

COUNCIL POLICY STATEMENT

Policy No.: 42
General Subject: General
Specific Subject: Electronic Messaging with Regards to the Open Meetings Act,
Freedom of Information Act and Local Records Act
Date Approved: July 17, 2006
Date Revised: August 20, 2007

PURPOSE

To establish guidelines for electronic messaging usage with regards to the Open Meetings Act, Freedom of Information Act and Local Records Act.

RATIONALE

To provide a written procedure that will guide elected officials in complying with the requirements of the Open Meetings Act, Freedom of Information Act and Local Records Act.

POLICY STATEMENT

As elected public officials, members of the City Council shall exercise caution when communicating between and among themselves via electronic messaging services. This includes, but is not limited to, electronic mail (email), Internet web forums and Internet chat rooms. Electronic messaging is a form of communication that is governed by the Open Meetings Act, which prohibits the discussion of public business by a majority of a quorum of elected officials of a public body except at a duly noticed public meeting. Therefore, electronic messaging should only be used in the following circumstances:

1. Messages from any **one** elected official to other elected officials where the receiving recipients respond only to the originator.
2. Messages between elected officials where the discussion involves less than a majority of quorum of elected officials. If the participants are on the same Council Committee, including alternates, members may not discuss that Committee's business. If the participants are not on the same committee, then not more than two members may participate in such a discussion. (Note that this prohibition may be violated if a message is passed sequentially from one member to another in a number equaling a majority of a quorum).
3. Messages between the City Manager or other City staff and an alderman or the mayor.
4. The communication of times, dates and places of regular or special Council or Committee meetings or other housekeeping matters; or

5. Responses to questions posed by members of the public, City staff or City employees.

Under the Freedom of Information Act (“FOIA”), electronic messages that have been prepared by or have been or are being used, received, possessed or under the control of any public body are generally deemed to be public records. As such, the messages may be subject to disclosure in response to a FOIA request. Messages may also be subject to disclosure in the context of litigation or in response to a court order.

Under the Local Records Act, any email that is in the possession of an elected official that includes evidence of the City’s business is to be retained in accordance with the City’s retention/destruction schedule.

Users should not have an expectation of privacy of any email messages that involve City business. Email may be subject to inspection or examination in response to a subpoena or discovery request in litigation or when there is a substantiated reason to believe that a violation of the law or City policy has taken place.