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UW Professors' Emails Regarding Union Organizing Not "Public Records" Subject to Disclosure

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The Washington Court of Appeals, Division One, [concluded](#) that emails of University of Washington professors relating to faculty union organizing were not "public records" under Washington's Public Records Act, Chapter 42.56 RCW. Although the emails were sent to UW email addresses, the Court concluded that emails relating to faculty concerns and unionizing efforts were not created "within the scope of employment" and were therefore not "public records" under the Washington Supreme Court's decision in [Nissen v. Pierce County](#).

In *Nissen*, the court addressed text messages on an employee's private cell phone, and determined that records on private cell phones were only "public records" if created within the scope of employment. The Court of Appeals' new decision applies that test to records sent and received from a public employees' official work email account, retained on a public agency's server.

In reaching its conclusion that UW employee emails regarding unionizing efforts were not public records, the court reasoned that UW had no authority to control employee actions regarding union activity under state law. The court cited the Educational Employment Relations Act, chapter 41.59 RCW, and the Personnel System Reform Act, chapter 41.80 RCW, which make it an unfair labor practice to interfere with or control employees' union activities. The Court concluded, "Documents relating to faculty organizing and addressing faculty concerns are not within the scope of employment, do not relate to the UW's conduct of government or the performance of government functions, and thus are not 'public records' subject to disclosure."

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