

Cell phone privacy: securing data under public records essay



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Cell Phone Privacy Question – I am a Battalion Chief in a large department and use my personal cell phone for work related issues like taking pictures of emergency scenes and emails/ testing to various chief officers and elected officials. My Chief informed me that material contained in my phone is available for review under a Public Records request for information if I am using it in the performance of my duty. Response – a recent case in Washington State clarified the issue related to material stored on your cell phone, or in the cloud or on other storage media subject to a proper public court affirmed, holding “ that text messages sent and received by a public employee in the employee’s official capacity are public records of the employer, even if the employee uses a private cell phone,” and that “ a record that an agency employee prepares, owns, uses, or retains in the scope of employment is necessarily a record prepared, owned, used, or retained by [a] state or local agency. ” Records an agency employee prepares, owns, uses, or retains on a private cell phone within the scope of employment can be a public record if they also meet the other requirements of RCA 2. 6. 010(3).

The decision reinforces the position, “ The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. ” Other recent Washington cases involving the PARA involved a small fire department in Skating County who were not responsive to a records request from a local newspaper and in fact tried to deceive the newspaper’s request by providing material not relevant to the request and the Snobbish County authorities learned the hard way during the former County Executive scandal, the use of dropped and the

cloud muddles oversight by making it much easier to evade detection. The takeaway here is to look to your own State law related to what constitutes public records and public officials can avoid the conflict In what is contained on their personal cell phones and other technology by not conducting public business on private devices. Departments should create polices related to mixing private cellophane use and public records. Public employees can sync work-related emails, texts and documents to an agency server, and avoid the conflict.