

OFFICE OF THE GENERAL COUNSEL

Legal Advisory

March 16, 2017

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SUMMARY

California Supreme Court holds that, when a public employee uses a personal account to communicate about public business, the message may be subject to public disclosure.

If you have any questions relating to this recent decision, please contact:

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CALIFORNIA SUPREME COURT HOLDS THAT MESSAGES ABOUT PUBLIC BUSINESS IN PERSONAL ACCOUNTS MAY BE PUBLIC RECORDS

The California Supreme Court reversed the Sixth District Court of Appeal's decision in *City of San Jose v. Superior Court* (Smith) that messages related to public business transmitted by City officials via private accounts were not subject to the California Public Records Act (CPRA). The Court found that (1) a communication prepared by a public employee conducting agency business has been "prepared by" the agency within the meaning of CPRA, and (2) a public employee's communications related to the conduct of public business do not cease to be public records simply because they were transmitted via a personal email account. The unanimous California Supreme Court decision is available [here](#).

The communications requested in this case were voicemails, emails, and text messages sent or received by City officials related to City redevelopment efforts. The City disclosed communications made using City telephone numbers and email accounts but did not disclose communications made via the individuals' personal accounts.

The Court broke down the definition of "public record" into four components: "(1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency." (Emphasis in original.) In examining the "prepared by" aspect of the definition, the Court rejected the City's argument that City officials were not agents of the City, concluding that records "prepared by a public employee conducting agency business" have been "prepared by" the agency. Similarly, the Court concluded that communications "retained by a public employee conducting agency business" have been "retained by" the agency within the meaning of the definition, even if the communication is retained in the employee's personal account.

The Court noted that determining whether a writing's content "relat[es] to the conduct of the public's business" will not always be clear. The Court pointed to several factors to aid future courts in this analysis, such as: the content of the message, its context, the purpose of the message, its audience, and whether the message was prepared within the employee's scope of employment. However, the Court recognized that, at a minimum, communications must substantively relate to public business to be disclosable under CPRA and that "primarily personal" communications generally will not be considered public records.

Importantly, the Court offered guidance on how to conduct searches for records located in personal accounts, noting that agencies may "reasonably rely on... employees to search their *own* personal files, accounts, and devices for responsive material." (Emphasis in original.)

Guidance for UC Professionals

Section IV.C.2.a of the University of California Electronic Communications Policy (ECP) is consistent with the *City of San Jose* decision, stating in the context of public records that:

University employees shall comply with University requests for copies of public records in their possession, **regardless of whether such records reside on University electronic communications resources.** (Emphasis added.)

As legal determinations about what messages "relate to the conduct of the public's business" may often be fact-specific, campus administrators who have questions in this area are encouraged to consult with their Campus Counsel or Oakland-based attorneys in the Office of the General Counsel.