



PUBLIC LAW & LABOR AND EMPLOYMENT

July 2008

COURT AVOIDS DECIDING WHETHER CITY COUNCILMEMBERS' PERSONAL EMAILS ARE SUBJECT TO PUBLIC RECORDS ACT

A closely watched California Public Records Act case, *Tracy Press, Inc. v. Superior Court*, was decided today by the California Court of Appeal. At issue was whether a city councilmember's email discussing city business must be produced by a city in response to a Public Records Act request when that email is sent or received without using city resources. Cities and other public agencies have been monitoring this case because of the uncertainty in the law whether such email is subject to disclosure under the Public Records Act.

In *Tracy Press*, the councilmember's email had been sent through a private email account using a non-city computer and was not in the city's possession. The city refused to produce the email in response to a request by Tracy Press. The newspaper brought a lawsuit claiming that the emails must be disclosed pursuant to the Public Records Act. The trial court ruled against the newspaper. The trial court decided that the councilmember was not a "local agency" as defined in the Public Records Act and the writings of an individual councilmember that were not prepared, owned, used or retained by the city are not "public records" subject to the Public Records Act.

Unfortunately, the appellate court decided the case on a procedural basis, and did not decide the key issue. The newspaper failed to name the councilmember in its writ of mandate filed with the court. The court dismissed the case on the basis that the councilmember was an indispensable party because her email was at issue.

This case highlights the continuing uncertainty whether councilmember emails, even those sent or received through a private email address using a home, business, or other non-city computer, are subject to the Public Records Act if the email contains information relating to the conduct of the public's business. Councilmembers are well advised to keep this uncertainty in mind as they use their personal or business email for communications with staff, the public, and other public agencies.

FOR ADVICE FROM RW&G CONCERNING THE TRACY DECISION, PLEASE CONTACT GSTINNETT AT GSTINNETT@RWGLAW.COM OR SUSAN RUSNAK AT SRUSNAK@RWGLAW.COM OR ANY OF THE LAWYERS IN THE FIRM'S **PUBLIC LAW OR LABOR AND EMPLOYMENT** DEPARTMENTS.

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