

Santa Clara County Releases Its Geodata

September 16, 2009

After a three year legal battle, Santa Clara County finally provided a copy of its GIS parcel basemap data to the California First Amendment Coalition (CFAC) in compliance with California's Public Record Act (PRA). Decisions from both the California Superior Court and the California Court of Appeal clearly affirmed that public agencies must provide their geodata in accordance with the PRA (California Government Codes §6250-6259). Generally, agencies can not charge a requestor of their geodata more than the direct cost of duplication, and they can not restrict how a requestor can use or redistribute the data. Santa Clara County had been selling its geodata for \$ 158,000; the cost CFAC finally paid was \$ 3.10 per disk, plus shipping.

"We have always believed that the public should have essentially free, unrestricted access to digital mapping data that were created by the government with public funds," said Peter Scheer, Executive Director of CFAC (www.firstamendmentcoalition.org). "Not only does the public own the basemap, but the public interest will be served by making it available to companies, individuals, nonprofits, journalists -- and even other government agencies."

In addition to providing its geodata to the public, the PRA requires the County to pay CFAC's attorneys fees and costs incurred to assert its legal right to the data. Rachel Matteo-Boehm led the successful team at Holme Roberts & Owen, LLP (www.hro.com) in this three-year battle for public access to public agency data.

"This has been a long and hard-fought battle requiring an enormous investment of time and effort, but the result is well worth it," said Ms. Matteo-Boehm. "At long last, we have a definitive Court of Appeal opinion that not only confirms the public nature of GIS basemap data, but also resolves several important legal issues of first impression that will bear on requests for other types of electronic records maintained by government agencies."

The Appeals Court affirmed the Superior Court decision that both the Critical Infrastructure Information Act and the accompanying Department of Homeland Security (DHS) regulations do not shield county parcel basemaps from public scrutiny. These Federal regulations make a distinction between submitters of Protected Critical Infrastructure Information to DHS, and recipients of such information from DHS.

The Appeals Court was also clear that California government entities do not have the right to use copyright law to restrict disclosure or impose limitations on the use of their data, which had been another one of the County's justifications for selling its data.

The Court of Appeal's decision was issued in February, and after the period for potential further appeal expired in April, the case was sent back to the trial court for a determination of the costs that the County would be permitted to charge for the geodata CFAC requested. It took another four months of negotiation to receive the County's most current data, in the format requested. The County shipped four disks with the requested data on August 26, 2009.

"Initially, the County tried to fulfill the Court order with a three-year-old copy of the geodatabase, then with last year's version," Bruce Joffe, founder of the Open Data Consortium project (www.OpenDataConsortium.org) and technical advisor to CFAC observed. "We insisted on the current version (Q3, 2009), in both .shp and .gdb format, which they eventually acceded to. Nevertheless, we had to request the 2008 annual version as well, because the 2009 version did not include the text annotation that is present in the 2008 version."

To date, the County has not provided adequate metadata to explain what all the tables and attributes are supposed to mean. Future PRA requests should seek adequate metadata, including the database dictionary, schema or E-R diagram, and descriptive documentation for users and GIS system managers, as well as the date of data capture, date the data was extracted from the geodatabase, and the basemap's projection, datum, state plane coordinate zone, and locational accuracy (or error tolerance).

Five years ago, 26 of California's 58 counties sold their GIS parcel basemap data for far more than the cost of duplication. This apparent violation of the PRA was taken to the California Attorney General's office by Dennis Klein of Boundary Solutions, Inc. (www.boundarysolutions.com) with the help of then-Assemblymember Joe Nation. After the A.G. wrote a legal opinion in 2005, stating that basemap data is subject to the PRA, 16 counties changed their data sales policy. With King County recently changing its policy since Santa Clara lost its appeal, and now Santa Clara becoming PRA-compliant, only eight counties remain in violation of the law.

"Acknowledgment is due to the many GIS professionals who supported the Open Data Consortium's efforts to develop a model data distribution policy, and who advocated for open geographic records according to the public records law," Joffe added, "especially to the 77 GIS professionals and organizations who co-signed the GIS Amicus Brief submitted to the Court of Appeal. Their opinions were noted by the Court."

Of the eight counties that still charge more than the direct cost of duplication for their parcel basemap data, Joffe hopes they will quickly reset their data cost policy according to the Court decision. With regard to the parcel descriptive attribute files that some Assessor Offices sell for over \$ 2,000, well, "that is a battle for another day."

Soon?

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