

METADATA CREATED ON A PUBLIC COMPUTER IS NOT ITSELF A PUBLIC RECORD UNDER THE PUBLIC RECORDS LAW

January 13, 2009 | Law Alerts, News

Lake v. City of Phoenix
Ct. Appeals, Div. One, January 13, 2009

Authored By The [JSH Appellate Team](#)

Plaintiff requested public records from the City of Phoenix, and alleged that the City failed to produce responsive records and intentionally withheld documents. Plaintiff filed a special action, which the trial court erroneously denied for lack of jurisdiction. Plaintiff appealed.

The court addressed whether or not metadata that attaches to notes entered into a city computer to document "supervisory performance" constitutes a public record. Metadata is information that is contained on an electronic document which is not revealed when printed, but which describes the history, tracking, or management of an electronic document. Examples of metadata that may be included in a computer document include: the user's name and initials, the company or organization name, the name of the computer, the name of the network server or hard disk where the document is saved, other file properties or summary information, non-visible portions of embedded or linked objects, document revisions, document versions, template information, hidden text, and comments.

Despite Arizona's strong policy of public access to and disclosure of public records, the court ruled that metadata is not a public record. A "record" is not necessarily a "public record." And the purpose of metadata is not to disseminate information to the public or to serve as a memorial of an official transaction for public reference. Nor is metadata a record required to be kept to discharge a duty imposed by law. Thus, the presumption in favor of disclosure did not apply. In dicta, the court stated that "if the legislature finds it appropriate to declare that metadata falls within the scope of a public record, then the legislature may take the appropriate steps to make that change. Until such time, the public records law does not require the production of metadata in response to a public records request."

The court also held that an unfinished investigation of a shooting involving an officer was a public record.

Judge Norris dissented. She believed that metadata should not be pronounced a non-public record simply because it did not fit within the "traditional" public record formulation. In her view, metadata is part of the notes electronically created by the employee; it is integral to the original electronic documents he created. And although he did not independently create the metadata pursuant to any duty, law, or other obligation, and it was a "by-product" of his use of a computer, when he used a computer to document his dealings with plaintiff, the metadata became part of his notes just as did his words. Metadata, she stated, contains information about who authored a document, when it was edited, and who would have accessed it. And this information can be crucial to ensuring government transparency.