

Legal and Regulatory Notes

Viewing Pornography on a Municipal Computer and the Privacy Issue

The Vermont Supreme Court has held that any privacy interest in viewing and sending pornography on work computers while on duty at a public law enforcement agency is outweighed by the public's interest in knowing how the police department supervises its employees and responds to allegations of misconduct. *Rutland Herald v. City of Rutland and AFSCME Council 93, Local No. 1201*, 2013 VT 98.

At issue were records of Rutland Police Department employees who were investigated and disciplined for viewing and sending pornography on work computers while on duty. Section 317(c)(7) of the Vermont Public Records Act exempts from public disclosure “personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation.” 1 V.S.A. § 317(c)(7).

The Vermont Supreme Court has previously construed the term “personal documents” in section 317(c)(7) to apply “only to those documents that reveal intimate details of a person’s life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends.” *Kade v. Smith*, 2006 VT 44, ¶8 (mem.). In determining whether such records must be withheld or disclosed, a court must “balance the public interest in disclosure against the harm to the individual.” *Rutland Herald*, 2012 VT 26, ¶11. In doing so, it must “consider the significance of the public interest asserted; the nature, gravity, and potential consequences of the invasion of privacy occasioned by the disclosure; and the availability of alternative sources for the requested information.” *Kade*, 2006 VT 44, ¶14.

Applying this balancing test, the Vermont Supreme Court noted that very little privacy could be attached to viewing pornography on work computers, “[O]ne cannot reasonably expect a high level of privacy in viewing and sending pornography on work computers while on duty at a public law enforcement agency.” On the other hand, the Court found, “there is a significant public interest in knowing how the police department supervises its employees and responds to allegations of misconduct. This is particularly true given the repeated instances of similar misconduct within the police department over a five-year period, as well as the apparent scope of the misconduct.” The balancing of the interests required disclosure of the records “without the need for redaction of the employees’ personally identifying information.”

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2012-368.html>.

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