

MONEY OFFICE POLITICS

How private are my emails? Not as private as you think



Shares: 64

by [Matt Gingell](#)

20 October 2014 3:33am

Employers must respect the privacy of employees' communications, but there are exceptions.



You may think that private emails from private accounts, and private messages from private social media accounts, are just that – private. You may also think that your employer cannot discipline you for their contents. You may be wrong.

The law is murky over whether employers can snoop on your emails at work

The European Convention on Human Rights, which is incorporated into UK law, states that everyone has the right to respect for their private and family life, their home and their correspondence. While only public bodies must expressly comply with this, it is relevant to all employers, as courts and tribunals must interpret, as far as possible, all legislation consistently with the right. There are only limited situations where it may not apply – for example, if there are national security concerns.

NOT ALWAYS PRIVATE

In most instances, therefore, emails and messages received and sent through private accounts outside work would be considered private, and employers would have no justification in scrutinising them. But there could be exceptions. What if an employee were to send a sexist email outside work to a friend? Supposing the employee encouraged the friend to forward on the email. What would be the position if, down the line, the email somehow ended up in the employer's inbox? It may be that the courts would deem that the employee could not have expected privacy.

Employers may, of course, dismiss an employee fairly for misconduct and that misconduct could arise inside or outside work. A key question would be whether the misconduct affects or could affect the employee's work in some way, or whether there is or could be reputational damage to the employer. There have been, for example, a number of cases where employees have posted inappropriate messages on Facebook that could have damaged the reputation of the employer, and have led to fair dismissals.



THE SCUDAMORE SCANDAL

So what about sending or forwarding offensive emails from a private account at work, and another employee accessing the account without authorisation? What if that employee passed the email on to a newspaper and the employer got wind of it? Remember the Scudamore sexist email scandal? A temporary PA allegedly searched a private account of Richard Scudamore, chief executive of the Premier League, and leaked the emails to the Sunday Mirror. After carrying out an investigation with a law firm, the Premier League decided to take no further action. Its reasoning was that the emails were private communications between long-standing friends; they had been obtained without authorisation from a private account; and there was no evidence of wider discriminatory behaviour. But there was criticism. Some argued the Premier League had grounds to dismiss.

SNOOPING EMPLOYERS

Another question is whether your employer has the legal right to snoop on you and monitor your emails and messages at work. Data protection law requires employers to provide detailed information to their employees about their monitoring activities. Employers should also have legitimate grounds for the monitoring and avoid unjustified intrusions into employees' private lives. The monitoring of email content from private accounts, for example, would be seen

as one of the most intrusive forms of monitoring – and could be very difficult to justify.

Employers also have to consider the interception of communications framework. Before an interception, consent from the sender and recipient is normally required. Employers may, however, intercept employees' communications that are "relevant to the business" without obtaining consent. The difficulty is how the employer will know for certain if an email is relevant to the business without opening it.

The whole thing is rather murky. So my best advice is to never type something that you don't want your employer to read.

Matt Gingell is a partner at law firm Gannons, which specialises in employment and commercial law. www.gannons.co.uk