

Court takes up public employees' privacy case

April 19 2010, By MARK SHERMAN , Associated Press Writer

(AP) -- The Supreme Court appears likely to rule against public employees who claimed a local government violated their privacy by reading racy text messages they sent on their employers' account.

Several justices said Monday that the employer, the Ontario, Calif., police department, acted reasonably in monitoring the text messages in view of its written policy warning employees they have no guarantee of privacy in the use of office computer and electronics equipment.

Justice Stephen Breyer said he didn't see "anything, quite honestly, unreasonable about that."

While the case involves government workers, the decision could have broader [privacy implications](#) as courts continue to sort out [privacy issues](#) in the digital age. Many employers, including Ontario, tell workers there is no guarantee of privacy in anything sent over their company- or government-provided computers, cell phones or pagers.

The case arose when the Ontario department decided to audit [text message](#) usage to see whether its SWAT team officers were using them too often for personal reasons. Three police officers and another employee complained that the department improperly snooped on their electronic exchanges, including many that were said to be sexually explicit.

An Ontario police official had earlier informally told officers that no

one would look further if officers personally paid for charges above a monthly allowance.

The 9th U.S. Circuit Court of Appeals in San Francisco said the informal policy was enough to give the officers a "reasonable expectation of privacy" in their text messages and establish that their constitutional rights had been violated. The appeals court also faulted the text-messaging service for turning over transcripts of the messages without the officers' consent. The court declined to hear the appeal of USA Mobility Wireless, Inc., which bought the text-messaging service involved in the case.

The Obama administration is backing the city, arguing that the written policy, not any informal warning, is what matters. "The computer help desk cannot supplant the chief's desk. That simple, clear rule should have decided this case," Justice Department lawyer Neal Katyal said.

More broadly, Katyal said, the appeals court ruling calls into question policies put in place by governments across the country. "Thousands of employers rely on these policies, and millions of employees," he said.

The court could take a very narrow path out of the case. Because the employees involved are [police officers](#), several justices said that their communications might be sought by defense lawyers in criminal cases.

"I mean, wouldn't you just assume that that whole universe of conversations by SWAT officers who were on duty 24/7 might well have to be reviewed by some member of the public or some of their superiors?" Justice John Paul Stevens said.

Justice Sonia Sotomayor wondered whether the reason for looking at the messages mattered. "Let's assume that in this police department, everyone knew, the supervisors and everyone else, that the police

department people spoke to their girlfriends at night," Sotomayor said. "And one of the chiefs, out of salacious interest, decides: I'm going to just go in and get those texts, those messages, because I just have a prurient interest."

It wouldn't matter, said Kent Richland, the city's lawyer, and Justice Antonin Scalia chimed that he agreed. "So when the filthy-minded police chief listens in, it's a very bad thing, but it's not offending your right of privacy. You expected somebody else could listen in, if not him," Scalia said.

Chief Justice John Roberts was alone in asking questions that suggested he would side with the officers. Roberts said the department might have allowed officers to black out any messages they were willing to pay for, providing an accurate picture of text message usage without compromising privacy.

The argument also displayed the limits on the justices' mastery of modern communications devices as Roberts tried to figure out the role of the text-messaging service in enabling an exchange between two people.

"I thought, you know, you push a button; it goes right to the other thing," Roberts said.

"You mean it doesn't go right to the other thing?" Scalia said.

A decision is expected later this year.

The case is *City of Ontario v. Quon*, 08-1332.

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