

City must pay \$538,555 in public records suit over e-mail metadata

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July 2, 2013

A town in Washington state must pay more than half a million dollars to resolve a seven-year lawsuit that brought electronic metadata within the scope of the state public records law, a trial court ruled last week.

The City of Shoreline will have to reimburse \$438,555 to cover the plaintiffs' costs as Washington agencies are required to cover reasonable attorneys fees for their opponents after losing open records lawsuits. Shoreline also agreed last year to pay a \$100,000 statutory penalty after the court found that the city violated the state public records act.

Michele Earl-Hubbard, a lawyer for plaintiffs, said that the \$485,555 award [granted](#) by Superior Court Judge Monica Benton was notable for its size.

“In our state it’s one of the highest attorney fee and cost awards in a public records case,” she said.

Earl-Hubbard added that the decision should provide at least “slight encouragement” for journalists to vindicate their access rights through litigation. The award gives agencies, both in Washington and elsewhere, an incentive to comply efficiently with requests for information.

Beth and Doug O'Neill sued in 2006 to find out the author of an e-mail criticizing the city council. Maggie Fimia, then the deputy mayor, read the message aloud at a council meeting and incorrectly attributed it to Beth O'Neill, who then requested a copy.

The O'Neills received a copy of the e-mail, but they never received the metadata identifying the original sender. Metadata are digital records that provide details about a file, such as when and where it was created.

The dispute made its way to the Washington Supreme Court, which in 2010 ruled that the metadata were subject to disclosure under the public records act. The city then hired computer experts who searched the hard drive of Fimia's computer and testified that the original message was lost.

The Supreme Court's 2010 ruling made Washington the second state, following Arizona, to establish explicitly that metadata are public records, Earl-Hubbard said. She added that reporters in particular stand to benefit from the decision.

"I think that the value of the O'Neill case is far stronger to journalists than it is to average people," she said. "Electronic journalists for decades have been using electronic records and metadata to catch people in untruths."

Flannery Collins, a lawyer for Shoreline, said that the city plans to ask the trial court to clarify why it rejected a technical argument that would have prevented the plaintiffs from recovering fees and costs. If the city is not satisfied with the court's explanation, it may appeal the decision.

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