

SPECIAL POINTS  
OF INTEREST:

- For the four most recent newsletters go to <http://www.azleg.gov/ombudsman/reports.asp>. For newsletters dating back to July 2008 contact Liz at [ehill@azoca.gov](mailto:ehill@azoca.gov).
- Open meeting law and public records law materials and updates are available on our website under publications.
- Training opportunities posted at <http://www.azleg.gov/ombudsman/presentations.asp>

INSIDE THIS  
ISSUE:

What You Need to Know About Cloud Computing	1,3
Are You Properly Disposing of Your Copiers?	1
Accessing Court Records	2,4
Unsung Heroes	2,3
Attempts to Preclude Access Continue	2
Open Meeting Law Update	3

# The Public Record

VOLUME 3, ISSUE 3

OCTOBER 2010

## What You Need to Know About Cloud Computing

Cloud Computing is one of the new buzz words flying about, but it is merely a new way for governments (and the private sector) to outsource Information Technology (I.T.) functions. One of the most commonly used aspects of cloud computing is for e-mail. When a public body's e-mail is "in the clouds", your e-mails are no longer maintained on your computer, or on your I.T. Department's servers, nor is it even maintained at one specific location that is known to the Leadership of your public body. The e-mail is being maintained at undisclosed locations scattered across your state, the nation, or even internationally; but you have access to the e-mails via an on-line application. BUT, do you have control over your own e-

mails?

One of the main services provided with cloud e-mail is the *e-mail archive*. Basically, a copy is made of every in-coming and out-going e-mail and that copy is maintained, usually by I.T., and usually without knowledge of the employees. This *archive* of e-mails is then maintained, apart from your inbox, for a selected period of time – "just in case".

This presents several challenges to Arizona's Records Management Statutes:

1. **Record Retention.** E-mail, like any other record, needs to be **retained based upon the content of the communication, and not the format of the communication.** Does the e-mail deal with requested vacation

or FMLA needed? Does the e-mail deal with next FY's budget? Does the e-mail discuss a new / current policy? Is the e-mail a request for information? Is the e-mail a public records request? All of these e-mails need to be retained for different retention periods based upon their content. Keeping copies of every e-mail for the same period of time does not comply with ARS requirements. With cloud computing you are no longer in control of records retention for your e-mail records, and you no longer can retain your e-mail records for various retention periods based upon the content of the e-mail record.

2. **Copy vs. Official Record.** You

*(Continued on page 3)*

## Are You Properly Disposing of Your Copiers?

Used copiers may pose records management and security risks. Equipment including printers and copiers may have imbedded hard drives that retain memory of documents copied, unless they are properly scrubbed or pre-set with memory retention limits. This is something government entities should be con-

cerned about, and a great issue to help bridge the gap with your Information Technology (I.T.) professionals.

Be aware of these risks and avoid the inadvertent unsecured disposal of confidential or private information.

The following directive may be

helpful to you in addressing this issue within your own organization.: <http://www.azdoa.gov/userfiles/IT%20Assets%20Directive%20Revision%201-1%20May%202010.pdf>



The clerk of the court is the official record keeper of the superior court.

Thank you to all the public officials and employees that go above and beyond each day to make government more accessible.



# Accessing Superior Court Records

The Clerk of the Superior Court is a constitutional officer, elected by popular vote in each of Arizona's 15 counties. The Superior Court and the Clerk of the Superior Court are separate agencies that work together. The Clerk of the Court is the official record keeper and fiduciary agent of the superior court, which involves recording the official minutes of court hearings and maintaining the official court record. Among other mandates by statute, court rule and

administrative orders, the Clerk issues and records marriage licenses, collects and disperses fees, and provides public access to the court's records.

Serving the fourth largest county in the United States, the Clerk of the Superior Court in Maricopa County receives an average of 45,000 pieces of paper each day. In 2009, the Clerk provided the public, court, legal community and various agencies with

1,215,750 copies of court documents via hard-copy and the electronic court record.

The Arizona Court of Appeals, Division I, confirmed in the *Arpaio v. Davis* case in 2009 that Arizona Supreme Court Rule 123, not the Arizona Public Records Law in Title 39, controls requests for judicial records. As the custodian of records, the Clerk's Office provides access to documents

*(Continued on page 4)*

## Unsung Heroes

Thank you to those of you that contacted me recognizing government employees who have gone above and beyond to promote open government in Arizona.

We would like to recognize the following four individuals for providing stellar service to the citizens of Arizona:

1. Fran McCarroll, Clerk of the Maricopa County

Board of Supervisor: "When I went to visit her office...the public information officer who normally handles special taxing districts was out. Fran came out of her office, pulled the files for the district, retrieved a statute book and spent well over an hour and a half reviewing the files and

statutes to verify the district status of compliance."

2. John Brodsky, Management Assistant II, City of Phoenix.; "John works in the public information office. He explained how to complete the request form and the benefits of

*(Continued on page 3)*

## Attempts to Preclude Access Continue

In April 2010, the Yavapai Superior Court dismissed the Congress Elementary School District's attempts to enjoin four women from seeking public records before the request is screened by the court. However, the court will consider the District's request for declaratory relief regarding

Jean Warren's pending January 13, 2010 public records request for the District's stewardship list and other public records.

After the superior court denied the District's motion to stay the claim for declaratory relief until after the appeal, defendant Jean Warren filed a

motion for summary judgment to require the District to release the records.

In addition, the District appealed the trial court dismissal and the parties recently completed briefing the issues for the Arizona Court of Appeals Division I.

Stay tuned....

# Unsung Heroes



(Continued from page 2)

making the search criteria as narrow as possible. John was friendly, helpful, detailed and efficient.”

2. Marsha Munday, Accountant

Ill, City of Phoenix: “Marsha in the City of phoenix Finance Department responded to two of my public record requests. I received the first response within one hour and the second respond via email within 24 hours. Marsha not only provided records, she assisted me with a fact finding mission. She was helpful and instructive.”

3. Rita Leyva, Chief Deputy, Yavapai County Superintendent’s Office: “I would like to

publicly thank Leyva for painlessly and immediately producing Congress elementary School District’s 2009-2010 budget upon request.”

It is great to hear about the good things happening out there. Please continue to submit nominations for our next newsletter. Keep up the good work!

**Cloud computing presents new challenges in records management.**

## Cloud Computing

(Continued from page 1)

have received an e-mail record, retained it as long as is needed, and are ready to delete the e-mail since it has come to the end of its retention period. You delete the e-mail, but has it really been destroyed? A copy of your e-mail still exists in the *e-mail archive*, and will continue to exist for a period of time determined by I.T. – which can be up to **10 years**. And, a copy of a record is NOT a record as long as it is

only a COPY. But, when you delete your e-mail, yet a copy still exists in the *e-mail archive*, that *e-mail archive* copy has now become the **official** e-mail record.

3. Public Records Requests, Litigation, Audits and Government Investigations. If you are provided with a request for records due to any of these reasons, e-mail needs to be routinely included since e-mail records are the same as any other

record type / format. When your public body is provided with a request for records, they will need to routinely search the *e-mail archive*, because there will be e-mail records in this archive that exist nowhere else **but** the *email archive*.

If you have any questions or comments on this article, please feel free to contact Jerry Kirkpatrick at 602-926-3820, or [jkirkpatrick@lib.az.us](mailto:jkirkpatrick@lib.az.us).

## Open Meeting Law Update

The Arizona Attorney General recently published a revised version of the Arizona Agency Handbook Open Meeting Law Chapter (Chapter 7).

It may be found at [www.azag.gov](http://www.azag.gov) on the resources page, or at [http://www.azag.gov/Agency\\_Handbook/Ch7.pdf](http://www.azag.gov/Agency_Handbook/Ch7.pdf)

Conspicuously posting this link sat-

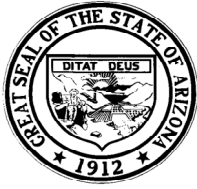
isfies the new requirements set forth under A.R.S. § 38-431.01 (G).

For those of you unfamiliar with the Arizona Agency Handbook, it is a publication intended to provide guidance to State officers and employees and to the lawyers who represent the State or appear before its boards and agencies. The

Handbook does not itself create legal rights or obligations; instead it is a reference source that discusses laws otherwise created by statutes, regulations, and the state or federal constitutions. Chapter 7 (open meetings) and Chapter 6 (public records) apply to all public officers and public bodies in Arizona.



**All public officials must review the handbook before taking office.**



## Arizona Ombudsman – Citizens' Aide

3737 N. 7th Street  
Suite 209  
Phoenix, AZ 85014

Phone: 602-277-7292  
Toll free: 800-872-2879  
Fax: 602-277-7312  
E-mail: [ombuds@azoca.gov](mailto:ombuds@azoca.gov)  
Website: [www.azoca.gov](http://www.azoca.gov)

**Making government more responsive  
to the people of Arizona**



Greetings!

We hope our Fall newsletter finds you doing well.

As always, our goal is to provide you with timely and informative information related to Arizona's Public Record and Open Meeting Laws.

If you have information you would like to share in an upcoming newsletter, or questions you want answered, please feel free to contact Liz Hill, Assistant Ombudsman for Public Access directly at 602-285-9136 x32 or [ehill@azoca.gov](mailto:ehill@azoca.gov).



# Court Records

*(Continued from page 2)*

in several formats.

In Maricopa County, case records maintained in paper or on film are available at the Customer Service Center located in downtown Phoenix. For viewing and copies, paper records can be transported to the Clerk's outlying facilities around the Valley upon request. Public records in adult case types initiated after January 1, 2002 have been digitized and are accessible at public access terminals – computer monitors where customers can view and print copies of public records. The Arizona Supreme Court has designated the digital image as the official record for the Superior Court in Maricopa County and the Clerk's Office destroys paper documents after verifying that the paper has been replaced with electronically-

maintained images in the official record.

Records can be requested through the U.S. Mail by providing enough information to identify the case and documents required and paying the copy and postage fees prescribed by statute. Most recently, the Clerk's Office made available the Electronic Court Record Online (ECR Online). Accessing the image of records over the internet through the ECR Online requires that the customer be involved with the specific case as an attorney, arbitrator, or party. Access to the entire electronic repository of public records requires using the public access terminals at the Clerk's physical offices.

A text-based docket of filings is available on the superior court's website. In addition, the images of minute entries are available on the Clerk's website. Some

records are still maintained in paper, such as sealed documents, juvenile records and other items specified by court rule or statute. The Arizona Code of Judicial Administration dictates the retention period for court records.

The Clerk of the Superior Court is proud to serve the citizens of Maricopa County and customers from around the world who access superior court records and exhibits. As times change, the Clerk's office becomes more efficient and is recognized as a national leader in imaging, access to records and eFiling. For more information about the Clerk of the Superior Court for Maricopa County, please visit the Clerk's website at [www.clerkofcourt.maricopa.gov](http://www.clerkofcourt.maricopa.gov)

By: Alexander Shapos, Superior Court Clerk Intern