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**LEGAL ALERT: TIPS FOR GOVERNING BOARDS IN RESPONSE TO
PUBLIC RECORDS ACT RULING ON ELECTRONIC
COMMUNICATIONS**

This Legal Alert is intended to provide strategies for complying with the California Supreme Court's ruling that a board member's written communications about public business are not excluded from a Public Records Act request simply because they have been sent from, or received in, a personal account or personal device.

City of San Jose v. Superior Court

In 2009, the City of San Jose was sued after it refused to search for and provide records of emails and text messages “sent or received on private electronic devices” in response to a California Public Records Act (CPRA) request. Eight years later, on March 2, 2017, the California Supreme Court held that a government employee’s writings and communications about public business are not excluded from a CPRA request simply because they have been sent from, or received in, a personal account or personal device. (*City of San Jose v. Superior Court* (March 2, 2017) 2017 WL 818506.) In other words, regardless of whether board members communicate using the district or county office email server or a private electronic method of communication, that communication may be subject to a CPRA request.

CSBA and the Education Legal Alliance filed an amicus brief in the case, pointing out the potential intrusion on the privacy rights of board members and school district staff who use their personal phones and other private communication devices for board business. Addressing that concern, the Court observed that the CPRA does not require extraordinary or intrusive searches, only that school districts and county offices use “reasonable effort” to locate existing records in response to a CPRA request. The Court did recognize that not every communication that happens to mention the agency in question is a public record. Depending on the context, an email or text may still be entirely personal. This will be determined depending on the context. For example, the Court recognized that an email from a public employee to their spouse complaining about a co-worker may not be a public record, while an email from that employee to their supervisor complaining that procedures were not followed may be.

Potential Changes in Board Policies

CSBA is reviewing and will be updating the relevant sample board policies and administrative regulations to meet the transparency objectives under the CPRA and to reflect the Supreme Court's ruling. Until then, this Legal Alert aims to provide initial clarity about board members' duties under the law, and strategies for complying with the Supreme Court's ruling.

What Board Members Can Do Now

Option 1: Board members (and staff) who continue to use their personal email accounts, devices, and text messaging to communicate about district or county office-related business should recognize that they may be required to search their personal communications and provide (in a sworn declaration) a sufficient factual basis for determining whether communications are district or county office-related communications subject to the CPRA, personal non-disclosable materials, or are materials otherwise exempt from disclosure under the CPRA. Board members will have to adhere to this process for each Public Records Act request that implicates their communications. Continued use of personal accounts and devices may lead to persistent, intrusive CPRA requests and even litigation to obtain these records.

Option 2: Board members (and staff) wishing to take proactive steps to separate their district or county office-related communications from personal communications may do so by:

1. Using only a district or county office-provided email address, or device, to send district or county office-related communications.
2. As the Supreme Court suggested in its ruling, copying a district or county office-provided email address on any district or county office-related communications sent from a personal email account.
3. When possible, using a separate "dedicated" phone and/or application to send and receive district or county office-related communications.
4. Using a phone or tablet provided by the public agency to communicate regarding public business.
5. Conducting public business over the phone or in person.
6. Avoiding the use of text messages or other instant-messaging tools to conduct public agency business, as such messages may become public records that are inconvenient or difficult to retrieve.

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