

CASE REPORT

PUBLIC RECORDS ACT - USE OF PERSONAL COMPUTERS AND PRIVATE EMAIL ACCOUNTS. When private email accounts are used to transmit emails containing agency business, such emails must be released under the Public Records Act unless an exemption applies. *Paulson v. City of Bainbridge Island, Kitsap Superior Court Cause No. 13-2-01839-1 (November 1, 2013).*

I. Facts. The City of Bainbridge Island received a request under the Public Records Act for city councilmember emails relating to the City's utility advisory committee. The City received a second request for records of a similar nature, but that request was made only for emails from certain named councilmembers. The requestors brought this action against the City as a corporate entity and against three councilmembers in their official and individual capacities, alleging that records from the City's servers were provided but that the requestors did not receive production of records from the defendants' personal computers. The plaintiffs requested the court to compel production of the hard drives from the councilmembers' personal computers. The City brought a motion to dismiss the councilmembers in their individual capacities and to dismiss plaintiffs' request for an order compelling production of the councilmembers' personal computer hard drives.

II. Applicable Law and Analysis. Judge Jeanette Dalton of the Kitsap County Superior Court quickly concluded that emails written by public officials and containing information relating to the conduct of government are public records under the Public Records Act. Judge Dalton dismissed the claims against the councilmembers in their individual capacities, reasoning that the purpose of the Public Records Act is to ensure that the public maintains control over its government through public access to agencies as opposed to individual elected officials. The claims against the councilmembers in their official capacities were maintained. Next Judge Dalton addressed the plaintiffs' request for an order compelling production of hard drives from person computers. After considering privacy issues, Judge Dalton ruled that the councilmembers impliedly consented to the inspection of their personal computers and personal email accounts by using them to conduct City business, and therefore the councilmembers had no reasonable expectation of privacy with regard to the subject records. Finally, Judge Dalton scheduled a conference with the parties on November 22, 2013, to review the status of the plaintiffs' requests given the rulings on the request for order to compel production of hard drives.

III. Conclusion. While this superior court case does not establish precedent in legal proceedings, it provides useful guidance on the direction a court may choose to go when personal computers and personal email accounts are used to conduct agency business. When agency

officials and employees conduct agency business over private email accounts, those emails are public records and must be released under the Public Records Act unless an exemption applies. If an agency official or employee has conducted agency business on personal computers or personal email accounts, those records must be provided in accordance with the Public Records Act. In order to lessen the likelihood of searches of personal computers and personal email accounts, agency officials and employees may wish to use agency email addresses and agency networks for retention of agency-related records. If you have any questions relating to best practices for using email to conduct agency business, please contact your city attorney.