

UAC PRESENTATION
“EMAIL ACCESS: PRIVACY ISSUES REGARDING USE OF COUNTY EMAIL SYSTEMS”

APRIL 12, 2017

PRESENTATION HANDOUT

W. Lewis Black
DUNN & DUNN, P.C.
2455 East Parley’s Way
Suite 340
Salt Lake City, Utah 84109
(801) 521-6677
wblack@dunndunn.com

- I. Introduction
- II. State Laws and Policies
 - a. State Laws
 - i. Government Records Access and Management Act (GRAMA) – U.C.A. § 63G-2-103(22)(a)
 - ii. Internet Employment Privacy Act – U.C.A. §§ 34-48-101 to 34-48-301
 - iii. Utah Interception of Communications Act – U.C.A. §§ 77-23A-1 to 77-23A-16 and 7-24B-1 to 7-24B-9
 - iv. Utah Protection of Public Employees Act (Utah Whistleblower Act) – U.C.A. §§ 67-24-1 to 676-24-10
 - b. State Policies
 - i. Electronic Mail for State Agencies: A Guideline of the Utah State Archives and Records Service (March 2017)
- III. Cases
 - a. Private Employers
 - i. *Walston v. United Parcel Service*, 2008 WL 5191710, *3 (D. Utah 2008)(unpublished)
 - ii. *U.S. v. Warshak*, 631 F.3d 266 (6th Cir. 2010)
 - iii. *U.S. v. Young*, 2013 WL 6665378, *2 (D. Utah 2013)(unreported)
 - iv. Cases stating that there is no reasonable expectation of privacy in using an employer’s email system.
 - 1. *Bingham v. Baycare Health System*, 2016 WL 3917513 (M.D. Fla. 2016)(unpublished)
 - 2. *Billings Gazette v. City of Billings*, 313 P.3d 129 (Mont. 2013)
 - 3. *U.S. v. Hamilton*, 2011 WL 1366481 (E.D. Ps. 2011)(unpublished)
 - 4. *U.S. v. Monroe*, 52 M.J. 326 (C.A.A.F. 2000)
 - 5. *McLaren v. Microsoft Corp.*, 1999 WL 339015 (Tex. App. 1999)(unpublished)

6. *Smyth v. Pillsbury Co.*, 914 F.Supp. 97 (E.D. Pa. 1996)

- b. Public Employers
 - i. *City of Ontario, Cal. V. Quon*, 560 U.S. 746, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010)
 - ii. *Sollenberger v. Sollenberger*, 173 F.Supp.3d 608 (S.D. Ohio 2016)
 - iii. *City of San Jose v. Superior Court*, 389 P.3d 848 (Ca. 2017) (March 2, 2017)
 - iv. *U.S. v. Cochran*, 2017 WL 1032573 (11th Cir. 2017)(unpublished) (March 17, 2017)
- IV. Examples of Email Policies
 - a. Expectation of Privacy
 - b. Personal phone use
 - c. Personal use of county equipment
 - d. Monitoring procedures
 - e. County property
 - f. Miscellaneous provisions
- V. Best Practices
 - a. If possible, have a **CONSISTENT** County-wide policy
 - b. **INFORM** employees **IN WRITING** that there is no expectation of privacy in government-provided electronic communications or public business
 - c. **EDUCATE** your employees about all aspects of the policy (and have frequent refresher courses)
 - d. **IMPLEMENT** and **ENFORCE** all policies **CONSISTENTLY**
 - e. **AVOID** using personal email to conduct official business
 - f. **REMEMBER:** Public business on private accounts is still a public record
 - g. **DON'T** mix personal and professional topics in the same email
 - h. **WHEN IN DOUBT**, err on the side of caution
 - i. Don't be afraid to **ASK FOR HELP**; you will need it sooner than you think.
- VI. Conclusion