

Is Anything I Say, Send, or Save at Work Private?!

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“It is the journey, not the destination, that matters . . .”



The Journey

- Legal Landscape
 - Fourth Amendment
 - NC Public Records Act
 - Attorney ethics
- University Policies
- Scenarios



Legal Landscape



Legal Landscape: Fourth Amendment

- UNC Charlotte wears two hats:
 - The government
 - An employer
- As the government, the Constitution provides parameters as to what UNC Charlotte can and cannot do.
 - Fourth Amendment = “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”
- But as an employer (as opposed to police), warrants are not required if the search is work-related.



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Reasonable expectation of privacy?

- Bleachers in the football stadium
- Student Union rotunda
- Department conference room
- Your cubicle
- Your closed-in office (but others have keys)
- UREC locker room
- Bathroom counter
- Bathroom stall

- Your university email
- Files on your university computer/university network drives



Does the employee have a reasonable expectation of privacy in that particular item or space?

- If no, then the employer's search is okay
- If yes, then there's a balancing test:

Invasion of
employee's legitimate
expectation of privacy



Employer's need for
supervision, control, and
efficient operation of
workplace



Fourth Amendment “Search”

- Work-related searches generally satisfy the Fourth Amendment
- Search has to be reasonable . . .
 - at its inception and
 - in its scope



Legal Landscape: NC Public Records Act

- “Public record” =
 - all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics,
 - made or received . . . in connection with the transaction of public business
 - by any agency of North Carolina government or its subdivisions
- Public records “are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.”



Legal Landscape: NC Public Records Act

- Exceptions:
 - Trade secrets
 - Law enforcement records
 - Emergency response plans
 - Social Security Numbers and certain financial information
 - Certain personnel information
 - Records protected by federal law (like student records)
 - Unpublished research data
 - Attorney-client communications (sort of)



Legal Landscape: NC Public Records Act

- Attorney-client communications =
 - Written
 - From attorney to client
 - For purpose of legal advice

* (could actually be more narrow than that)
- Trial preparation materials
 - Also limited
 - Most university attorney work is not litigation-related

Legal Landscape: Attorney ethical standards



"You appear to be a very honest and ethical applicant. Are you sure you're in the right office?"

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**"We need to draw the line on unethical behavior.
But let's draw it with an Etch-a-Sketch and
don't be afraid to shake it a little."**



Legal Landscape: Attorney ethical standards

- RULE 1.6 CONFIDENTIALITY OF INFORMATION
 - “(a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent”
- RULE 1.13 ORGANIZATION AS CLIENT
 - “(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

University Policies

Electronic Communication Systems

SEARCH UNIVERSITY POLICIES

 Search

UNIVERSITY POLICIES

University Policies

New & Revised University Policies

▶ Chapter 100 Personnel Policies and Regulations

Chapter 200 Academic Policies

▼ Chapter 300 Research, Intellectual Property, and Information Technology

Electronic Communication Systems

Chapter 400 Student and Alumni Matters

Chapter 500 Nondiscrimination

▶ Chapter 600 Property, Finances, Services, and Records

University Policy: 304

I. Policy Statement and Purpose

Electronic Communication Systems (ECS) are systems using University resources that transmit data electronically with or without human interaction (i.e., email, web, instant messaging, etc.). (See [OneIT Information Security Glossary](#).)

University electronic communication accounts are provided and supported by the State of North Carolina to support the missions of the University. The purpose of this Policy is to ensure the appropriate use of the University's ECS. by its students, faculty, and staff.

ECS are tools provided by the University to complement traditional methods of communication and to improve education and administrative efficiency. Users have the responsibility to use these resources in an efficient, effective, ethical, and lawful manner. **Use of the University's ECS evidences the user's agreement to be bound by this Policy.** Violations of this Policy may result in restriction of access to the University email system and/or other appropriate disciplinary action.

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III. Procedures

A. Personal Use of ECS

While personal use of University ECS accounts is not prohibited by law, and while the University does not routinely monitor any user's ECS content, privacy of personal ECS content residing on or transmitted through University equipment is not assured. Because the University is a State entity, all data transmitted or stored using ECS capabilities are subject to the requirements of North Carolina's Public Records law, which generally requires that any person may have access to State records. Courts may order the production of University records, including ECS records, in connection with litigation. Appropriate law enforcement and other officials may, consistent with law, have access to documents for purposes of investigating allegations of violations of law or of University policy. **Given such considerations, but subject to the requirements of the North Carolina Public Records Act, no University faculty member, staff member, or student should use a University ECS account with the expectation that any particular ECS content, whether personal or business-related, will be private.**

II. Applic

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III. Proce



UP 715, Security Cameras

in accordance with University product, installation, maintenance, and support standards.

7. The Security Camera Coordinator will oversee the installation of all security cameras in coordination with Facilities Management and the Office of Information and Technology Services. Camera views will be limited to public areas and may not include bathrooms, changing rooms, individual residence hall rooms or other areas where there is a reasonable expectation of privacy.
8. All costs associated with the purchase, installation, and maintenance of the security cameras will be the responsibility of the requesting unit.
9. The use of false/misleading signage or dummy/placebo cameras is prohibited.

V. RECORDED VIDEO STORAGE AND ACCESS

1. Recorded security camera video will be stored in the CVRRC, a secure data storage system that can be accessed only by personnel authorized by the Chief of Police.

NOTICE

Use of the University's computing network, including NinerNET Services, is conditioned on compliance with University Policy 311, Information Security, OneIT Standards and Guidelines (Standard for Communications Security and Standard for Responsible Use), University Policy 304, Electronic Communication Systems, University Policy 601.14, Proprietary Software, and University Policy 302, Web Communications. Users should have no expectation of privacy while utilizing University computing and electronic communication resources. Except as prohibited by law, any and all data communications may be intercepted, monitored, recorded, copied, audited, inspected, and disclosed for administrative and/or legal purposes.

OK



The Destination: Is Anything You Say, Save, or Send at Work Private?



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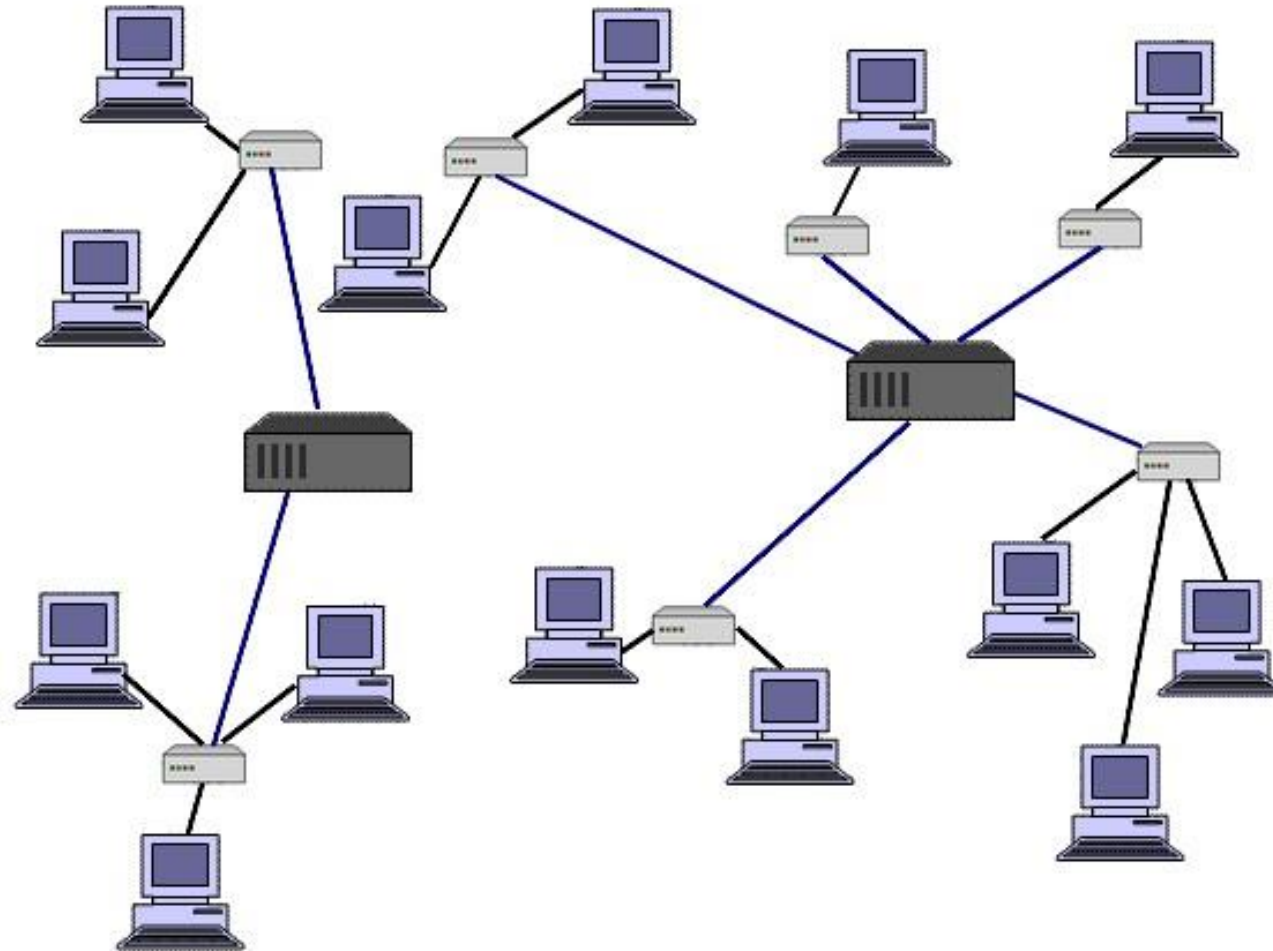
Scenario 1





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Scenario 2





Scenario 3

CONFIDENTIAL

Christine Davis

CONFIDENTIAL

Christine:

I just wanted to make sure that you received my investigation report about John Smith. I think it's safe to say that John and the rest of his student org have gone off the deep end this time. Two-year suspension anyone?!

Oh, and I'm planning to get that draft policy revision to you by the end of the week. Legal is really pushing back on the language that supposedly "violates the Constitution" so I guess I'll try to tweak that before I send it up.

Thanks,

--
Sarah O. Edwards | Student Conduct Investigator
UNC Charlotte | Dean of Students Office
9201 University City Blvd. | Charlotte, NC 28223



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Scenario 4A





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Scenario 4B



Questions?



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