Which way on e-mail privacy?

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The emerging issue of employee privacy and e-mail use suggests yet another looming contest between contrasting workplace philosophies. In recent weeks the media has been full of stories on the extent to which personal use of e-mail and web browsing should be allowed at work.

In late March, the federal attorney-general launched the Privacy Commission's *Guidelines on workplace e-mail web browsing and privacy*. Conceptually, the guidelines adopt the government's preferred 'light touch' approach to privacy legislation. The result is a document which strongly emphasises employer rights of control and surveillance. While reference is made to employee expectations of reasonable private use and privacy, suggested worker rights are basically restricted to advice on when, how and by whom their e-mail and web browsing will be monitored. The more thorny question of actual privacy of e-mail content is not addressed.

At present it appears that most organisations have not developed formal policies for staff use of these technologies. The Privacy Commission recommends they do so urgently. The guidelines emphasise that management is responsible for issuing instructions on proper use of e-mail and the internet. Without them, staff misconceptions will continue. The commissioner points out the common employee view that their e-mails are private, together with the belief of many workers that the law protects their privacy at work. It does not. There is no constitutional or common law right to privacy, says the attorney-general.

The Commission's recommended policy would state clearly what management's expectations are. It would say unambiguously what use is permitted and what is not. It is for each organisation to say what it considers appropriate, but it will not be sufficient to say merely that all activity must be 'work-related'. The policy should be issued and explained to all staff and should be shown on-screen when employees log-on. It should state in detail what information is logged and who has rights to access and review staff e-mail. Access should be restricted and the policy should outline clearly in what circumstances authorised staff may exercise access rights. Exactly arrangements for monitoring staff compliance should be clarified.

Obviously some elements of policy in this area are straightforward. No reasonable person could object to automatic prohibition of certain behaviours — such as use of e-mail to transmit pornography, to harass, defame or abuse another person, or to disclose confidential information. Similarly, browsing of various objectionable websites would need to be expressly forbidden. But in other respects the issue is complex. Where web browsing is concerned, for example, care needs to be taken in defining and assessing 'work-related purposes', since genuine web searching will often turn up surprising or even undesirable sites. Workable monitoring policies would take account of this and prevent unreasonable penalising of employees in such situations.

Recent release of a major survey report by law firm Freehills shows that three in four enterprises regularly monitor employee e-mails. But only a third advise staff. As the attorney-general himself concedes, most staff certainly do not expect to completely sacrifice their privacy while at work. And while it is probably better policy to tell staff that it is occurring, few people are likely to be satisfied merely by knowing what is going on. The obvious question will be: if reasonable private use is acceptable, why is not full privacy granted? In other words, if it is reasonable that I send a personal message to my spouse on a personal matter, why should *anyone* have the right to view that message? It is presumably unacceptable for management to listen in to an equivalent private telephone call. A clearly personal letter sent or received through the workplace mail system would not be opened and read in a normal work environment. People will naturally and rationally ask: why should these values change, merely because the medium is different?

In recent years the new world of work has been dominated by contesting theories for people management. Full employment has gone. We live in a buyers' market as far as jobs are concerned. Technology has destroyed many forms of work and radically altered others. People are working harder and longer. As a result, employers are able to exercise increased control over their workforce, and this extends to professional work. More and more the line between private life and working life is blurring. And the new technologies of e-mail and the internet have been a significant part of that. In this environment, some employers have ruthlessly exploited their power to control. Others have preferred a more co-operative approach. Outcomes suggest that the latter style has superior effects on productivity and performance, through more positive staff relations.

The matter of employee privacy is a classic case where either approach can be followed. Clearly, the new technologies provide unprecedented opportunity for surveillance of and intrusion into employees' private lives. But will it be productive for employers to do it? Obviously organisations are entitled to expect their staff to be focussed primarily on their work. But do we really expect them to have no private life at all while at work? Surely not. ∎

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