



Agenda Cover Memorandum

Meeting Date: June 26, 2017

Meeting Type: COW (Committee of the Whole) City Council Budget Workshop

Item Title: Discuss Use of Official E-Mail Accounts

Action Requested: Approval For discussion
 Feedback requested For your information

Staff Contact: Jim Brown, CP&D Director
Phone Number: 847-318-5296 Email Address: jbrown@parkridge.us

Background:
IT and Admin staff have recently created e-mail accounts for elected officials. IT staff is preparing a memorandum covering how to access the e-mail accounts and tips on use of the accounts.

These accounts would be used for all official City business. For reference, a previous memorandum from the City Attorney regarding electronic communications on official and personal accounts is attached.

Recommendation:
Discuss Use of Official E-Mail Accounts

Budget Implications:
Does Action Require an Expenditure of Funds: Yes No

If Yes, Total Cost:

If Yes, is this a Budgeted Item:
 Yes No Requires Budget Transfer

If Budgeted, Budget Code (Fund, Dept, Object)

Attachment:
Tappendorf memorandum, RE: Use of Official vs. Personal Accounts or Devices (E-Mail and Other Electronic Communications), dated March 21, 2015



DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

A Professional Corporation
140 South Dearborn Street, Suite 600
Chicago, IL 60603
www.ancelglink.com

Julie A. Tappendorf
jtappendorf@ancelglink.com
(P) 312.604.9182
(F) 312.782.0943

MEMORANDUM

To: Shawn Hamilton, City Manager
City of Park Ridge

From: Julie A. Tappendorf

Subject: Use of Official vs. Personal Accounts or Devices (Email and other Electronic Communications)

Date: March 21, 2015

You asked me to provide a memorandum addressing some of the legal issues that arise with City officials using their personal email addresses or accounts to conduct City business. In this memorandum, I have provided a summary of how record disclosure and retention laws apply to City emails, and the various pros and cons to using official versus personal email accounts to conduct City business.

1. Personal Emails

Electronic communications (email, text message, etc.) can implicate state laws pertaining to records disclosure (Freedom of Information Act or FOIA), records retention (Local Records Act or LRA), and open meetings (Open Meetings Act or OMA). However, it is important to note that these laws only apply to communications that discuss City business. So, if a communication is purely personal in nature, even if it is sent or received on an official email account or address, it is not subject to release under FOIA, retention under the LRA, nor will the communication trigger a “meeting” under the OMA.

Example: If an alderman receives an email relating to his upcoming family vacation to Disneyworld, that email is not subject to release or retention since it does not pertain to City business. It does not matter whether the email is sent on the official account or personal account, it is not subject to FOIA because it is not City business.

Example: An alderman sends an email to another alderman stating his personal opinion of a City employee (but the email does not relate to the performance of the employee’s duties), that email does not pertain to City business so is not subject to release or retention.

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2. City-Related Emails on City Device or Account

As a general rule, if an email is sent to or received on an *official* City email address or account, or is sent to or received on a City device (computer, cell phone, tablet), that email will be subject to release under FOIA if the email pertains to City business. Those emails are considered “within the control of the City” because they can be located on a City device or City server.

Even though these emails are considered public records, certain information within the email might fall under FOIA exemption that would authorize the City to withhold or redact that exempt information.

Example: If an alderman member receives an email on his official City email account from a resident asking about a paving project on his street, that email is subject to FOIA. The resident’s personal information (home address, personal email, etc), can be redacted, but the remainder of the email could be released. That email would also have to be retained for a certain period of time before it could be approved for destruction under the LRA.

Example: An alderman sends an email from his official City email account to another alderman discussing performance issues concerning a City employee, that email is subject to FOIA.

3. City-Related Emails on Personal Device or Account

An email sent to or received from a City official’s *personal* email address or personal account or device that discusses City business is subject to release under FOIA only under certain circumstances. Those circumstances depend on whether the City has “control” over the email or whether the official sending or receiving the email is acting as a “public body.”

The Illinois courts have come up with 3 scenarios where an electronic communication that is sent to or received from a City official’s *personal* email account or device will be subject to FOIA.

Scenario 1: If the email is sent to a majority of the public body (even on a personal device), it is subject to FOIA.

Example: An alderman sends an email discussing City business from his personal email account to the private email accounts of 4 other City Council members - that email is a public record subject to FOIA.

Scenario 2: If the email discussing City business is forwarded to or from an official City account (i.e., it is on the City server), then it is subject to FOIA.

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Example: An alderman routinely forwards all of his emails discussing City business from his official City email address to his personal email address (or vice versa). Any of the emails found on the City's server are subject to FOIA.

Scenario 3: If the email discussing City business is sent/received during a meeting of the public body, it will be subject to FOIA.

Example: An alderman sends an email or text message from his personal account and device to another alderman discussing City business during a City Council meeting – that message is now subject to FOIA.

In short, even if an alderman uses his personal device to send emails discussing City business from his personal email account, the messages might be subject to release under FOIA if any of the above 3 scenarios apply.

However, if none of these 3 scenarios apply, the emails or text messages sent to or received from purely personal devices or accounts will not be subject to FOIA¹

Example: An alderman uses his personal email account and device to email a resident answering his question about the street paving project. That email is not subject to FOIA unless it was sent during a City Council meeting, forwarded to a majority of the City Council, or forwarded to or through the City's server.

Example: An alderman uses his personal email account and device to email an alderman discussing performance issues about a City employee. That email is not subject to FOIA unless it was sent during a City Council meeting, forwarded to a majority of the City Council, or forwarded to or through the City's server.

4. Pros and Cons of Use of Official versus Personal Accounts or Devices

There are advantages to using official City accounts and devices to communicate City business.

First, having all records pertaining to City business (including emails and other electronic communications) located on the City's server or official City device makes it easier for City staff to respond to FOIA requests and retain City records under the LRA. This avoids having to ask a City official to turn over electronic communications on private devices or accounts that may fall within one of the 3 scenarios discussed above that require disclosure under FOIA. To that end, some municipalities have adopted a policy that mandates that City officials only use official City devices and accounts to send messages that discuss City business.

¹ Although the messages would not be subject to FOIA, they could be subject to release through a subpoena, discovery, or court order if the messages are relevant to pending litigation or a criminal investigation.

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Second, using an official account for City communications and a personal account for personal communications can avoid a possible release or even review of personal messages. If a FOIA request asks for all emails sent to or from a City official within a particular time-frame, these emails will have to be reviewed by City staff to determine which are public records subject to release and which are personal emails not subject to FOIA. However, if a City official uses his or her official email address only for City business, there will be little or no commingling of personal and official communications.

On the other hand, there are advantages to City officials using their personal devices or accounts to communicate City business.

First, not all communications that discuss public business will be deemed public records subject to FOIA and retention. Only those communications that fall into one of the above-described 3 scenarios have to be released.

Second, some residents may prefer to contact their elected officials on their private devices. So long as the communication does not fall within one of the 3 scenarios discussed above, they should not be subject to public release.

5. Open Meetings Act

As you know, the OMA applies to electronic communications, meaning that a majority of a quorum of the City Council or other public body could trigger a “meeting” under the OMA just by emailing and texting each other.

Example: If 3 of the 8 City Council members are contemporaneously emailing each other about an upcoming City Council agenda item, they are likely in violation of the OMA.

The OMA applies regardless of where the discussion takes place. So, for purposes of determining whether an electronic discussion violates the OMA, it is irrelevant whether the emails are sent from an official device or account or a personal device or account.

6. Conclusion

Unless the City Council adopts a policy mandating the use of official City accounts or devices to communicate City business, it is up to individual City officials to determine how they communicate with each other, other City officials or employees, or members of the public. Those communications may be subject to release under FOIA and retention under the LRA depending on the content of the message, how it was sent, and who it was sent to/received from.