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## Public Records Caution While Working From Home

Messages between public officials exchanged on private devices may be considered public records. Keeping this decision in mind is particularly important as agency staff and officials telecommute, work from home or otherwise do work outside of the office during the COVID-19 pandemic.

In *Sinclair Media III, Inc. v. Cincinnati*, a media outlet sought public records from the City of Cincinnati requesting all text messages between any city council member, the mayor or the city manager regarding the city manager's employment for a defined 6-week period.

The City objected to producing the text messages on the grounds that the request was ambiguous, overly broad and that the records were ultimately not public records subject to disclosure. Over the City's objections, the court found that the request was not ambiguous or overly broad largely because it was limited in time and scope.

More importantly however, the court held that the text messages exchanged between City officials were public records despite being maintained on personal devices because they were records "[...] created or received by, or come under the jurisdiction of, the City, and were kept by the City through its council members and employees [...]."

In determining whether privately exchanged messages between public employees or officials constitute public records, the court considered whether the text messages documented the functions, policies, procedures, operations or other activities of the City, as defined by the Ohio Revised Code. The court ultimately ordered the City to produce the responsive messages concluding that they sufficiently documented such operations and activities. In responding to requests for records generated during the COVID-19 pandemic, agencies should be cognizant of the Sinclair decision to include potentially responsive records located on private devices that may have been created while employees and officials telecommute.



Of course, Sinclair's relevance extends beyond COVID-19. All Ohio agencies should make its employees and officials aware of the decision and let them know that communications on their personal accounts or devices may be disclosable public records. Agencies should also consider updating public records policies prohibiting or minimizing the use of personal accounts and devices for public business, even while working from home. This can be achieved by encouraging employees and officials to utilize agency email accounts only. Finally, if an employee or official does use a personal account or device, policies should require that the communication be forwarded or "cc'd" to an agency account or server.

Ohio Attorney General Dave Yost has provided a model public records policy contemplating the Sinclair decision available at:

<https://www.ohioattorneygeneral.gov/Files/Government-Entities/Model-Public-Records-Policy.aspx>.

Should you wish to discuss developing this policy to work for your agency, please contact Jessica Lomakin.



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