

# THE RISK JOURNAL

A PUBLICATION FOR MMRMA MEMBERS

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## CPCU Society Names MMRMA Company of the Year

by Michael Rhyner  
MMRMA Executive Director

I AM PROUD TO announce that MMRMA was selected as "Company of the



Year" by the Greater Detroit Chapter of the Charter Property Casualty Underwriter (CPCU) Society. The award was announced and presented on November 16 at the CPCU Society's All Industry Day luncheon at the Detroit Athletic Club. The award recognizes insurance companies for their leadership and commitment to the CPCU's core values, promotion of education, and involvement in the Chapter. Past recipients include State Farm, Citizens Insurance, and General Motors Corporate Risk Management.

Founded in 1944, the CPCU Society is an international society of insurance professionals with approximately 28,000 members worldwide. CPCUs are experts in many different fields of insurance and, although professionally diverse, they all share the same dedication to insurance excellence. The CPCU membership consists of insurance

executives, underwriters, claims, compliance, risk managers, reinsurers, marketing, attorneys, and financial advisers, representing insurance carriers, agencies, brokers, independent administrators, law firms, and insured entities.

The CPCU is the highest professional designation in the property and casualty insurance industry and requires passing rigorous undergraduate and graduate level examinations, meeting experience requirements, and agreeing to be bound by a strict code of professional ethics.

MMRMA staff members have long been active in the CPCU Society. Director of Claims Michael Ellis, Senior Claims Consultant Charlie Stevens, Claims Manager Elaine Wood, and Senior Property Adjuster Florence Nagy have all earned the CPCU designation. Charlie Stevens is incoming chapter president, and Ellis and Nagy are past presidents.

In a rapidly changing and competitive environment,



The CPCU award recognizes insurance companies for their leadership, commitment to CPCU core values, promotion of education, and local involvement.

it is vital that organizations and individuals continue to develop their knowledge and skills. In the insurance and risk management field, we emphasize education and recognize the need for ongoing training in the use of systems technology.

**MMRMA's Educational Focus**  
MMRMA has made a strong commitment to education and training. Most members have reaped the benefits by taking advantage of the training programs developed by MMRMA's risk control team and often funded with Risk Avoidance Program (RAP) grants. That commitment also applies to our staff, who are encouraged to take advantage of continuing education opportunities and seek professional designations in their fields.

This focus on education and professional development is consistent with several

of MMRMA's Shared Core Values, including the commitment to a learning environment and to competence. We strive to select and retain, at all levels and in every department, capable, experienced individuals who are committed to learning. The personal and professional growth of Board members, employees, and service providers is critical to maintaining MMRMA's excellence.

We also recognize the importance of professionalism. A professional environment is critical to creating a positive atmosphere and instilling confidence in the organization. A positive attitude is the most fundamental contribution our staff and associates can make to MMRMA.

Congratulations to everyone involved in MMRMA's achievement of the CPCU's "Company of the Year" designation.

# Metadata and the Freedom of Information Act

By Christopher Johnson  
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A NEW CASE FROM the Supreme Court of the State of Washington has addressed an issue that has not yet been considered by Michigan courts in a published decision. The issue deals with whether or not metadata is subject to the Michigan Freedom of Information Act (FOIA).

*O'Neill vs City of Shoreline*, 240 P3d 1149 (2010), was the first time the Supreme Court of the State of Washington dealt with metadata issues. While this case does not set precedent in the State of Michigan, there is a strong possibility that this ruling could be used in our own court system.

Metadata is information which describes the history, tracking and management of an electronic document such as an email. Examples of email metadata include such information as the dates that the mail was sent, received, replied to, forwarded, blind carbon copied, and sender address book information. Most metadata is generally not visible when a document is printed or when the document is converted to an image file.

The facts of the *O'Neill* case are typical of what happens in local units of government.



*The case involves an email critical of the City Council that a private citizen, Beth O'Neill, claimed she didn't author. She sought release of the metadata to track who had sent and received the email, and in what form.*

Diane Hettrick (a private citizen) wrote an email to Lisa Thwing (a private citizen). The email contained an allegation that Beth O'Neill (a private citizen) wanted information passed along about alleged illegal activities being condoned by the City Council.

Several days later, Thwing forwarded the email to Deputy Mayor Maggie Fimia and at least one other council member, Janet Way. The email received by Fimia did not list any other recipients to whom Thwing had sent the email, since Thwing first forwarded the email to herself and then blind carbon copied the other recipients.

## Tracking the Email Chain

At a later public meeting of the City Council, Deputy Mayor Fimia stated that she had been sent a copy of an email allegedly sent by Hettrick and O'Neill accusing the council of improper conduct. O'Neill immediately made an oral

request for that email and denied authoring the email. After the Council meeting, Fimia forwarded the original Thwing email to her own personal email account, first removing the "to" and "from" line listing Thwing as a sender and a recipient. She did not remove any additional information from the email.

The next day, Fimia forwarded this new email to staff at the City, which then provided a print copy to O'Neill. This copy did not include the sender or receipt information of the email from Hettrick to Thwing, nor did it include sender or recipient information of the email from Thwing to Fimia.

After O'Neill received this document, she then asked in writing for the City to provide all information relating to the email, including how it was received by Deputy Mayor Fimia, from whom it was received, and the forwarding chain of the email. Fimia

Metadata tracks the history of an electronic document, including the dates the mail was sent, received, replied to, forwarded, blind carbon copied, and sender address book information.

found the original, unaltered email from Thwing to herself, including the forwarding information that the email had originally been sent by Hettrick, and forwarded it to the City Attorney.

Subsequently, the City gave O'Neill a hard copy of that unaltered, complete email string, including both headers, each of which included the date and time of the messages.

After receiving the second disclosure from the City, O'Neill explicitly requested the metadata from the email's entire chain, including all metadata pertaining to the email that Thwing had sent to Fimia. Deputy Mayor Fimia attempted to find the metadata associated with the original email from Thwing, but could not find it.

Fimia concluded that she must have inadvertently destroyed it, so she asked Thwing to resend the original email to her, which Thwing did.

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# Risk Advisory Profile: Parks and Recreation Committee

by Terry VanDoren,  
Risk Control Consultant

**MMRMA'S PARKS AND Recreation Advisory Committee** was developed to help members reduce the potential for recreational property and liability loss. The committee works closely with MMRMA's Risk Control department in addressing loss exposures, emerging loss trends, legislative issues, and other P&R concerns of member communities.

To accomplish this task, the committee develops resources, training programs, safety brochures, and member alert letters/notices. These practical risk control materials provide members with the means to reduce the frequency and severity of losses. The committee also promotes and encourages members to apply for RAP grants for training and loss reduction.

The Parks and Recreation Advisory Committee consists of member employees representing communities from across the state, including department heads and directors of large county systems, city recreation and parks departments, and township and village programs. Each committee member brings his or her own unique perspective on issues facing their departments. This provides a broad base of experience and



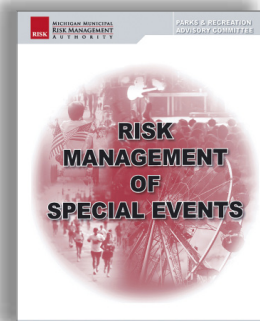
*The Parks and Recreation Committee authored a guide for managing risks associated with winter sports titled Winter Activity Safety Guidelines: Cross Country Ski Trails/Sledding Hill Safety/ Natural Ice Skating Rinks.*

knowledge to address the ever-changing P&R challenges facing members.

## **New Special Events Handbook**

To that end, the committee recently completed an extensive handbook, *Risk Management of Special Events*. Community special events pose unique risk exposures. This is true whether the local unit of government is conducting or merely hosting the activities on public property. Some risks are inherent to the nature of special events, while others can be encountered due to poor or inadequate planning.

This comprehensive manual consists of ten sections covering all stages of both large and small events, from planning to cleanup. The handbook also includes sample forms and applications. The resource is available to member employees who



**Community special events pose unique risk exposures, whether a member is conducting or hosting the event.**

have requested and been approved for Members Only access to MMRMA's website, [www.mmrma.org](http://www.mmrma.org).

Other committee work involves a recently revised brochure on playground safety, inspection, and maintenance programs. The advisory committee is currently completing a resource on the

use or rental of community facilities by the public. These new projects expand on the committee's catalog of risk control resources, DVDs, and brochures, several of which have earned national awards for MMRMA.

The Parks and Recreation Advisory Committee holds half-day meetings on a regular basis. Like all of MMRMA's Risk Control Advisory Committees, it is a great opportunity for networking among committee members and learning about the organization's risk management efforts.

If you are interested in joining MMRMA's Parks and Recreation Advisory Committee, please contact Terry Van Doren, Risk Control Consultant, at [tvandoren@mmrma.org](mailto:tvandoren@mmrma.org) or call 734 513-0300.



Yellow perch have the distinction of being the most frequently caught game fish in Michigan.

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The *Risk Journal* is published six times a year for members of the Michigan Municipal Risk Management Authority. We welcome your feedback. To comment or suggest story ideas, please contact Tamara Christie, communications specialist, at 734 513-0300, 800 243-1324, or [tchristie@mrrma.org](mailto:tchristie@mrrma.org).

Fimia provided that email, along with its metadata, to City staff, which distributed it to O'Neill. The City also provided O'Neill with metadata from the identical email that Thwing had sent to Councilmember Way, after extracting it from Way's computer.

O'Neill was not satisfied and brought suit under the State of Washington's equivalent of FOIA. The essential question O'Neill raised was whether or not all of the metadata was consistent among the different emails she received.

The Washington State Supreme Court held that metadata relating to an electronic document is disclosable under their records act. What was difficult about this particular matter was that Fimia had already deleted the email from her own personal computer prior to receiving the request for metadata.

For this reason, the court required the City to examine the hard drive of Fimia's home computer. If the City was able to retrieve the information from the hard drive, the City was required to provide the metadata information to O'Neill. The court noted that this was appropriate since Deputy Mayor Fimia had used her home computer for City business.

In a separate footnote, the court noted that it addressed only whether the City may inspect Fimia's home computer if she gave consent to the



For data to be disclosed in Michigan, a court must find that a document involves a public rather than a private matter.

inspection. The court did not address whether the City may inspect Fimia's home computer without her consent.

### Is Metadata Disclosable in Michigan?

A major question of interest to MMRMA and its members is how this case may apply to Michigan's FOIA. The definition of a "public record" in FOIA is fairly broad. It means a "writing" prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. There is an exception for computer software.

"Software" is defined as a set of statements or instructions that, when incorporated into a machine, is capable of causing a machine or device to perform particular tasks or functions. Software does not include computer-stored information or data or a field name if disclosure of that field name does not violate a software license.

Finally, the definition of "writing" includes other means of recording: magnetic or punch cards, disks, drums, or other means of recording or retaining meaningful content.

These broad definitions of "writing" and "public record" suggest that courts in Michigan would be inclined to hold that metadata is subject to FOIA. However, *Howell Education Association vs Howell Board of Education*, 287 Mich App 228 (2010), holds that the mere possession of a document in the computer of a public agency does not automatically render the document a "public record." The court is still required to do an analysis of whether or not the email pertains to a public matter rather than a private matter.

For example, the activity in the *Howell* case involved typical union activities such as handling disciplinary matters and collective bargaining agreements. The court ruled that these activities did not touch public matters, but were rather private matters.

It would still be important for a court to review the content of email messages and/or other documents to determine if the associated metadata of the underlying document would also be private.