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Whose Phone is it Anyway?

I was recently asked to discuss the difference between administrators (and staff) using their own personal phones for work versus using district-issued phones. In reality although there are some major issues related to management, privacy and security to be addressed by school districts, from the perspective of the administrator, the differences are really fairly minor.

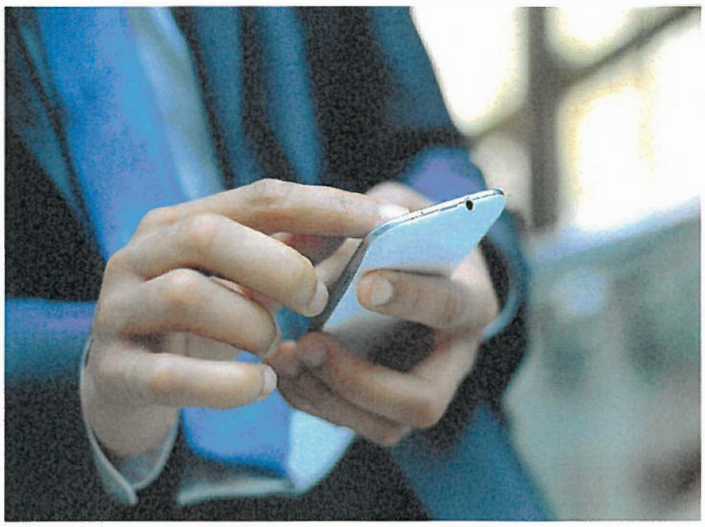
When discussing phones, we are really discussing smart phones. As such, one first must define what is meant by a "smart phone." Wikipedia defines a Smart Phone as:

> *[A] portable computer device that combines mobile telephone functions and computing functions into one unit. They are distinguished from older-design feature phones by their more advanced hardware capabilities and extensive mobile operating systems, which facilitate wider software, access to the internet (including web browsing over mobile broadband), and multimedia functionality (including music, video, cameras, and gaming), alongside core phone functions such as voice calls and text messaging.*

Unlike earlier phones, smart phones are not only used for verbal communication, but also for texting, emailing, messaging, managing work and social calendars and research and they are a direct source of records, information and entertainment. Of course, when we refer to smart phones, we are not just talking "phones" as we know them but also include all such similar devices such tablets, laptops, computers, wrist watches, etc. Unlike earlier, smart phones and the like also contain a significant amount of personal information and private communications.

Most school districts naturally expect that their administrators and staff will rely upon their smart phones and related devices to conduct school business. The distinction is that some school districts direct that such work must be performed solely on district-issued devices and not personal devices. Other school employers allow or require the use of personal devices for such purposes, some paying a monthly stipend. Some districts have no policy or practice one way or the other.

From a school district's perspective, the use of such technology – district-issued or personal devices – necessarily addresses certain perceived risks and benefits. Directing the use of district-issued technology increases direct costs (cost of technology and related fees), as opposed to the directed use of personal devices which seemingly reduces costs. However, permitting or requiring the use of personal devices creates greater data security and privacy risks, while directing district-issued devices permits greater organizational control. Therefore, school districts will continue to debate permitting or requiring the use of personal devices for work or using school district-owned assets.



From the administrator's perspective, the major distinction between school district issued devices and the use of personal devices is the structure of uniform assignment of technology versus the ease and comfort of using devices with which one is most familiar and comfortable. However, a more critical but less discussed issue to administrators is the distinction between personal and district-issued devices and the extent that it impacts upon personal privacy one has related to their devices vis-à-vis their employer or the public.

As a rule, employees generally have very little privacy when it comes to employer-issued work devices. Company-issued devices are generally held to be just like any other piece of property issued by the company, such as a work-issued computer. As with work-issued computers, an employee does not have an **"expectation of privacy"** on her company-issued device. In fact, this lack of privacy should be spelled out in a school district's "acceptable use" policy. It is noted that such policies establish a clearly diminished expectation of privacy and expressly permit the employer to search such devices under certain circumstances. Also, under such policies, employers generally can monitor employee e-mails and track internet use on the employer-issued devices.

On the other hand, personally owned devices are not considered district property. As a general rule, a school employer cannot conduct a search of an employee or their belongings against their will, without reasonable suspicion. Generally, public employees are protected against unreasonable searches of their belongings by their employer. As the U.S. Supreme Court noted several decades ago, employees do not lose Fourth Amendment rights merely because they work for the government instead of a private employer. (O'Connor v. Ortega, 480 U.S. 709, 717 (1987).) As a result, generally, the employee maintains a reasonable expectation of privacy in the contents of a personal item brought into the workplace. Generally, employees have rights to privacy over their personal belongings and as such their personal devices, especially where they are not used for work purposes.

However, as noted, personal devices are often used for work-related purposes or to access work-related material. In some instances, such use may be permitted or required depending upon the policies or practices of the school district. Following a trend in the private sector, some employers have developed 'bring your own device' (BYOD) policies permitting or requiring the use of personal devices for work. Under such policies, the permitted or required use of such devices in the workplace may redefine how those personal devices are treated in terms of privacy rights. To the extent that personal devices are permitted or required to be used in the workplace or to address work, such use may similarly create a diminished expectation of privacy on the part of the employee and a greater right to access to search such devices on the part of the employer under certain circumstances. This is especially true where such policies outline such conditions of use of personal devices in the workplace.

Another distinction related to school district issued devices as opposed to the use of personal devices is public access to such information under the Right to Know Law (RTKL). Similar to the above discussion related to employer access, the distinction between the use of school district-issued devices and the use of personal devices centers upon the use of the devices themselves rather than the designation itself.

As a matter of law, the RTKL requires disclosure of requested documents that are public record. A "record" is defined under the RTKL as "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." (65 P.S. §67.101.)

Where school administrators do not use their personal devices for school business, such devices do not contain information that documents a school district transaction or activity or information that is created, received or retained pursuant to law or in connection with a school district transaction, business or activity. Thus, such devices are not subject to review under the RTKL. However, when school-issued devices or personal devices are used for school work-related purposes, both may be subject to requests under the RTKL if the information sought is otherwise applicable under the law. Whether administrators utilize official school district-issued devices or their own personal devices to conduct or address or further school district business, such communications may be subject to public requests under the RTKL if they contain information documenting a transaction or activity of the school district that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the school district. Of course, such information retrieved from such devices is also subject to exclusion or redaction under the RTKL if such information falls outside of disclosure or is otherwise exempt under the RTKL.

> *"School districts throughout the state will continue to weigh the pluses and minuses of permitting or requiring the use of personal devices by their employees, including administrators."*

School districts throughout the state will continue to weigh the pluses and minuses of permitting or requiring the use of personal devices by their employees, including administrators. There are major issues to weigh when determining whether to have employees use school district-provided devices or allow them to use their own. To the extent that school employers permit or require administrators and other staff to use personal devices to perform school district work rather than school district issued devices, administrators should be aware that such use has implications as far as employer and public access to their devices under certain circumstances. The upshot from this

is that school administrators should be very careful to examine any acceptable use policies related to the use of school district technology and devices and the diminished expectation of privacy expressly or implicitly arising from such use. In addition, where school districts permit or require the use of personal devices for work-related matters, administrators must examine whether the school district has set forth with clarity that such devices become subject to school district access and under what circumstances. Administrators should at all times make sure that they are adhering to such policies and utilizing their devices in accordance with such policies. ■

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