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California Supreme Court Puts Ruling Exempting Private Electronic Communications from Public Records Act on Hold

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On Wednesday, June 25, 2014, the California Supreme Court nullified a recent Court of Appeal opinion that held that written communications by public officials on their private electronic devices/accounts were not “public records.” (See *Electronic Communications Through Private Accounts/Devices Are Not Public Records* for a detailed analysis of the opinion in *City of San Jose v. Superior Court*.) In granting review of the case on Wednesday, the Supreme Court signaled not only its intent to weigh in on the questions raised by the case, but also effectively invalidated the Court of Appeal’s opinion. Therefore, the Court of Appeal’s opinion exempting such records from disclosure is no longer in effect.

The fact that the Supreme Court took review does not necessarily mean it plans to reach a conclusion contrary to the Court of Appeals, but does suggest that it ultimately will decide the questions at the heart of the case. We expect the Supreme Court to order briefing and oral argument in the matter before ultimately deciding the case, although this process is likely to take several months, if not years. We will continue to provide updates as the case progresses in the Supreme Court. In the meantime, we continue to advise school districts and community college districts to consult with counsel regarding appropriate responses to public records requests.

PRACTICE AREAS

- Board Ethics, Transparency and Accountability