

## **Supreme Court Ruling Allows Audit of Text Messages Made on Government-Issued Device**

### ***Court Refused to Rule on General Expectation of Privacy***

The United States Supreme Court addressed a public employee's claim of Fourth Amendment (to be free from unreasonable searches) violations by his employer auditing text messages made on his government-issued device. In *City of Ontario v. Quon*, the Supreme Court ruled last week that the public employer's audit of the employee's text messages was reasonable and allowable. The Court refused, however, to rule on whether public employees generally have an expectation of privacy in workplace text messages.

In *Quon*, the City of Ontario gave pagers capable of sending and receiving text messages to police department employees. The City's plan had a monthly limit on the number of text messages, resulting in fees for additional messages. City employees paid the overages. When Quon and other employees began to routinely exceed their monthly text limit, the Chief of Police sought to determine whether the City's plan limit was too low. Upon request, the service provider gave the Chief transcripts of Quon's messages. The Chief discovered that many of Quon's messages were personal and some were sexually explicit. The Chief turned the transcripts over to internal affairs, which determined that few of Quon's on-duty messages were related to work. Quon was disciplined. In response, Quon and other department employees (who had exchanged messages with Quon) sued, arguing that the City had violated their Fourth Amendment right and the Federal Stored Communications Act.

At the trial court level, the judge concluded that Quon had a "reasonable expectation of privacy" in his text messages because of the City's informal practice allowing him to pay for some personal use. The judge, however, concluded that the City was entitled to audit those messages if it had a legitimate purpose in doing so. The trial court granted judgment in favor of the City after a jury determined that the Chief's purpose was legitimate. On appeal, the Ninth Circuit reversed the lower court's decision, concluding that the search was not reasonable as a matter of law because there were less-intrusive means that the Chief could have used to determine whether the City's plan limits were too low.

In overturning the appellate court decision, the Supreme Court stated that the audit was allowable where (1) the public employer had a legitimate work-related purpose and (2) the audit was reasonably related to that purpose. Where a public employee has a legitimate expectation of privacy, an employer's intrusion "for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances."

The Supreme Court concluded it did not need to determine whether Quon had a reasonable expectation of privacy in his text message because, even if he did, the City's audit was reasonably related to the City's legitimate work-related purpose given the facts. In addition, the Court considered the fact that the audit would have been "regarded as reasonable and normal in the private-employer context."

It is important to note that the Supreme Court's decision emphasized that the ruling was narrowly tailored to *Quon*'s facts.

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