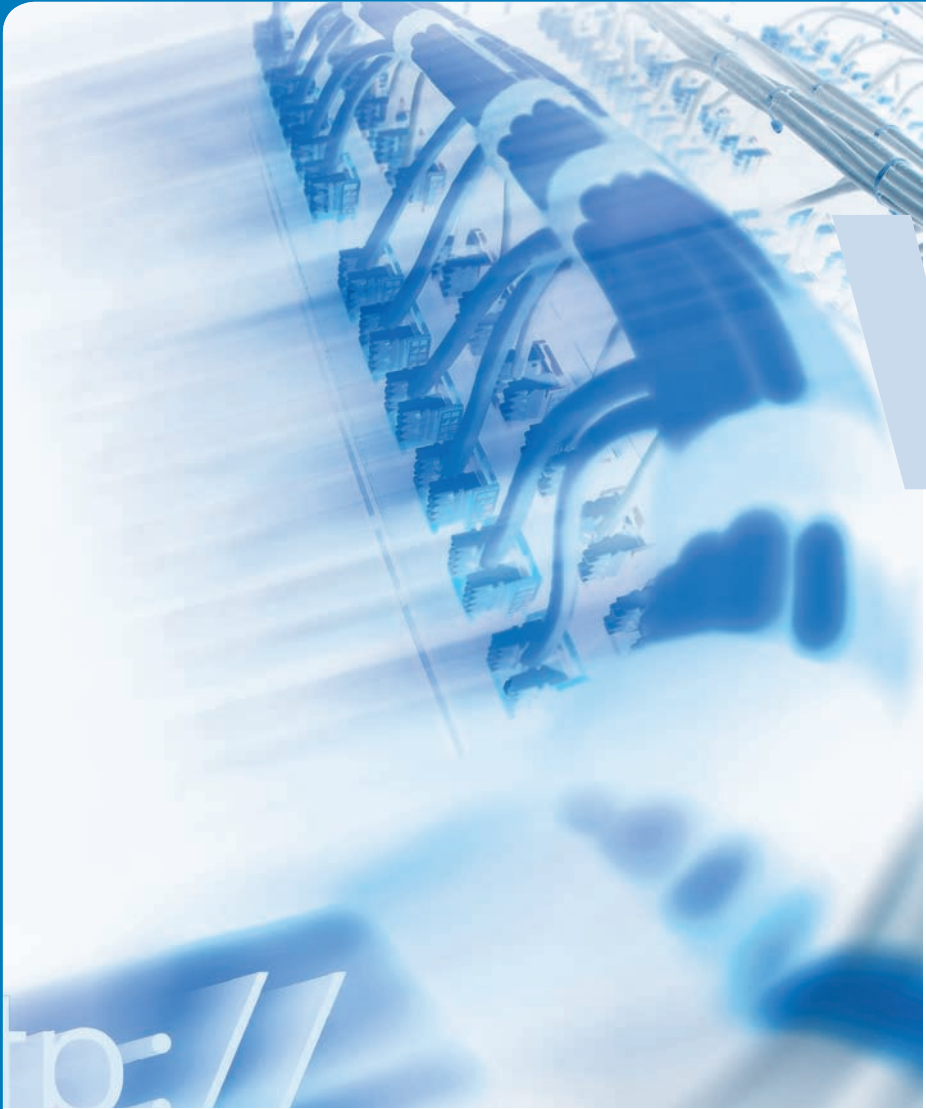




The E Files

Public employee personal e-mails not public record



WHAT ARE THE IMPLICATIONS STANLEY GRIFFIS V. PINAL COUNTY? // When responding to a request for public records that requests e-mail, the public agency will evaluate the content of those e-mails for purposes of determining whether they relate to the official business of the agency or office. Personal documents will not be produced. // When an e-mail contains a mix of business and personal information, the public records requirements support production of the e-mail. // When an agency withholds e-mail and documents as personal, the person requesting production can ask for a review of the documents by a trial court to determine if they relate to public business.

▼ **Today's avalanche of e-mail traffic poses some extraordinary dilemmas for both public and private employers. Not surprisingly, these dilemmas often end up as legal issues sometimes balancing the public's right to know against the legitimate privacy concerns of public employees. —TIMOTHY BERG**

I was privileged to lead a team who recently argued a case before the Arizona Supreme Court to establish that e-mails of government officials that are solely personal in nature are

not public records subject to review and copying under the public records law. Ultimately, the Justices agreed.

In *Stanley Griffis v. Pinal County and Phoenix Newspapers*, the Arizona Supreme Court said that "Disclosure of purely private documents does nothing to advance the purposes underlying the public records law. The contents of purely private documents shed no light on how the government is conducting its business or spending taxpayer money."

The Justices went on to state that a review of the nature and purpose of the e-mail compared to the official's or the agency's activities should guide what is ultimately considered

solely personal communication and what is a public record. They further highlighted the importance of public access to government communication by placing the burden of proof on the party arguing that a record is solely personal.

Phoenix Newspapers requested hundreds of e-mails generated by former Pinal County Manager Stanley Griffis over a two-month period after Pinal County suspended Griffis in 2005 while it investigated allegations concerning improper use of government funds by Griffis. A Pinal County Superior Court judge concluded that Phoenix Newspapers' public information request indeed covered all

Workforce Q&A

of Griffis' e-mails, including those of a solely personal nature. The premise for this decision was that if the e-mail is on a government computer, then the e-mail is presumed to be a public record.

The Court of Appeals disagreed, ruling that a public official's e-mails are not necessarily assumed to be public records simply because they are on a government computer. The Court held that e-mails which are purely personal cannot be considered public records as defined by Arizona law. Phoenix Newspapers appealed this decision to the Arizona Supreme Court.

Practically speaking, both government and business need dynamic and clear internal e-

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mail policies that are regularly communicated.

The Griffis decision affects business when it is involved in a dispute with the government or otherwise seeks information in a public records request. It directly affects the responsibility of public agencies to produce documents and vindicates the right of public employees to keep their personal e-mail from routine public disclosure to anyone asking for them. It sets a bright line test for what e-mails are public records. Beyond this, it is a reminder of the burden for any business that gets involved in a dispute or litigation.

The electronic communications that increasingly dominate our workplace are raising new and intriguing questions for the courts, employers and government about how private electronic communication is, just how far the presumption of privacy extends, and what the obligation is to produce what may be literally millions of e-mails relating to a dispute or litigation.

Timothy Berg is the managing partner of Fennemore Craig and practices law in the areas of civil appeals and public utilities regulation.

Answers From the Top

Does Size Really Matter?



by Corporate Job Bank CEO Paul Boca

We have received many questions from readers who are trying to decide which size company is the best fit for their work style. After reviewing these questions I have developed some opinions and feedback about both sides of the employment pond.

What are the benefits of working for a large organization?

Bigger companies can offer bigger benefits and rewards. Larger organizations offer a variety of benefits including internal department structure, training opportunities and impressive employee benefits like a 401K, company car or stock options. Promotions and hires are also rewarding due to the high amount of competition and volume of potential candidates. Large organizations often have a well-established presence in the community, therefore adding credibility to your position and your resume. In-house resources are also beneficial as it accelerates the completion of projects and can cut delivery and mark up costs.

What are the benefits of working for a small company?

Smaller companies have the luxury of offering flexible schedules to fit the personal needs of employees. To some, this can be a bigger selling point than an increased salary or fancy job title. A small company also gives employees direct access to the owners and management to voice opinions and project ideas. Although in-house resources might be limited compared to a large organization, employees can benefit from opportunities for quicker advancement, direct accountability for projects vital to the company's success and experience in daily business management.

How do I know which environment is better for me?

Everyone's work environment preference is different, so it is important to identify your personal employment strengths and weaknesses. If you are someone who needs structure, policies and a steady paycheck, a large organization is probably your best bet. If you possess the entrepreneurial drive and flourish in a laissez-faire environment, a

smaller company would have the most flexibility and opportunity to accommodate your needs. Bottom line: Picture yourself during a normal work week. What motivates you? Is it the constant desire for the boss' approval, or is it the challenge of managing a variety of responsibilities to help grow a smaller company? Evaluating what motivates you can be a determining factor when deciding which environment works best for you.

How can I make a smooth transition from a larger organization to a small company?

If the day comes when you find you would like to climb off the corporate ladder and join a smaller company, be sure not to burn any bridges. The best advice I can give to those making a transition from a large organization to a small company is maintain your contacts with the "higher-ups." You will most likely find that those contacts will come to good use at your new venture since a small company does not have as many in-house resources as a large organization. It is important to acknowledge the operation and resources of the small company prior to making the transition so you are prepared for all changes. There are no stupid questions, so ask your new employer what services are offered within the company and what is typically outsourced. This will lead to a smoother transition when you begin your new position with the smaller business.

How can large organizations provide the same attention to employees as smaller companies?

This is a lesson from which Goliath can really learn from David in the business world. Smaller companies consider all of the employee's needs in terms of schedule, promotion and assignments. To offer this positive aspect, larger companies can offer quarterly surveys to the employees, giving them a chance to offer feedback about the work environment and their sense of value to the company. This will make the employees feel that their needs are being considered by upper level management, therefore motivating more productivity. Employees do not like to be lost in the mix, so treat them as an appreciated asset to the organization and they will be more inclined to do their best.