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California Supreme Court Rules Public Records Act Covers Government Communications

On March 2, 2017, the California Supreme Court in *City of San Jose v. Superior Court of Santa Clara County*, ruled that when government officials conduct public business using private emails and personal devices (e.g. cell phones and computers), those communications may be subject to disclosure under the California Public Records Act (PRA)."

The Court addressed whether communications about government matters sent through a public official's personal email account is subject to disclosure under the PRA. Making a careful balance between public access and personal privacy, the Court noted that the PRA was intended to cover paper documents but extended the application of the PRA to electronic communications. Emails and other forms of electronic communication are considered writings within the meaning of the PRA.

However, to be disclosable under the PRA, a writing must contain information relating to the conduct of the public's business. Factors to consider in determining whether a writing is disclosable include:

- x The content itself;
- x The context in or purpose for which it was written;
- x The audience to whom it was directed;
- x Whether the writing was prepared by an employee or purported to act within the scope of employment.

The Court cautioned that writings that are primarily personal and contain only incidental references to agency business will not generally constitute public records.

Recommendation:

You should be aware that your text messages, email and even postings on social media sent from personal devices such as cell phones and personal computers may be subject to disclosure under the PRA if the c