



FULLERTON POLICE DEPARTMENT

TRAINING BULLETIN

ROBERT DUNN, CHIEF OF POLICE

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TB # 21-04

Use of Personal Devices to Conduct Official Business

Summary

“Public records” are those recordings and writings that relate to the conduct of official police department business even when those recordings and writings are made using personal devices. While most police department records are exempt from public disclosure under the Public Records Act, many are not and all police records are subject to disclosure in response to a subpoena. For this reason, employees should not conduct official police department business using personal devices to avoid potentially subjecting those devices to review by a judge.

Discussion

In *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017), the California Supreme Court held that:

“...documents otherwise meeting [the Public Record Act’s] definition of ‘public records’ do not lose this status because they are located in an employee’s personal account.”

This means that public employees who use personal cell phones and personal email accounts to communicate about official business should be aware that these devices and accounts could be subject to search by a judge in the event that there is a public records request or subpoena that seeks public records contained on personal devices/accounts. Usually a judge’s search is not necessary because the law allows the employee to search his/her own device for public records, but if there is reason to believe that the employee has not disclosed official records in response to a lawful public records request or subpoena, a judge may order the device be reviewed *in camera* for any disclosable records. For this reason, best practices include never using a personal cell phone, computer, device, or email account to communicate about or conduct official police business and if you do, to at least be aware that such communications may be disclosable in response to a public records request or subpoena.

Source: Memorandum from Keith F. Collins, Deputy City Attorney

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