City of San Jose v. Superior Court

Request targeted “emails and text messages ‘sent or received on private electronic devices used by’ the mayor, two city council members and their staffs.”
Background of the San Jose Case

Ruling in favor of the requestor: “[W]e hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act....”

Guidance for Searches

• When a CPRA request for local agency correspondence, such as emails, is received, does the local agency have to automatically request that public employees and officials search their personal accounts or devices?
• A CPRA request for correspondence probably includes requests for records on personal accounts or devices.
Guidance for Searches

• The *San Jose* decision likely applies to public officials, not just employees.
• The *San Jose* decision likely applies to text messages.
• The *San Jose* decision likely applies to social media messages.

“As to requests seeking public records held in employees’ nongovernmental accounts, an agency’s first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search their own personal files, accounts, and devices for responsive material.”
Good afternoon Council Members and Planning Commissioners-

The City has received a public records request for all communications between city officials and LOCAL BIG BOX. We are asking that you conduct a search of your private accounts and/or devices regarding this request for records.

Please confirm in writing that you have conducted a reasonable search of your private devices and/or accounts and that you either: (1) do NOT HAVE responsive records; or (2) HAVE responsive records. All responsive records should be emailed and/or delivered to me by Monday, ______th in print or electronic copy.

Please conduct your own search of your personal devices and/or accounts for any "public records" that you may possess of communications with LOCAL BIG BOX and City Council and Planning Commission. For purposes of this request, "public records" means records containing information relating to the conduct of the City's business. Records that are primarily personal containing no more than incidental mentions of City business generally will not constitute public records. If you are not sure about a record, please disclose it.

Any responsive text messages can be forwarded by a "screen shot" email to me. All of your City email accounts have already been searched.

Thank you, CITY CLERK 😊

Guidance for Searches

“Factors” a local agency may consider when deciding whether a record is public or personal:

• Content
• Context/Purpose
• Audience
• Scope

Each record must be reviewed on a case-by-case basis to determine whether it is a public or personal record.
Guidance for Searches

The San Jose court suggested the use of "affidavits" for individuals who withhold documents from their personal accounts or devices. However, the court does not require the use of affidavits.

Guidance for Searches

Public records on personal accounts or devices should be kept in accordance with the local agency’s retention schedules.
Best Practices and Policies

Make the public employees and officials aware of the decision, and let them know that public records on their personal accounts or devices may be subject to the CPRA.

Best Practices and Policies

• Be clear to public employees and officials that public records on their personal accounts or devices may be subject to the CPRA.
• Include a requirement that prohibits or minimizes the use of personal accounts and devices for public business.
• If possible, give all public employees and officials an agency email account.
Best Practices and Policies

• Have an auto-message on public official’s personal accounts that directs public business to the official’s agency email account.
• Have a plan in place for former public employees and officials to disclose all of the public records on their personal accounts or devices before they leave the agency.

Best Practices and Policies

Document the local agency’s efforts!