High court: Go ahead, search cop's sexy texting

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(AP) -- The Supreme Court had a common-sense message Thursday for workers with cell phones and other gadgets provided by their employers: Use your own cell phone if you've got something to text that you don't want your boss to read.

The justices unanimously upheld a police department's search of an officer's personal, sometimes sexually explicit, messages on a government-owned pager, saying the search did not violate his constitutional rights.

The court did not lay down any broad rules about the privacy of workplace electronic communications in a world of rapidly changing technology. But the opinion by Justice Anthony Kennedy did make clear that governments can check to be sure their employees are following the rules.

The case grew out of a search of the text messages sent by a police sergeant in Ontario, Calif., Jeff Quon, on his department pager. The department discovered many personal messages, including some that were sexually explicit, when it decided to audit text message usage to see whether SWAT team officers were using their pagers too often for personal reasons.

Kennedy noted that in one month alone, Quon sent or received 456 messages during work hours - and nearly 400 were personal.

Quon and three other people who sent him messages sued. They contended the search violated their constitutional rights.

Many employers tell workers there is no guarantee of privacy in anything sent over their company- or government-provided computers, cell phones or pagers.

Ontario has a similar policy. But a police official also informally told officers that no one would audit their text messages if the 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 high court reversed that ruling. It did not decide whether Quon had a reasonable expectation of privacy, but said that even if he did, the search itself was reasonable.

But Kennedy expressed the justices' unease about dealing with privacy concerns in the computer age.

In a case from the 1960s, he said, "The court relied on its own knowledge and experience to conclude that there is a reasonable expectation of privacy in a telephone booth. It is not so clear that courts at present are on so sure a ground."

Kennedy said it is true that many employers accept or tolerate personal communications on company time and equipment. But he suggested that employees who want to avoid the potential embarrassment of having those communications revealed might "want to purchase and pay for their own" cell phones and other devices.

Christopher Wolf, an expert on workplace privacy and partner at the Hogan Lovells law firm, said the decision made clear that "if the employer is doing something for a legitimate business purpose, it's not likely to be unreasonable."

Joshua Dressler, an Ohio State University law professor, said the court probably was wise to rule narrowly.

"With modern technology quickly moving in directions the justices could not have imagined even a decade ago, it is increasingly obvious that the Supreme Court will need to determine the limits of government surveillance of our cell phone conversations, text messages, and other nonwire transmissions," Dressler said.

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

More information: Court ruling: http://tinyurl.com/2d44jbv