

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

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the page, creating a modern, layered effect. The text 'Legal Landscape' is centered in a clean, sans-serif font.

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 search is work-related.

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)
- ▶ Belk Gym locker room
- ▶ Bathroom counter
- ▶ Bathroom stall

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

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

Yes

No

Balancing Test:

Invasion of employee's legitimate expectation of privacy

vs.

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

Search okay

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
 - ▶ Student information
 - ▶ 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



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

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ELECTRONIC COMMUNICATION SYSTEMS

SEARCH UNIVERSITY POLICIES

 Search

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

Chapter 700 Safety and Health

Chapter 800 University Policies of General Application

UNIVERSITY POLICY: 304

EXECUTIVE SUMMARY:

The purpose of this policy is to ensure the appropriate use of the University's email system by its students, faculty, and staff. It addresses personal use of email, limitations on the use of email, archiving email, official University email communications, and user responsibilities.

POLICY DESCRIPTION:

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 electronic communication systems (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 electronic communication systems 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.

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.**

ECS SIGNATURE STANDARDS

SECURITY CAMERAS

SEARCH UNIVERSITY POLICIES

Search

UNIVERSITY POLICY: 7 15

EXECUTIVE SUMMARY:

This Policy provides guidelines for the authorization and use of security cameras on UNC Charlotte property.

POLICIES

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 and electronic communication resources is conditioned on compliance with the University's Information Technology (IT) policies (University Policies 302, 303, 304, 307, 311, and 601.14). Pursuant to those policies, the University will take any steps necessary to safeguard the integrity of the University's computing and electronic communication resources and to minimize the risk to both those resources and the end users of those resources. Such safeguarding includes monitoring data traffic to detect anomalous network activity, as well as accessing, retrieving, reading, and/or disclosing data communications when there is reasonable cause to suspect a violation of applicable University policy or criminal law, or when monitoring is otherwise required or permitted by law.

OK

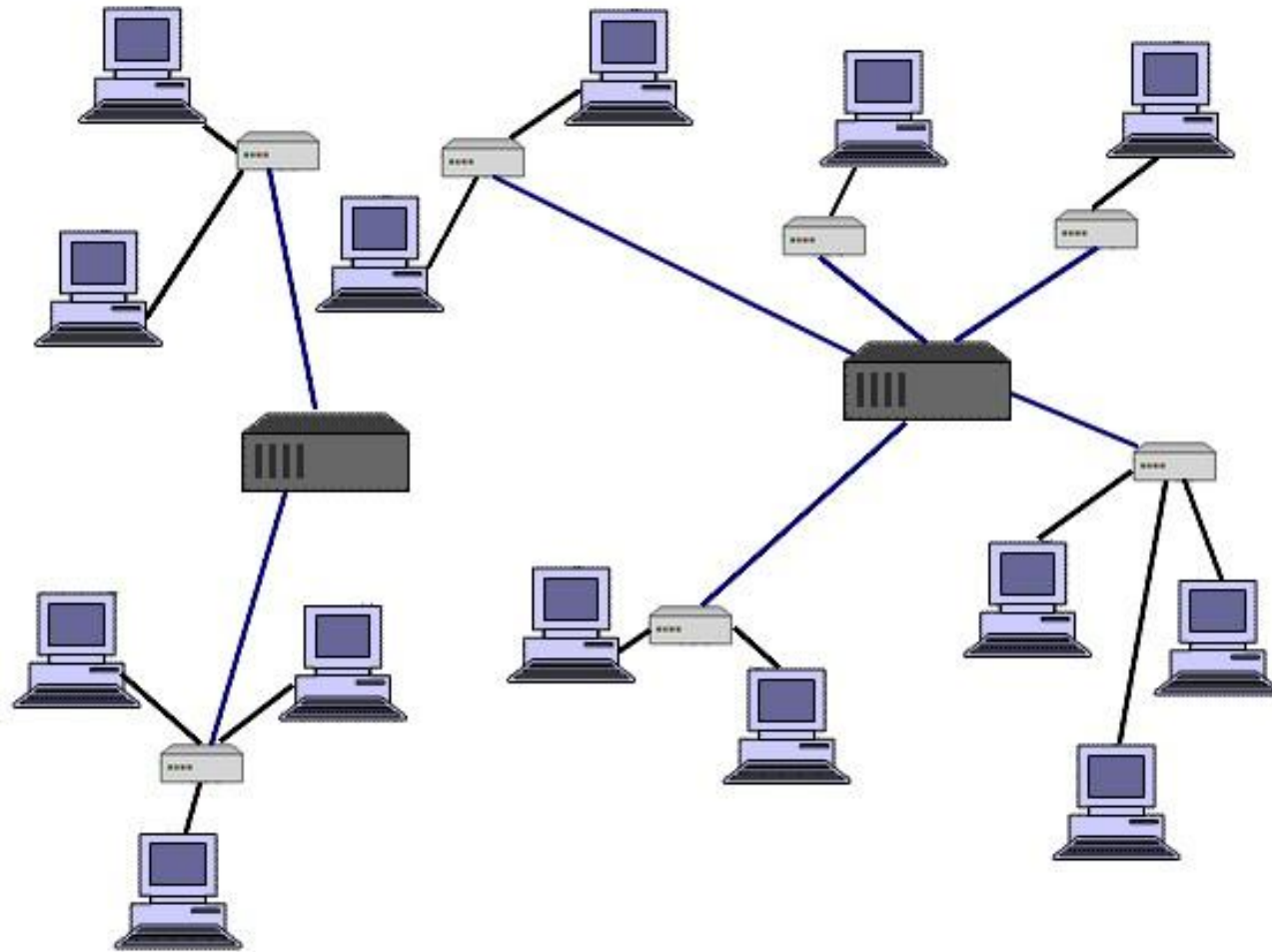
The Destination

Is anything you say, send, or
save at work private?

Scenario 1



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,

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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



Scenario 4B



Questions?