



## Case study: Public Access to Government Data

In the early 1990s the County of Santa Clara, California signed an agreement with a private contractor to convert the County's existing 1"=500' (1:6000)-scale parcel maps to a "digital cadastral base map" (County of Santa Clara 1993, p. 1). To finance the project the County issued a government bond to cover half of the contractor's up-front costs. It executed a cost-sharing agreement with the Santa Clara Valley Water District to pay the other half.

The agreement with the contractor stipulated that the County would own (claim copyright over) the digital base map. However, the County and contractor agreed to split revenues earned through sales of the database to "the broadest possible base of potential users, including, but not limited to, the real estate industry, the community development market, public safety organizations, private industry, government agencies and the general public" (County of Santa Clara 1993, p. 1). The County and contractor anticipated annual sales revenues of \$300,000 each within five years of the base map's production. The County planned to use the earnings to subsidize base map maintenance and related GIS services.

In 2005, at the request of a state legislator, the California Attorney General issued an opinion that "parcel boundary map data maintained by a county assessor in an electronic format is subject to public inspection and copying under provisions of the California Public Records Act" (Locklear and Stone 2005, p. 2). Consistent with that Act, the Attorney General's opinion held that government agencies should respond in a timely manner to requests to digital cadastral data, and should provide the data at nominal cost.

A 2006 survey by the Open Data Consortium revealed that 36 of California's 58 counties licensed parcel data at no cost or at the cost of reproduction. Thirteen counties, including Santa Clara, continued to offer their data for sale at higher costs despite the Attorney General's opinion. In October 2006 the California First Amendment Coalition (CFAC) filed suit against the County, claiming that the parcel data are public documents subject to the California Public Records Act, which states that state agencies "shall make the records promptly available to any person upon payment of fees covering direct costs of duplication" (State of California 2004). In its opposition to the suit Santa Clara County argued that the digital cadastral basemap constituted proprietary software (which is specifically excluded from the Public Records law) and that the loss of licensing fees would undermine support for the County's mapping activities.

With the Superior Court ruling still pending, Santa Clara County suspended sales of its cadastral database in April 2007, citing concerns that "about alerting potential terrorists to the location of pipelines feeding San Francisco water from the Hetch Hetchy reservoir" (San Jose Mercury News 2007a). The County subsequently requested that the database be designated as "critical infrastructure information" by the U.S. Department of Homeland Security. CFAC replied that "there's nothing sensitive in the database that isn't already available in other public information" (San Jose Mercury News 2007b).

On May 22, 2007 County Superior Court judge James Klienbergr ruled that a digital cadastral basemap is a public record, and that Santa Clara County must provide public access to the data

at reasonable cost. On June 14 the County appealed the decision to California Superior Court, stating that the further court action was required “to help us with the balancing act between the public’s interest in knowing and public safety” (San Jose Mercury News 2007b). In February 2009 the California Court of Appeal rejected the County’s claim that its cadastral database should be considered “critical infrastructure information.” And in October 2009, Santa Clara County was ordered to pay \$500,000 in legal fees to the California First Amendment Coalition, and to make the County’s cadastral basemap data available to the public at the cost of reproduction—\$3.10 per disk.

In 2010, however, the Superior Court of Orange County ruled that the County’s “O.C. Landbase” met the definition of “computer software” in the California Public Records Act, and was therefore exempt from disclosure rules. Rejecting the Sierra Club’s argument that the Santa Clara case was a controlling precedent, the Court ruled that the County was acting within the law when it charged the Club \$375,000 to license the Landbase (Joffe 2010).

Sarah is a Certified GIS Professional who is employed as the GIS Manager of another county in California. Sarah has recently overseen development of an expensive GIS database that will support operations of several county departments. Sarah’s bosses, the county commissioners, are sharply divided about how their county should respond to the equivocal court decisions. Some commissioners feel strongly that the database is a public record, and should be distributed accordingly. Other commissioners are convinced that the database is software, and that county should charge licensing fees to recoup the substantial costs of maintaining the database. The commissioners summon Sarah to a closed-door meeting about the issue. Sarah knows that the commissioners respect decisiveness, and will insist that she not equivocate. What should Sarah recommend?

## References

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San Jose Mercury News (2007a). County Stops Selling its Data for Maps, Claims Security Risk. April 3, p. 1B.

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## Resources for educators

Suggested discussion points, relevant GISCI Rules of Conduct, and further resources related to this case study are available on request. Send request to David DiBiase ([dibiase@psu.edu](mailto:dibiase@psu.edu)) along with contact information (including your position and affiliation) and a brief description of how you plan to use the case.

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<http://gisprofessionalethics.org>

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