



Published: 08.16.2007

# Appeals Court rules for newspaper in public records case

**By Howard Fischer**

*CAPITOL MEDIA SERVICES*

PHOENIX -- Public officials can be ordered to provide public records even before they have been created, the state Court of Appeals ruled Thursday.

In a unanimous decision, the judges said they see nothing wrong with requiring the Maricopa County Sheriff's Office to provide copies of press releases to all news outlets at the same time. The ruling is most immediately a victory for the West Valley View, a Maricopa County weekly that found itself off the agency's e-mail list after an editorial critical of Sheriff Joe Arpaio.

But the decision also spells out that individuals seeking certain kinds of regularly produced records need not file a special request -- and need not go to court -- each time.

The newspaper's legal victory comes at taxpayer expense: The appellate judges ordered the sheriff's department to pay the paper's legal fees. Attorney Daniel Barr said the figure is more than \$43,000.

Paul Chagolla, the sheriff's spokesman -- and the person who the appellate court said made the decision about who does and does not get the releases -- declined to comment.

The fight traces its roots to the 2005 decision to stop sending releases to the twice-weekly paper which serves Avondale, Buckeye, Goodyear, Litchfield Park and Tolleson. The paper's response was to file a public records request seeking all future releases.

When the agency did not respond, the paper went to court.

Appellate Judge Diane Johnsen noted that the sheriff's department never claimed that the press releases are not public.

Instead, Dennis Wilenchik, the agency's attorney, said there is no legal authority for any ongoing request for public documents that have not yet been created. Wilenchik said his client cannot be ordered to release a document until someone has requested it -- meaning after it already has been released.

Johnsen suggested that amounted to requiring the newspaper to "somehow discover on its own that a press release has been issued and then make a separate formal request to the sheriff for a copy of each release." She said that makes no sense, especially for a newspaper that is working against deadlines.

All content copyright © 1999-2007 AzStarNet, Arizona Daily Star and its wire services and suppliers and may not be republished without permission. All rights reserved. Any copying, redistribution, or retransmission of any of the contents of this service without the expressed written consent of Arizona Daily Star or AzStarNet is prohibited.