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COURTS

Your boss shouldn't read your text or e-mail messages without an OK, court says

The 9th Circuit Court of Appeals rules in favor of an Ontario police officer whose messages were obtained by the Police Department and reviewed without his permission.

By Maura Dolan, Los Angeles Times Staff Writer
June 19, 2008

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SAN FRANCISCO -- A federal appeals court Wednesday sharply limited the ability of employers to obtain e-mails and text messages sent by employees on company-financed accounts.

The text message portion of the ruling, issued by the U.S. 9th Circuit Court of Appeals, will affect all employers who contract with an outside provider for messaging, as most do. Access to e-mail would be barred if the employer contracts out its e-mail service rather than maintaining an internal server to handle it.

A majority of companies keep employee e-mail on their servers, analysts said. Microsoft Corp.'s Outlook program, which has a 65% share of the corporate e-mail market, can be used either on a company's internal systems or on systems managed by vendors. Currently, about 28% of Outlook users have their e-mail handled by an outside vendor, according to research firm Radicati Group.

The ruling also gives all government workers 4th Amendment protection against searches of text and e-mail communications by their bosses, lawyers said.

"This ruling is a tremendous victory for your online privacy, helping ensure that the 4th Amendment applies to your communications online just as strongly as it does to your letters and packages," the Electronic Frontier Foundation, a nonprofit group that advocates civil liberties in the digital world, said in an online posting.

Your Vote

Should employers be allowed to read the text message of employees?

No way! Invasion of privacy.

Yes. That's fair game.

Only if the employer owns the cellphone.

The unanimous ruling by a three-judge panel was the first federal appellate decision to provide 4th Amendment protection to electronic messages, which lawyers said would require police to obtain a warrant before they could access someone's e-mail or text messages.

The ruling stemmed from a lawsuit by Ontario Police Sgt. Jeff Quon and three others against the city's service provider and the city and Police Department for violating the 4th Amendment prohibition against unreasonable search and seizure.

In August 2002, Quon and another officer exceeded a department limit of 25,000 characters per month for texting. The police chief ordered a subordinate to obtain transcripts of the officers' text messages to determine whether the pagers were being used purely for work purposes.

The provider, Arch Wireless, sent the department transcripts of the messages. The city determined that many of Quon's messages were personal, and several were sexually explicit.

The court found that Arch Wireless violated the federal Stored Communications Act, which prohibits providers from divulging the contents of any communication that is

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maintained on the service without a warrant.

"I think right now service providers are going to be a little leery of providing anything to the subscriber because of this case," said John H. Horwitz, who represented Arch Wireless in the case.

The court ruled against the Police Department even though the city had informed employees that it had the right to read e-mails and text messages. The court said that despite the policy, text messages were not monitored for content and employees had an expectation of privacy.

"There were a host of simple ways to verify the efficacy of the 25,000 character limit [if that, indeed, was the intended purpose] without intruding . . . on 4th Amendment rights," Judge Kim McLane Wardlaw wrote for the court.

The department could have warned Quon that for a month he was forbidden from using his pager for personal communications, and that all his messages would be reviewed, the court said.

Dieter C. Dammeier, who represented Quon and three other plaintiffs who communicated with him by text message, said reading one's text message "really is like somebody trying to eavesdrop on your phone conversations." He said some of the sexually explicit messages were between Quon and his wife.

"Nowadays, people text message," Dammeier said. "It's a new wave of communication, and hopefully this decision is going to be the trend that keeps them more private."

He said the case would return to the lower court to determine monetary damages.

The defendants' lawyers said they did not know whether their clients would appeal.

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Times staff writer Joseph Menn contributed.

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DISCUSSION

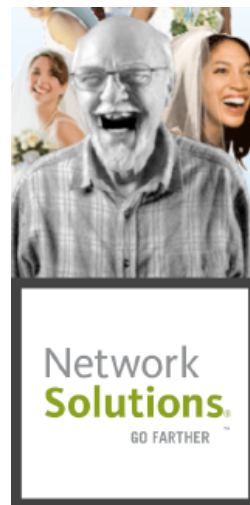
Share your view: Should employers be allowed to read the text messages of employees?

1. Yes, whoever is paying the bill, be it an employer or parent. Leave it to a policeman to be too cheap to buy another phone for private use. In the last public agency I worked for the SMART employees used the CITY paid phone for CITY business and our own private phone for other business. We were smart enough to know that the taxpayer and ourselves wouldn't like to be reading an article like this about more wasted money by a public employee. I guess policemen feel that they are above having to show any responsibility.
Submitted by: web
4:02 PM PDT, Jun 18, 2008

2. So, I as a tax payer who can only afford a prepaid plan, I'm paying for public employees to text for personal matters? Weird.
Submitted by: Baffled Tax Payer
3:49 PM PDT, Jun 18, 2008

3. If the company pays for it it's there property & can do with it as they wish. Employees should know better than to use it for personal use. AND WHY IS A COP SENDING SEXUAL MESSAGES, Here we are looking for cops to protect & Serve the community & they are wasting it on sending text messages to his lover? PUNISH HIM!!!
Submitted by: Yami No Matsuei
3:39 PM PDT, Jun 18, 2008

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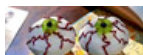
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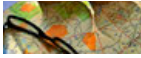
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