

Communications in Private Accounts May Be Subject to the Public Records Act

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Public agency officials and employees may be required to disclose writings about public business that are sent, received, or stored in a personal account.

In an opinion released yesterday, the California Supreme Court considered a Public Records Act request submitted to the City of San Jose for redevelopment-related emails and text messages sent or received on private electronic devices used by the mayor, two council members, and their staffs. The Court unanimously ruled that writings concerning the conduct of public business are not exempt from disclosure under the Public Records Act simply because they were sent or received using a nongovernmental account.

Although the Court did not agree with the city's position, the opinion contains important limitations intended to protect the privacy interests of public agency officials and employees. In particular, the Court emphasized that writings "that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records." Additionally, the Court stressed that public agencies may reasonably rely on officials and employees to search their own personal files, accounts, and devices for responsive material when a records request is received.

City of San Jose v. Superior Court, decided March 2, 2017.

If you have any questions, please contact **Amy Greyson**, **Brendan Kearns** or **Isaac Rosen**.