CTSI
Serving Colorado's Counties

Technical Update

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E-mail Communications Under Scrutiny

Two recent court rulings demonstrate that the legal status of e-mail communications is under continuing scrutiny.

As a Legally Binding Contract

The Massachusetts Appeals Court enforced the terms of e-mail communications as a legally binding settlement agreement. The communication exchange that occurred mid-trial between two corporations was a "sufficiently complete and unambiguous statement as a matter of law, and that both parties intended to be bound by that communication of settlement terms". Basis Technology Corp. v. Amazon.com, Inc., No. 06-P-1048 (Mass App. Ct. 2008). Crucial to the decision was a statement contained in the e-mail exchange that confirmed that the list of six key points, also included in the communication exchange, contained the "essential business terms" of the settlement agreement. This conclusion merely applies traditional contract law to the written terms of e-mail communications.

Private or Privileged When Sent from Work

The use of e-mail communication at work may not always destroy any available "privileges" to protect the privacy of an e-mail, under the Federal Rules of Civil Procedure. These "privileges" may still protect the privacy of an e-mail communication under certain legally imposed conditions. Examples include communications containing private attorney-client legal advice and discussion, confidential communications between married spouses, and other situations not mentioned here.

The fact that the employer's policy did not address the use of non-employer provided e-mail accounts has led one court to conclude that e-mail sent by internet servers not controlled and reviewed by the employer allowed the employee to retain a right of privacy (specifically, the attorney client privilege.) National Economic Research Associates Inc. v. Evans, (Suffolk Co. Mass., Super. Ct. August 3, 2006.)

In order to ensure access to employee e-mail, employers may want to draft broader use and monitoring policies that limit personal use of any e-mail, blogging, messaging systems, and other electronic means of communication from the workplace using employer equipment, and to state that all communications transmitted by, received from, created and/or stored in the corporate server are employer property in which employees have a substantially reduced right of privacy and that all such communications are subject to employer monitoring.

What This Means For Counties

Counties should be aware that informal electronic communications by persons with the appearance of authority to bind the county may well be viewed as official communications or even binding contracts. They should consider, with their IT professional and county attorney, whether they should take steps to notify their vendors and the public of their official process for confirming contracts. They might also want to require exculpatory language be appended to outgoing e-mail communications sent from county servers.

Counties should also review their entire phone, facilities, equipment and software use policies to determine if their written policies meet their business needs, and to ensure that the policies they have can be uniformly enforced in a reasonable manner.

For more information, contact CTSI at 303-861-0507.