

Court tosses email subpoena

By Andrew Selsky
Associated Press

BEND (AP) — A federal appeals court, seeking to protect former Oregon Gov. John Kitzhaber's right to privacy, ruled on Wednesday that an attempt to access a cache of messages from his personal email accounts as part of an influence-peddling probe "is unreasonable and invalid."

The 9th U.S. Circuit Court of Appeals panel reversed a lower court's order allowing emails from Kitzhaber's private accounts — some of which contain official business — to be subpoenaed. The higher court said the subpoena was "unreasonably overbroad" and should have been quashed.

The development shows how complications can result when officials use private email accounts for official correspondence. Hillary Clinton, the presumptive Democratic party nominee for president, ran into problems when she used a private email account to conduct official business as secretary of state.

Clinton's use of private email raised concerns about keeping top-secret government information secure. In contract, authorities are now confronted with having to determine how to access emails from Kitzhaber's personal accounts that could be relevant to their

investigation.

Judge Marsha S. Berzon, writing the opinion for the appeals court, said the U.S. District Court needed to "prevent the trampling of Kitzhaber's reasonable expectation of privacy."

Investigators cannot simply get copies of all Kitzhaber's emails, the appeals court said, noting that they "include many private details unrelated to his official duties regarding him and his family, as well as private communications with his personal attorneys."

Berzon suggested a neutral third party sort through the countless emails in Kitzhaber's private accounts, whose content is on state computers.

Kitzhaber's contention that his communications with lawyers working for the state of Oregon is protected by attorney-client privilege was rejected by the appeals court.

"Kitzhaber's communication with his private attorneys should receive all the protections normally afforded by the attorney-client privilege. But he may not himself invoke the privilege to protect his communication with attorneys for the State of Oregon," Berzon wrote.

Gerri Badden, spokeswoman for the U.S. Attorney's office for the district of Oregon, told

The Associated Press in an email: "The investigation continues." She declined to comment on the court's ruling.

Kitzhaber's attorney, Janet Hoffman, did not immediately respond to a phone call or email seeking comment.

Kitzhaber resigned in 2015 amid suspicion that his fiancée, Cylvia Hayes, used her relationship with him to earn lucrative consulting contracts. The couple has denied wrongdoing. The FBI has issued subpoenas for emails and thousands of other records for review by a grand jury.

Wednesday's ruling noted that copies of Kitzhaber's personal emails were archived on a state government computer. It said that in his second term as governor, he declined to use an official email address and instead established an "official" Gmail address and requested that those emails be archived.

He also used a private Gmail account and one hosted at att.net, and he commonly used those "to communicate with senior staff for both personal and state business," the appeals court said. Emails from the personal accounts, which were handled by the same device, were also archived on state computers, apparently without Kitzhaber's knowledge.

City snapshot

By Sue Stafford
Correspondent

- The update of the basketball/tennis courts located in the southwest corner of the Sisters Elementary School playground is complete and they are open for use by the public. A final addition of lights on a timer for night play on the courts will be installed by the Sisters School District. The renovation of the courts has been a joint project by the City of Sisters and the school district.

- The new permanent restrooms at Clemens Park are scheduled for delivery on July 29. The infrastructure of power, sewer and water has all been installed. The concrete pad for the building is scheduled to be finished this week.

- Sisters resident Kris Rérat has been appointed to the City's Parks Advisory Board. Rérat was formerly

a preschool teacher at The Little Cloverdale Preschool before she retired to help her husband Phil in their business, Swiss Mountain Log Homes. According to her application, Rérat has some previous parks experience.

- Mid Oregon Credit Union, with branches in Bend, Redmond, La Pine and Madras, is planning to open a new branch in Sisters, to be located on the north side of town near the Deschutes County Sheriff's Substation at Barclay Drive and Larch Street. They are currently hiring employees.

- According to Patrick Davenport, community development director, the City of Sisters is the fourth-fastest growing city, on a percentage basis, in the state of Oregon. Davenport said that growth might be even more robust if more contractors were available to do the building.



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