

Friday Memo
August 4, 2017

Upcoming Events – Matthew Duffy

August 7: Board of Education Retreat, Alvarado, 10:00 AM – 4:00 PM
August 9: Board of Education Meeting, DeJean, 6:30 PM
August 14: Technology Committee, IT Center, 4:00 PM
August 14: Agenda Setting, Superintendent’s Office, TBD
August 15: Facilities Subcommittee, FOC, 4:00 PM
August 16: CBOC, FOC, 6:00 PM
August 17: All District Welcome, Richmond Auditorium, 8:00 AM
August 17: Governance Subcommittee, Alvarado, 6:00 PM
August 21: First Day of School
August 23: Terence Martin Day

Next Week’s Board Meeting – Matthew Duffy

Closed Session for the August 9 meeting will begin at 6:00 PM.

Public Records – Marcus Walton

In light of the recent Governance Subcommittee discussion of Board Member Electronic Communication, attached is an article that might be of interest.
http://www.lozanosmith.com/news-clientnewsbriefdetail.php?news_id=2671

Sprint Grant Distribution Results – Mary Phillips

Our School Community Workers spent several weeks contacting families to determine whether or not they had internet access in their homes. The final results are informative and can be found at goo.gl/MBjSfu. Please be sure to log in with your district username and password. Three hundred of our identified students will receive their hotspots on August 23. The rest of the identified students will receive their hotspots throughout the week of August 28. Once distribution has been accomplished, we will continue to locate students who may have “slipped through the cracks”. Invitations have been sent.

New Teacher Institute August 7 to 10 – Nia Rashidchi

In partnership with the United Teachers of Richmond, WCCUSD is hosting a four-day professional learning institute for incoming educators. This institute will be held August 7-10, 2017 from 8:15 a.m. – 3:00 p.m. at El Cerrito High School (540 Ashbury Avenue, El Cerrito 94530).

The theme for the institute is **WCCUSD New Teacher Summer Professional Learning Zone: We’ve Got You!** This institute will enable our new educators to make personal connections with District level staff, new colleagues, and site leadership, and will provide them with the tools, skills, and content to deepen the implementation of quality learning, teaching, and leading in our classrooms and schools. Daily topics include culture, climate, best practices, and educational technology.

West Contra Costa Unified School District
Office of the Superintendent

All educators who attend will be compensated with a \$1,000 stipend for attending the full institute. Attendance is strongly encouraged for all four days as the learning deepens over the course of the institute. Continental breakfast and lunch will be provided each day.

The Institute is a collaboration between multiple District departments including Human Resources; Special Education; Community Engagement; Informational Technology; Teaching, Leading & Learning; Multilingual and Multicultural Services; Research, Accountability, Assessment, and Data; and the United Teachers of Richmond.

We welcome board members to visit the Institute to meet our new educators. The [daily agendas](#) for the Institute can be viewed here. A [social hour](#) will be held at AMF Pinole Valley Lanes on Monday, August 7 from 4:00-6:00 p.m. following day one of the Institute.

We are excited to welcome our new professional educators to our district!

**Heads Up Football Clinic for West Contra Costa Unified School District (WCCUSD)
Coaches – Steve Collins**

WCCUSD will be hosting a Heads Up Football Clinic on Saturday, August 12 from 8:00 – 12:00 at El Cerrito High School.

USA Football's manager of scholastic relationships and engagement reached out to the district. USA Football is working with many of the largest school districts in the country (including a handful in California) as we launch our 2017 programs/resources such as the Heads Up Football initiative.

USA Football and San Francisco 49ers have partnered to provide a handful of California school districts an opportunity to participate in Heads Up Football at no cost. The 49ers have selected West Contra Costa Unified School District.

Heads Up Football is a comprehensive middle and high school player-safety/coaching education initiative encompassing an array of medically endorsed coach education resources. The core elements of Heads Up Football are:

- Concussion education – how to identify and respond to symptoms of concussions
- Heat and hydration education – how to prevent, recognize and treat athletes
- Sudden cardiac arrest – how to respond to suspected sudden cardiac arrest
- Equipment fitting – how to fit equipment and check the fit of equipment throughout the season
- Shoulder Tackle System (fundamentals, leverage, form tackle, thigh and drive tackle and thigh and roll tackle – with the emphasis on limited helmet contact)

Additionally, Heads Up Football is bolstered this year with new, dynamic shoulder tackling instruction with collaboration from the Seattle Seahawks, USA Rugby and with support of the American Football Coaches Association.

Facilities Master Plan Projects: Harmon Knolls and Valley View Demolition Budget Increase Request and Bid Award – Lisa LeBlanc

The bid awards for the Harmon Knolls and Valley View demolition projects are on the August 9, 2017 Board agenda. The bid awards are higher than anticipated and exceed the estimated construction costs as identified in the Facilities Master Plan. Staff is recommending that the bids be awarded but it will require the Board to increase the project budgets.

There are several possible contributors to the project cost being higher than estimated including the labor force availability and the volume of Bay Area projects bidding and under construction. On July 18, 2017, the Facilities Subcommittee discussed the proposed budget increases and the factors affecting the bids with the understanding that staff would be reconciling recently closed out projects to identify budget savings to apply toward Harmon Knolls and Valley View. The Facilities Subcommittee and staff are very sensitive to the impact of budget increases and the effect that it could have on other Facilities Master Plan projects as we move through the program. In this case, staff was able to identify savings from the final close-out of the Greenwood project to offset the budget increases. Therefore, staff is recommending that the Harmon Knoll project budget be increased from \$200,000 to \$450,000 along with increasing the Valley View project budget from \$1,000,000 to \$1,150,000. In order to offset the total increase of \$400,000 to the project budgets staff recommends utilizing the project savings from the Greenwood Site that is in excess of \$550,000.

Private Emails Discussing Public Business are Public Records. Now What?

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As public agency officials and employees have increasingly turned to text messages and email to facilitate communication anytime and anywhere, they lost touch with a basic truth: Electronic communications are writings. As such, they may fall within the reach of the California Public Records Act (CPRA). Now that the California Supreme Court has opened the door to disclosure of public agency-related communications made or stored on private devices and in private accounts, California's local agencies will need to develop policies and procedures to address these practices.

In *City of San Jose v. Superior Court*, the California Supreme Court held that the CPRA grants the public a right to access texts, emails and other records relating to the business of public agencies even if they were created, received by or stored in a private device or account. "If public officials could evade the law simply by clicking into a different email account, or communicating through a personal device," the Court wrote, "sensitive information could routinely evade public scrutiny."

This case had its origins in a 2009 lawsuit against the City of San Jose, its redevelopment agency and several city officials. The plaintiff claimed that the city's failure to provide voicemails, emails and text messages that were sent and received by city officials on personal devices using personal accounts violated the CPRA. The Supreme Court's March 2, 2017 ruling finally (and for the first time in California) put the issue of whether such communications can constitute a public record to rest: An email or text sent to or from a private device or account can indeed be a public record.

While providing certainty on this issue, however, the case also raises many new questions. Public officials will need to tighten their seat belts: The road ahead is likely to be bumpy.

The Supreme Court did give helpful guidance on what is now considered a public record, concluding that only records that "relate in some *substantive* way to the conduct of the public's business" will be public record. The Court narrowed the scope of records subject to disclosure, specifying that communications that are primarily personal, containing only incidental mentions of agency business, generally will not be considered public records. The Court thus pulled back from prior cases holding that the mere mention of public business in a communication could make that communication subject to the CPRA.

The Court also recognized the practical challenges of retrieving records from personal accounts while respecting the privacy of account holders and their correspondents. Although the Court did not establish a specific process, it did point to procedures adopted by federal courts applying the Freedom of Information Act and by the Washington Supreme Court that applied that state's public records law. The Court favorably noted that individuals can be allowed to search their own devices and accounts for responsive records when a request is received, and to submit an affidavit regarding potentially



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responsive documents that the individual withheld. To have such a practice, the Court noted that training the individuals who are undertaking such searches is appropriate. The Court also discussed the adoption of policies that would prohibit the use of personal accounts for public business, unless messages are copied and forwarded to an official government account. While these methods were offered as examples, the Court did not endorse any specific approach, leaving it to each public agency to develop its own practices.

While the Court gave some clues as to how public agencies can attempt to comply with its ruling, it left open a host of other issues. Public agencies will have to determine how to address evolving technologies, including apps that do not preserve messages; how to deal with public officials and employees who refuse to produce records from their personal accounts; and how to distinguish gossip from the substantive conduct of public business.

The ruling may also create collective bargaining issues. For instance, if an agency wishes to compel its employees to make their personal accounts available or prohibit employees from using personal devices or accounts to conduct agency business, negotiation with bargaining units could be required.

In addition to queries for advice on implementing new procedures in light of *City of San Jose*, we have received three repeated questions:

1. *Does the ruling apply retroactively?* Yes. Nothing in the case limits its holding to how documents are created and retained after the ruling, meaning that a CPRA request for electronic records can reach back to an indefinite time period.
2. *What types of communications are governed by the ruling?* Again, there is no limit to the breadth of the holding. It applies to all forms of electronic communication relating to public business. In fact, there is nothing that limits the decision to electronic communications: It would appear that personal correspondence in letters, longhand written notes, and other forms of writing may now be subject to the CPRA if they discuss agency business, even if they are possessed and maintained only by individual officials outside of the agency's offices.
3. The third question has been the most frequent one, reflecting a state of disbelief: *Does this decision really mean that an individual's private email accounts could be opened to disclosure under the CPRA?* The answer is yes.

Moving forward, *City of San Jose* supports the notion that local agencies should be developing and adopting policies and practices to address the disclosability of electronic communications and the use of personal accounts for public business. Records retention policies will also be relevant, as agencies will need to consider how email records, now including those on personal accounts, will be retained by the agency or its public officials.

Developing such policies is not a job for lawyers alone. Various stakeholders should be involved in determining what process the agency will use to address communications on personal accounts, potentially including IT staff, elected officials, legal counsel, student service staff in school districts, city managers and superintendents, business officials, and possibly employee union representatives. Once policies are developed, training will be critical for bringing local agency officials and employees up to speed on the policies that were adopted and the procedures that will be followed when CPRA requests are received.

Lozano Smith was the first law firm in California to develop and broadly distribute email retention policies for use in school districts. We have now developed model school district policy language to address the *City of San Jose* decision. The most recent version of this model policy language is available by contacting the author of this article or clientservices@lozanosmith.com. We are available to assist all types of local agencies with developing their own policies and best practices, including development of agency-specific affidavits for public officials and employees who may possess agency-related business communications in their personal accounts.

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It is a brave new world for public officials. Until policies can be developed and put in place to address how a public agency will implement *City of San Jose*, public officials may wish to limit the use of their personal devices and accounts for substantive communications regarding their agency. In the meantime, remember the old adage: Don't put it in writing unless you want it on the front page of the newspaper!