

Personal e-mail between public officials and public employees may be redacted

A recent court decision demonstrated that under the Colorado Open Records Act (CORA), personal communications between a public official and public employee may be redacted to comply with the disclosure of public records. In other words, personal information may be blacked or whited out in a copy of the record before it is released. The case was *The Denver Publishing Co. v. The Bd. of County Commissioners of the County of Arapahoe, Colo.*

The Case

The Board of County Commissioners of Arapahoe County hired a private investigator to research allegations of impropriety regarding an alleged extramarital relationship between County Clerk and Recorder Tracy Baker and Assistant Chief Deputy Clerk Leesa Sale. The private investigator made an extensive report that included 622 e-mail messages between Baker and Sale.

Since many messages were deemed to be sexually explicit, the board released a redacted version of the report without the explicit messages. After the report was released, the board received requests for a nonredacted report and decided to file a request for judicial determination of whether the nonredacted report must be released.

A trial court ruled that the messages were public records under CORA and ordered their release. An intermediate appellate court reversed the decision on

the grounds that the e-mails were public records, but were exempt under the constitutional right to privacy.

The Colorado Supreme Court affirmed the appellate court's decision that the e-mails should not be released, but arrived at the conclusion on different grounds. The court held that the definition of public records under CORA does not include private e-mail correspondence like the messages at issue in the case. Thus, the court concluded that the county could redact the personal content from mixed e-mails that contained both public and private communications.

What This Case Means to Counties

It is not recommended to use work e-mail for personal purposes whatsoever; however, if mixed personal and public related e-mails must be released, please note that the personal information can be legally redacted (blacked out in the copy to be released – not in the original record).

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