

YOUNG, MINNEY & CORR, LLP

LEGAL ALERT



CHARTER SCHOOL BOARD MEMBERS & EMPLOYEES BEWARE!
NEW CALIFORNIA SUPREME COURT CASE RULES
YOUR PERSONAL EMAILS/TEXTS REGARDING SCHOOL BUSINESS
ARE LIKELY DISCLOSABLE PUBLIC RECORDS

On March 2, 2017, the California Supreme Court (“Court”) issued a ground-breaking decision in the case of [City of San Jose v. Superior Court](#). In *City of San Jose* the Court ruled that if a public employee uses his or her private electronic device or personal account to communicate about the conduct of public business, those communications could be subject to disclosure pursuant to the California Public Records Act (“PRA”)(Govt. Code §6250 et seq.) This Legal Alert does not address the highly complex statutory interpretations [arguments] regarding whether the Public Records Act is definitively applicable to charter schools. However, most granting agencies require compliance and most charter schools have agreed to comply with the Public Records Act as a part of their charter petitions or in separate memoranda of understanding.

As a result of the Court’s ruling, charter school employees, officers, and/or board members are required to publicly disclose work-related communications on their personal electronic accounts and devices. While the case dealt with email and text messages sent or received on a public employee’s personal electronic device (e.g., cell phone, iPad etc.) the ruling of the case will also extend to, for example, work-related communications via social media (e.g., messenger, Facebook etc.) Because the court’s ruling was declarative of existing law, its ruling covers both newly created electronic records as well as previously created electronic records.

The Court was not unsympathetic to the privacy rights of individuals while at the same time trying to ensure transparency in government activities; the court provided some general nonbinding guidance on methods for searching for public records maintained on private devices and personal accounts that would allow the Board member/employee to search their own personal files, accounts, and devices for responsive materials if: (1) the Board member/employee is properly trained on how to distinguish between public records and personal matters; and (2) the Board member/employee completes an affidavit that includes sufficient factual information to allow the public agency (or court) to determine if a withheld document was a “public record” or “personal material.”

The Court encouraged public agencies to adopt policies to: (1) reduce the likelihood of public records being held in Board member/employees private accounts; and (2) outline the process for conducting searches on private accounts when a records request is made by a member of the public.

This case establishes for the first time a legal standard for disclosure of work-related communications on personal devices or private accounts that will have a profound impact on Board

members/employees and the way charter schools will be required to respond to PRA requests. Charter schools are encouraged to: (1) immediately confer with legal counsel regarding a review of school-wide practices and adoption of appropriately tailored policies and procedures; and (2) to schedule training for Board members, administration, and staff on the PRA's requirements, its exemptions from disclosure (e.g., personal financial data, medical information, attorney-client communications etc.), and the new policies and procedures for responding to PRA requests.

If you should have any questions regarding this update, please contact Paul Minney (pminney@mycharterlaw.com) or James Young (jyoung@mycharterlaw.com) at the Law Offices of Young, Minney & Corr, LLP at (916) 646-1400. Or find us on the web at: www.mycharterlaw.com.

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