



TEXT MESSAGING ISSUES AND BLOGS

Dennis E. Wagner, Esq.

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The Supreme Court of the United States finally weighed in on the issue of text messaging in the recent case decided in June 2010. In *Quon v. City of Ontario*, the Supreme Court of the United States held that text messaging sent by police officers while on duty, may be intended to be private and such privacy may give way to the legitimate interest of the employer to search the text messages. In the *City of Ontario* case, the device provided was an alpha-numeric pager which was capable of sending and receiving text messages. The City of Ontario provided the pager to their police officers with an acknowledgment that it was only supposed to be used for City work and that the City had the right to monitor the activity and messages and there was no expectation of privacy. The officers were provided a limitation regarding the number of text messages and Quon went over his allotment and a review was conducted by the department to determine whether it was excessive usage. During the review process, it was found that many of the text messages were personal and some contained sexual references. The court held even if there was a reasonable expectation of privacy in the text messages, there was no Fourth Amendment violation by obtaining and reviewing the text messages because there were reasonable grounds for suspecting a search was necessary for a non-investigatory work related purpose.

In a concurring opinion by one of the justices, there was a reference to the officer having a limited expectation of privacy as he should have understood that all of his work related actions, including all of his communications on his official pager, were likely to be subject to public and legal scrutiny.

Comment

So what does this mean for officers who want to use their own personal cell phone device to send text messages at work about work related business? Chances are those text messages are going to be discoverable. Just like any phone calls that you make during work hours on your phone to other officers. That information may well be subject to production by a Federal Court upon a demand by a plaintiff's attorney in a civil rights case. The issue would be that despite using your "private" phone, you were using it for a "public" purpose. Because the public purpose, which is ultimately going to be the issue in the underlying lawsuit, is most likely always

going to give way to the production of the information as opposed to any privacy interest the officer may have. Phone calls that are made to wives and girlfriends during work hours may be discoverable because the issue may involve an event that happened during a shift, and who you spoke with or who you texted during your shift or any references made about the incident that occurred.

The advice is not to use your personal device for texting about work related issues at all. This may be difficult for officers in the field who see their private phone as a useful tool in the course of their law enforcement duties. Keep in mind that using your personal phone for your law enforcement duties may result in the production of records as to who you're communicating with and what is being communicated. Your expectation of privacy may give way in a civil rights case to the discoverability of that information.

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