

## Snapshot

- Employee doesn't violate privacy law merely by sending work data to personal email account
- Russian email privacy services owe duty of confidentiality, cannot avoid through terms of service

By [Sergei Blagov](#)

Russian email service providers must protect information contained in electronic communications and can't avoid that duty through a customer waiver, the country's Constitutional Court ruled in an opinion released Oct. 27.

Email service providers may not rely on user agreement terms to grant themselves an independent right to allow or restrict access to personal information, because they are not the owners of the data, the court said in its Oct. 26 [opinion \(\*In re Sushkov\*\)](#), Konst. Sud. RF, No. 25-P, 10/26/17).

The underlying case involves a wrongful termination complaint. In 2016, Moscow-based construction company CJSC Stroytransgaz terminated Alexander Sushkov, former head of the company's legal department, for allegedly compromising the secrecy of confidential corporate documents by sending them to his private email account via email service provider [Mail.ru](#).

The company said that sending the information through the email service was a data breach that violated Russian privacy law even though there was no evidence that data was leaked to third parties.

Sushkov filed suit, arguing that it wasn't inconsistent with Russian privacy law to use an email service provider to transmit confidential information because the provider had the responsibility to maintain the security of the data. The trial and appeals court disagreed, citing provisions in the email service provider's terms of service that allowed it to release data.

### Access Doesn't Mean Ownership

Sushkov petitioned the Constitutional Court to annul the lower court rulings, arguing that their definition of "information holder" as being an entity that was able to grant or limit access to information violated the nation's constitutional right to privacy of correspondence.

The Constitutional Court held that even though there isn't a specific law requiring email service providers to protect the privacy of correspondence, they aren't exempt from the constitutional privacy protection requirement. If an entity has access to private data, that doesn't mean that it owns the data and can decide to void privacy protections, the Constitutional Court concluded.

The email service provider user agreement can't be interpreted to mean that email service providers own data contained in emails, the court held.

Therefore, Sushkov didn't violate the law by sending company data to his personal account, the court said.

However, sending confidential information to the private email account creates conditions facilitating uncontrolled use of the confidential data and may be interpreted as a violation of the company's internal policies, the court concluded in remanding the case for retrial.

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