

TEXT MESSAGING SCANDALS

TIPS TO AVOID THEM

By Matt Dreese

Being in the public eye is difficult. Just ask any celebrity. Everything they do or say can cause quite the stir, and anything they do serves as fodder for the court of public opinion. Similar rules—and judgment—befall employees of local and state government agencies. The only difference is that their public notoriety often comes on the back of an embarrassing scandal. Many scandals start out as local stories that gain national attention quickly, and often involve digital records about what a government employee said, and how and where they said it. These records can be found in email, social media exchanges, and even text messaging. As the use of text messaging for official communication increases, many public-sector employee texts have become the centerpiece of media headlines in recent years.

For Example:

BRIDGEGATE

NY/NJ, 2013–2016

Port Authority police were ordered to close lanes of the George Washington Bridge, causing potentially dangerous backups and delays. Allegations included that New Jersey Governor Chris Christie knew about the closure order—under the guise of a traffic study—and communicated with collaborators via text and email. Federal prosecutors and Gov. Christie’s attorney claimed a cell phone used by the governor that contained these messages had gone missing, and there was no proof of its existence. Twelve text messages sent between the governor and other key players in the lawsuit had also been deleted.

RACIST TEXTS

San Francisco Police Department, CA, 2014–2016

During the 2016 investigation of Officer Jason Lai for off-duty assault, a series of racist text messages between Lai and three former SFPD officers was discovered. The messages included racial and homophobic slurs and stereotypes, and were sent from Lai’s personal cell phone. The text messages may have affected 207 criminal cases Lai was part of, including three murder cases. A previous text-messaging case, involving former SFPD Sergeant Ian Furminger and 13 other officers, led to charges filed in federal court. This case led to the dismissal of 13 pending criminal charges and the review of 3,000 more.

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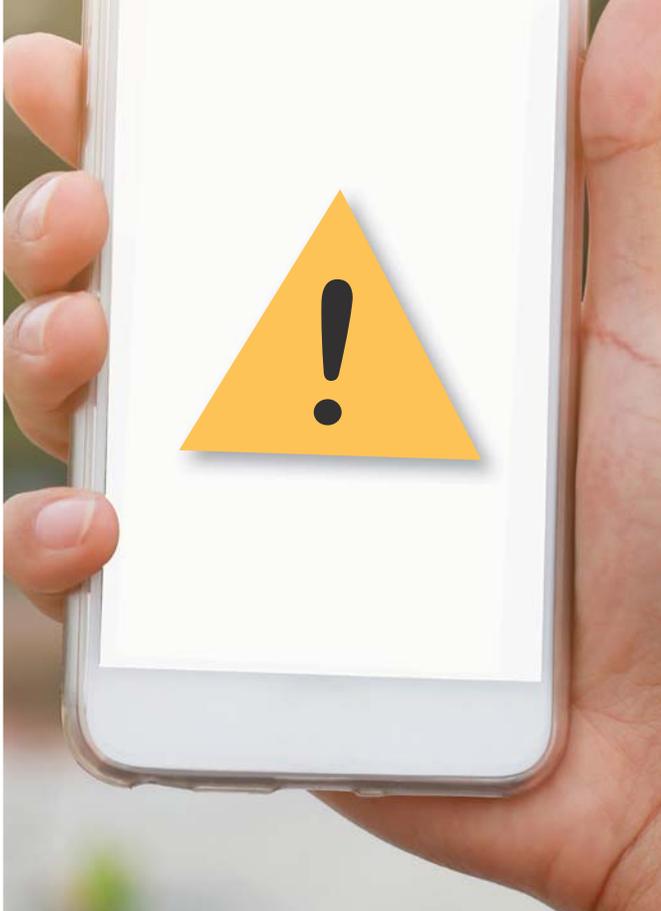
Missouri House Speaker, 2015

In 2015, Missouri House Speaker John Diehl resigned from the Legislature after admitting to inappropriate text communications with a Capitol intern who was in college at the time the messages were exchanged. Mr. Diehl—who initially shirked colleagues’ requests to step down—announced his resignation after a local paper released a story and screenshots of the messages.

Be Aware of the Risks

When electronic communications such as text messages reveal problems with the conduct of a public-sector employee, it also reflects poorly on the municipality, and can expose the following risks:

- **Reputational damage:** The public may lose trust that the municipality has their best interest in mind.
- **Criminal charges:** Formal charges or indictments may be brought against the individuals involved, or the entire agency.
- **Employment issues:** Someone in the agency may need to step down voluntarily, or be removed from his or her position.
- **Public relations problems:** The department may not recover from the public backlash, even if the scandal was limited to one employee.



Avoid the Fallout

How can your organization avoid the risks inherent in employee misuse of text messaging? The following tips can help your employees responsibly use personal and agency-issued mobile phones to send and receive text messages for business purposes.

1. Put policies in place that outline specific expectations of conduct across device types—including permissible language and content guidelines—and the consequences of violating the agreement. Creating and implementing these policies will require input from multiple departments, including legal and public communications officers.
2. Train employees on your organization's policies and rules for text messaging. During training, emphasize that all electronic communications will be archived and supervised, and that any text message—even something an employee may consider mundane or insignificant—can be called into question or requested as a public record.
3. Use a comprehensive archiving solution. When an organization uses an automated archiving solution to capture and monitor text messages—and other digital content types—it is much easier to identify communications that present risk, and produce public records when they're called for in an open records request or litigation process.

Remember: Under public records laws, it does not matter if an employee uses a government-issued device or personally owned device to communicate. It is the content that qualifies the message as public, not the carrier or device type.

A versatile archiving solution keeps messages in their original context, indexed, and in a search-ready state. This makes it easier to sort through conversations, see which platform they originated from, and follow the conversation across devices and content types. A comprehensive solution may also help expedite your response to information requests, and reduce costs associated with lengthy e-discovery processes. And, because the content is archived, and not the device, it is virtually impossible for messages to go missing—even if the device is damaged or lost.

Remember: public records laws require all electronic communications used for public business to be archived and supervised. It is up to the agency to maintain communications archives and produce content in response to information (freedom of information) requests.

Policies and procedures, training, and a comprehensive archiving solution cannot always prevent public scandals that involve text messaging. However, implementing these tips may help public agencies identify potential behaviors, and appropriately address employees before the issues become public scandal. 

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