

Legal Alerts

Washington Court of Appeals Holds City Council Member's Facebook Posts Are Not Public Records

03.06.18 01.07.26

The Washington Court of Appeals, Division Two, held that a Puyallup City Council member's Facebook posts were not "public records" under Washington's Public Records Act, Chapter 42.56 RCW, because the council member did not prepare the records within the scope of her official capacity as a member of the City Council.

The litigation centered on plaintiff Arthur West' public records request to the City asking for all records sent to or received by City Council Member Julie Door's "Friends of Julie Door" Facebook site. The City conducted a search of its own records and located one email, which it disclosed. The City did not disclose any posts on the "Friends of Julie Door" site.

To be a "public record" subject to disclosure under Washington's PRA, among other requirements, a record must relate to "the conduct of government or the performance of any governmental or proprietary function." In West's action under the PRA alleging the City wrongfully withheld the Facebook posts, the City contended that the Facebook posts did not contain any information relating to the conduct of government or the performance of any government function. The trial court agreed that the records were not "public records" because they did not meet this element and dismissed West's claim on summary judgment.

The Court of Appeals affirmed on different grounds. On appeal, the Court assumed without deciding that the posts "related to the conduct of government or a government function." However, the Court concluded that the posts did not meet another element of the definition of a public record, because the posts were not "prepared" by the City. In order for the posts to have been prepared by the City, under Nissen v. Pierce County, the post would have to be prepared by Door acting within the "scope of her employment," or her "official capacity."

Because Door's position did not require the posts, the City did not direct the posts, and because the posts did not further the City's interests, the Court concluded that the posts were not prepared by Door within the scope of her employment. The Court concluded that informational posts about City events and activities furthered the City's interests to a "minimal extent" but that this "tangential benefit to the City" was insufficient to establish Door was acting in the scope of her employment.

While the City prevailed, the Court noted that Facebook posts on personal sites can constitute public records, and that the inquiry was "case- and record-specific."

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