

Records Created By Use of a Personal Electronic Device by a Member of the Public Body During a Meeting of the Public Body, May Be “Public Records” Under FOIA

Public officials should be aware of the June decision of a Sangamon County Circuit Court which upheld the determination of the Public Access Counselor of the Office of the Illinois Attorney General that city council members and the mayor of Champaign were required under the Illinois Freedom of Information Act to turn over all electronic communications, including cell phone text messages and personal e-mails sent from personal phones during Champaign City Council Meetings. *Champaign vs. News Gazette* (Sangamon County Cir. Ct., 6/11/12)

In that case, a reporter from a local paper made a FOIA request for the materials, including city-issued, and personal, cell phones/devices, contending that “communications pertaining to the transaction of public business – being received and used by individual members of an official body in their role as a member of that public body during an ongoing public meeting – should be public records”. The City of Champaign provided documents related to the City’s electronic equipment, but unsuccessfully argued that “private citizen communications to the Council member’s or the Mayor’s privately owned electronic devices is not within the scope of the Freedom of Information Act” due to the fact that such communications/records are not within the possession of the City.

The Public Access Counselor concluded that records which do not pertain to the business of the City (such as messages regarding personal business meetings or family matters) do not fall within the definition of public records under FOIA. See *Public Access Opinion No. 11-006* (11/15/11) However, as to those records created using personal cell phones, the Public Access Counselor concluded that what constitutes a “public record” is not determined by:

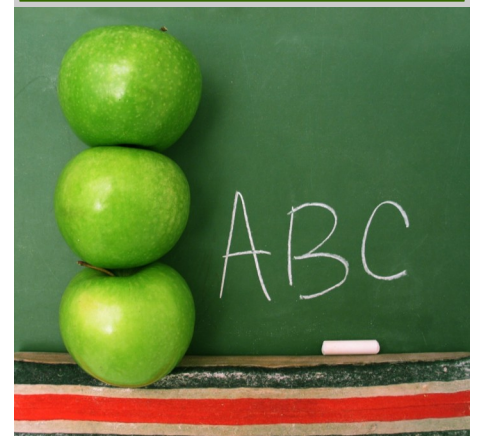
“where, how, or on what device the record was created; rather, the question is whether that record was prepared by or used by one or more members of a public body in conducting the affairs of government. The focus is on the creation of the record itself, and how it was used.”

Based on this reasoning, the Public Access Counselor concluded that message sent or received by City Council members on personal electronic devices during the Council meeting, pertaining to public business, were public records under FOIA.

The City has not yet determined whether to seek an appeal of this decision of the circuit court.

A complete copy of the opinion of the Public Access Counselor of the Office of the Illinois Attorney General, can be accessed at: <http://foia.ilattorneygeneral.net/2011binding.aspx>

For more information about matters discussed in this issue, please contact any one of the KTJ Attorneys.



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