Emails and Text Messages On Personal Devices Subject to Public Records Act

Information presented to the Commission during the 4-17-13 LAFCO hearing.

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Judge's Ruling Demonstrates Risk to Public Agencies; Policies Should be Reviewed

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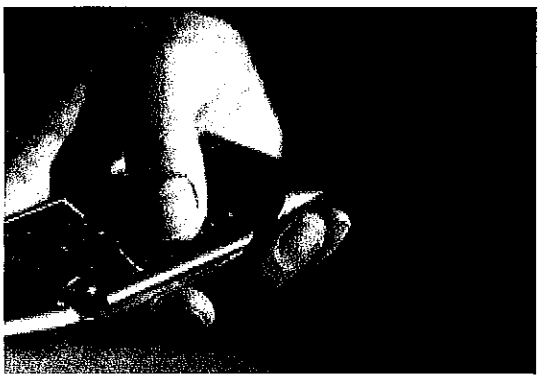

A Santa Clara County Superior Court judge recently ruled that emails and text messages concerning city business but stored on a public official's personal device are subject to the Public Records Act (PRA). The PRA request at issue in the case had asked for all electronic information related to certain public business sent or received by city officials, including on the officials' private electronic devices.

This decision was issued by a trial court, and only applies to the parties involved but could have wider ramifications if the city appeals the decision. The case does demonstrate the risk that public agencies may be required to disclose emails and text messages that concern the public's business regardless of the device used to send or receive the message. Thus, agencies may wish to review their practices and procedures regarding the sending and storage of emails and text messages related to agency business. In particular, consideration should be given to the delivery and retention of records if agency officials and/or employees use personal accounts and devices to send and receive messages related to agency business.

Until this case, no court had specifically ruled on whether messages related to the public's business but sent to or from a private device were considered public records. Many agencies and their attorneys have argued that because records on personal devices are not retained by the agency, they are not disclosable under the PRA. The trial court did not find this reasoning persuasive and instead focused on the content of the messages. Additionally, the trial court concluded that agencies act through their officials and that communications retained on a city official's private account are "retained" by the city.

For questions regarding this case or its implications for your public agency, please contact Kara Ueda in the firm's Municipal Law practice group or your BB&K attorney.