

# Local Governments Navigating the California Constitution

## II. Individual Rights under the California Constitution

### *B. The Right of Privacy*

#### *Right applied in the workplace*

Municipal employers are frequently confronted with questions about the extent to which information about their employees is protected by the right of privacy. The Supreme Court will consider the extent to which public employees have a legally protected privacy interest in their home contact information in *County of Los Angeles v. Los Angeles County Employee Relations Com.*, Case No. S191944, review granted June 15, 2011. The Court of Appeal opinion (which was depublished by the Supreme Court's grant of review) is provided to give the factual context and a summary of the applicable cases.

Municipal employers may consider using video surveillance to investigate employee activity in the workplace. The Supreme Court considered the application of the right of privacy to surveillance activities in *Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, where an employer surreptitiously installed a camera capable of taping the activities in a private office shared by two female employees. Although the employer had intruded on the employees' privacy by installing the camera, it was not liable for damages, because the camera had not actually caught the women on tape. The United States District Court in Los Angeles recently applied the principles to the use of a hidden camera in a dispatch room to investigate reports of employee misconduct. *Carter v. County of Los Angeles*, 770 F. Supp. 2d 1042 (C.D. Cal. 2011) (Hon. Dean D. Pregerson).

#### *Right applied to the public*

Municipalities frequently obtain information about members of the public whom they serve. To what extent does the right of privacy restrict the government's ability to compile and distribute such information? The right of privacy did not bar implementation of California's version of Megan's Law, which mandates sex offender registration and disclosure of some information about the registered offenders. *Fredenburg v. City of Fremont* (2004) 119 Cal.App.4th 408. But, more recently, the United States District Court in San Francisco issued a preliminary injunction against Proposition 35, which requires registered sex offenders to provide law enforcement with their Internet identifiers and Internet service providers. *Doe v. Harris* (N.D. Cal. Nov. 14, 2012) Case No. 12-CV-05713 (ruling on First Amendment grounds).

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