

LEGAL MAILBAG – March 21, 2024



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

As a middle school principal and faithful reader of Legal Mailbag, I appreciated learning about the status of text messages between teachers in the Newsblast a couple weeks ago ([March 7, 2024 Legal Mailbag](#)). But Legal Mailbag got me thinking, and now I am anxious to know the answers to some related questions that I hope Legal Mailbag can answer. In essence, I wonder if using personal devices for school district business could open up those personal devices for public inspection.

For example, if a staff member sends messages from a personal device through the district email, would those messages be subject to FOI? If so, would the personal device then be subject to inspection under FOI? Similarly, my district utilizes an emergency management system that comes with an app that can be put on a personal device. If staff members decide to download the application for the emergency alert system on their phones, would their phones become subject to inspection pursuant to a FOIA request? The primary purpose of the app is for staff to complete attendance for students and staff. But some staff members don’t want to download the app on their phone because they are fearful that doing so would make their phone subject to inspection under the FOIA. Using the application on their phone is far better for staff than using the app on a laptop, and some words of comfort that their phones remain private would be welcome.

I don’t mean to suggest that our personal devices have evidence of wrongdoing. However, I would rather that the public not read the texts and emails from my mother complaining that I never call.

Signed,
Privacy Please

Dear Privacy:

The texts and emails from your mother remain safe from public scrutiny, whether you receive them on district equipment or on your personal devices. The definition of “public records” under the Freedom of Information Act is broad, but it contains an important limitation:

“Public records or files” means any recorded data or information ***relating to the conduct of the public's business*** prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method. (Emphasis added).

Conn. Gen. Stat. § 1-200(5). In accordance with that definition, records that do not relate to the public’s business are not “public records,” and that is true wherever the record is located.

Legal Mailbag understands that you are also concerned about opening up personal devices for public inspection if they are used for school-related purposes. The answer is that personal devices remain just that – private. If you or a staff member uses a personal computer or cell phone for school business, the records created thereby relate “to the conduct of the public’s business,” and once they are received by a public agency (as would be the case if they are received on the district server), they are public records. Some public records may still be kept confidential, such as records with FERPA-protected information, but public records are available for public inspection unless such an exemption from disclosure applies. In any event, the devices themselves remain personal devices, and using such personal devices for school business does not result in their being subject to public inspection.

To be sure, the Freedom of Information Commission has ordered public officials to search their personal computers for records responsive to FOI requests. [*Pinette v. Town Manager, Town of Wethersfield*](#), Docket #FIC 2003-341 (September 8, 2004) (Mayor directed to search home computer for emails related to official business). See also [*Weeks v. First Selectman, Town of Canterbury*](#), Docket #FIC 2004-323 (July 13, 2005). But any such orders have directed the public official in possession of public records on personal devices to retrieve and provide such records him- or herself. The Commission has never ordered a forensic examination by a third party to search for public records on a person’s private device.

In short, you and your staff must keep in mind that any records related to school business are public records if they are received by a public agency (which does include the district server and may even include you as a principal), even if they are created on personal devices. However, creating records on personal devices does not expose those devices to examination by third parties under the FOIA.