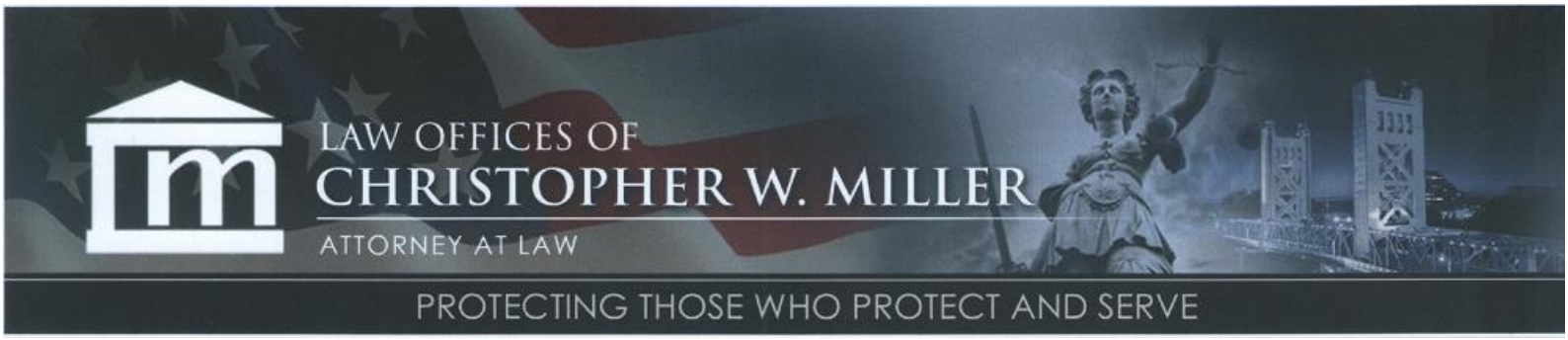

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CLIENT BULLETIN

March 15, 2017

CALIFORNIA SUPREME COURT RULES INFORMATION ON PERSONAL E-MAILS AND DEVICES MAY BE SUBJECT TO PUBLIC RECORDS ACT DISCLOSURE

In a case reminiscent of the private e-mail troubles of former Secretary of State Hillary Clinton, the California Supreme Court has ruled communications by public officials using private e-mail accounts and personal phones or computers may be subject to disclosure under the California Public Records Act (CPRA).

Noting the widespread use of personal devices has expanded the workplace and blurred the lines between official and private communications, the court held text messages, e-mails, and records of telephone calls by public employees using nongovernmental accounts or devices are still public records that agencies can order employees to disclose.

Here are the **key points** from the case, *City of San Jose v. Superior Court*:

- Records created by a public employee using a personal account are still "public records" that belong to the employee's agency, not to the employee

- Public records created on personal accounts are subject to disclosure even if the employee retains the only copy of the record

- Public agencies must balance public's need to know against the employee's privacy interests when ordering employees to disclose records held in private accounts

The court recommended agencies adopt the federal practice of requiring employees from whom records in private accounts have been requested to sign an affidavit declaring a record to be private and not subject to disclosure.

The decision is an emphatic reminder that public employees always should avoid using personal devices – tablets, iPhones, private e-mail – for any work-related purpose.

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