograph.



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