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Court sides with teachers in e-mail dispute

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Wisconsin's Open Records Law became a little less open Friday when the state Supreme Court ruled that e-mails that teachers send from work on school accounts should not be released for public review if the teachers say they are personal.

The result came in a splintered decision that ultimately sided with five Wisconsin Rapids teachers who opposed release of their e-mails under the state's Open Records Law, even though a majority of the justices found the e-mails were in fact public records.

Three justices found "purely personal" e-mails do not meet the definition of a record under the law. Two others found they are records but should not be released in this instance after balancing the public's interest in disclosure against its interest in keeping the e-mails private, making five votes for not releasing the e-mails.

Two justices strongly disagreed, finding the e-mails clearly are public records that should be disclosed.

The majority decision "is contrary to the letter and the spirit of the Public Records Law and is a disservice to the public's interest in government oversight," Patience Roggensack wrote in a dissent joined by Annette Ziegler.

Robert Dreps, a lawyer who filed a brief in the case on behalf of the news media, which supported release of the e-mails, said the disjointed and lengthy ruling demonstrates why the Legislature needs to update the law to address electronic records.

"This isn't the end of the world for public accountability," Dreps said. "But it makes it awkward and burdensome and it ought to be black and white."

The Wisconsin Education Association Council saw it differently.

"This decision clarifies the public records law when it comes to personal e-mail," said Christina Brey, speaking for the teachers union.

Don Bubolz of Vesper had requested the e-mails for a six-week period in 2007 to see if teachers were wasting time during the school day. He could not be reached for comment Friday.

District officials notified the teachers they intended to honor Bubolz's request, and the teachers went to court to block release. A circuit court judge had ordered disclosure of the e-mails, but with any sensitive personal information like medical data redacted. The teachers appealed.

Chief Justice Shirley Abrahamson wrote the lead opinion, joined by justices N. Patrick Crooks and David Prosser. It concludes that content of an e-mail - not its author or the account it was written on or whether it was done during an employee's work day - determines whether it amounts to a public record. So a teacher's e-mail to a spouse about a child care arrangement, having no connection to a government function, would not be a record.

But the dissent points out that none of the justices has ever seen the content of the e-mails in question, and that by allowing government employees to apply their own "personal" label on some e-mails creates a "broad, blanket exception" to the public records law.

Justices Ann Bradley Walsh and Michael Gableman each concluded, in separate concurring opinions, that e-mails created by government employees on work accounts are public records, but in this particular case should not be released.

Most of the 60-page lead opinion is devoted to interpreting the open records statute to conclude that personal e-mails are not a record. But it also cites decisions in several other states that have blocked the release of government employees' personal e-mails. It suggests that allowing public workers to send some personal e-mails from work adds to efficiency, since they might otherwise have to take more time away to address those issues. The opinion also suggests that if personal e-mails were always accessible to the public, agencies might have trouble attracting and retaining employees.

[The four separate opinions](#), which total 107 pages, note that while the Wisconsin Rapids Schools' policy allows some personal use of e-mail, it also clearly warns employees that such e-mails are not private or secure.

Roggensack notes that anyone getting paid by taxpayers necessarily gives up some privacy and is subject to a degree of public scrutiny. She believes the Wisconsin Rapids teachers have failed to show how keeping their e-mails secret advances any public interest greater than that of open accountability for government.

Cities, counties and labor unions and the state Department of Justice all file friend- of-the-court briefs in the case.

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