New Jersey Supreme Court: Logs of Government-Related Emails Contained in Personal Accounts Are Government Records Under OPRA

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The New Jersey Supreme Court ("Court") unanimously held that logs of government-related emails in public officials' personal email accounts are government records subject to disclosure under the state's Open Public Records Act ("OPRA").

Background

In *Rosetti v. Ramapo-Indian Hills Regional High School Board of Education*, Case No. A-72-24, the plaintiff submitted an OPRA request to the Ramapo-Indian Hills Regional High School Board of Education ("Board") seeking, among other records, email logs for all past and current Board members for accounts used to conduct or discuss Board business during the specified time period. The requested logs were to include sender, recipient, copied and blind-copied recipients, date, time, subject, and attachment information. Email logs do not exist independently and are generated by extracting data from email accounts. Such logs can be used by requestors to see which correspondence exists so they can request specific, targeted documents rather than submitting overly broad requests. Email logs also provide data about who is communicating and when, giving requestors information without requiring public entities to redact unrelated or exempt content or attachments.

When the Board did not respond to the OPRA request, the plaintiff filed an order to show cause and verified complaint against the Board alleging OPRA violations. The Board eventually produced a redacted log from Board-issued accounts but not from Board members' personal accounts used for Board business. The trial court denied the plaintiff's request for personal-account logs, finding that personal email logs exceed OPRA's purview and granting the request would impose a substantial burden on the

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Board. However, the New Jersey Appellate Division reversed and held that email logs from Board members' personal accounts discussing Board business are subject to OPRA.

New Jersey Supreme Court's Decision

The Court affirmed as modified and held that logs of government-related emails contained in personal email accounts are government records under OPRA. The Court reasoned that OPRA's definition of a government record broadly includes electronically stored information made, maintained, kept on file, or received in the course of official business. It emphasized that emails, whether created on a government official's government or personal account, fall within that definition. The parties did not dispute that emails related to government business, even if housed in personal email accounts, are government records pursuant to OPRA. However, they disagreed over whether the Board should be required to generate email logs from the private email accounts used by Board members. The Board argued it would be difficult, if not impossible, to generate such logs due to technological restrictions.

The Court relied on past precedent, which held that an email log containing fields such as sender, recipient, date, and subject can qualify as a government record, and that agency-created records may be disclosable regardless of who maintains them or where they are stored. Applying those principles, the Court concluded that OPRA reaches communications in personal accounts when they involve government business, including electronically stored information within those emails, by way of email logs generated from those personal email accounts.

The Court also made clear that the disclosure obligation is not unlimited. A log need not be created of an entire personal email account simply because the account contains some government-related emails. The log need only include the government-related emails contained in the personal email account.

To satisfy the request, the Court directed the Board members to search their personal accounts, including inbox, trash, sent, and other relevant folders, for messages to or from other Board

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members, or to use another acceptable method that would identify Board-related emails, in order to create logs of government-related emails housed in those personal email accounts. The Court further stated that Board members should certify the searches performed so a reviewing court can assess whether the searches were proper.

Significance and Practical Guidance for Public Employers

The decision confirms that personal email accounts cannot be used to avoid OPRA obligations when employees, elected officials, board members, or others conduct public business through those accounts. The decision does not make every aspect of a personal email account subject to OPRA. It, however, does confirm that government-related emails and logs of those emails may be disclosable even when housed in personal accounts.

Notably, the Court cautioned that the dispute could have been avoided if Board members had used only government-issued accounts for Board business. That warning underscores the importance of policies, training, and ongoing reminders regarding official communications.

For more information about this decision or the Open Public Records Act, please contact the authors or any attorney in the FBT Gibbons Labor & Employment Practice Group.

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