

E-Mail and Retention of Documents Policies

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Establishing an [Internet User Policy](#) is a first step to providing security for both the municipality and its employees. With a policy in place that spells out what can and can not be done with the Internet access that is provided in the workplace, municipalities have begun the process of preventing abuse of the system as well as litigation that could arise. Last month's *Townsman* discussed writing an Internet policy. This month is a continuation of that process as we look at what should be included in an E-mail and Retention of Documents policy.

E-mail is a specialized tool within the Internet services that are available, and it presents some unique problems and possibilities. E-mail is the fastest and most cost-effective way of communicating, and it facilitates a freer exchange of information between individuals. In addition, storage of electronic data is much more cost-effective and efficient than rooms full of file cabinets. As a new communication medium, it does present some issues that should be considered by employees and municipalities alike.

E-mail is not confidential:

- It can be read at several points in the transmission process by system administrators or "the Boss" or on the recipient's machine(s);

- Employers have the right to read business communications done on "company" machines;

- Deleted e-mail can be retrieved by computer experts; and

- E-mail is acceptable as evidence in lawsuits and may even trigger lawsuits.

Never write anything that will offend anyone:

- E-mail should never violate the anti-discrimination laws & rulings since not only the author but the system owner (municipality) could be held responsible; and

- E-mail should never contribute to a hostile work environment and open up charges of harassment.

E-mail, depending on its content, is a public record and must be available when requested.

Copyrighted materials are easily transferred via e-mail and can subject the municipality to charges of violation of copyright or software piracy.

Normal personnel policies can not cover the new challenges of Internet and e-mail use. To protect both municipality and employee, a specific e-mail policy should be in place. In her article, "Municipal Policies on Internet Usage and E-Mail Document Retention", Isabel R. Safora, Senior Counsel of the Port of Seattle, lists the following important ingredients that should be part of an e-mail policy for any municipality (reprinted with permission of the author):

- Indicate that the policy is applicable to internal and Internet e-mail.

- Explain that e-mail systems and all e-mail documents are the property of the municipality and not private employee communications (whether created or received).

Indicate that the municipality reserves the right to monitor e-mail messages; explain circumstances under which monitoring will occur and for what purpose.

Prohibit employees from sending discriminatory, harassing, or offensive e-mail messages.

Prohibit use of e-mail for religious or political activities, personal gain, solicitation, or in support of illegal activities.

Define the type of e-mails that should be considered public records, or indicate that e-mails are public records.

Remind employees that e-mails that are public records are subject to disclosure laws and records retention requirements.

Require that employees print e-mails that are public records and include them in the subject file, or retain them as word processing documents.

Instruct employees to delete e-mails that are not public records as soon as their administrative purpose has been served.

Explain that e-mail is subject to discovery in litigation, that deleting an e-mail does not guarantee it has been erased from the system.

Recommend that employees use good judgment when creating e-mail and always assume that it is discoverable.

Prohibit employees from sending e-mails containing confidential information.

Remind employees that they should use good judgment when sending e-mail, that they are creating records, and that e-mail should not be used as a substitute for face-to-face gossip.

Explain that e-mail is not a good form of communication with legal counsel when seeking legal advice or transmitting information concerning matters in litigation or disputes which are likely to result in litigation.

Indicate that inadvertent disclosure or dissemination of the communication could waive the attorney-client privilege.

Indicate the procedure for employees to report inappropriate e-mails. For reporting purposes, a specific individual or position title should be named in the policy.

Safora also identified the following as elements to be include in a Retention of Documents policy (reprinted with permission of the author):

Define type of e-mails that should be considered public records.

Indicate that e-mails are subject to record retention requirements.

Describe your system of e-mail back up, archival, etc. and explain that as a result of the schedule e-mail can remain on the system for X period of time after deletion by the user.

Indicate your e-mail retention schedule.

Although the issue of establishing policies may seem daunting at first, the benefits of using the Internet and e-mail far outweigh the problems. Remember that the municipality is ultimately responsible for the use or abuse of the technology. By becoming proactive and developing and

implementing the necessary policies, training, and disciplinary procedures before there is a problem, the municipality can "control" that liability. Good, clear policies may help dodge those information superhighway potholes.

RESOURCES

Resources available on the Internet or from MMA's Local Government Resource Center:

"Acceptable Use Policy for Bulletin Boards, On-Line Subscriptions, and Internet Services."
<http://www.state.va.us/-itc/usepol.html> [Link no longer available. Try
<http://www.doe.virginia.gov/VDOE/Technology/AUP/home.shtml>]

"[Administrative Regulation No. 43: Internet and Electronic Mail Policy](#)" [City of Portland](#).

"A Brief Survey of Government Internet Policies: Internet Services Testbed" Center for Technology in Government. <http://www.ctg.albany.edu/projects/inettb/polsurv.html#2>

"Department of Administrative Services Number: 03-13" and "Department of Administrative Services Number: 03-21." <http://www.state.or.us/IRMD/policies/03-13net.htm> and
<http://www.state.or.us/IRMD/policies/03-21aup.htm> [Links no longer available]

"E-Mail: Even if you Don't Have it Yet, Your City Probably Needs Two Policies For It" B. J. "Jeanie" Thompson Law Offices, Dallas, Texas. <http://www.bjt-law.com/e-mail2.htm>

"Governor's Task Force on Information Resource Management Technology Policy 96-8
http://www.irm.state.ny.us/policy/tp_968.htm

"Memorandum - City of Seattle." <http://mrsc.org/infoserv/seattle.htm>

"Municipal Policies on Internet Usage and E-Mail Document Retention" by Isabel R. Sofora, Senior Port Counsel, Port of Seattle. <http://mrsc.org/infoserv/safora.htm>