

Date: 2/23/09
Item: 13.a
City Council Electronic
Communications Policy

MEMORANDUM

TO: Bill Malinen
FROM: Eric J. Quiring
DATE: February 17, 2009
SUBJECT: Electronic Communications Policy
File No. 4002(1)-0341

Electronic Communications Policy topics discussed at previous Council meetings

1. Can members of the public expect their e-mails to Council Members to be confidential?

Section I of the draft Policy expressly states that electronic communications may be classified as public data and may be subject to public disclosure. Therefore, members of the public cannot expect confidentiality. The Minnesota Government Data Practices Act presumes that government data are public unless a specific law provides otherwise.

2. What are the limits on Council Members' discussions and/or polling of other Council Members prior to meetings?

The Minnesota Open Meeting Law prohibits Council Members from conducting public business outside of a public meeting. Section V of the draft Policy addresses communications among Council Members outside of Council meetings.

3. Does the City's retention policy apply to Council Members' electronic communications?

Minnesota law requires the retention of all government records, regardless of the format. Section VI of the draft Policy references the retention of electronic communications in accordance with the City's retention policies and procedures.

1 An electronic communication is a government record subject to the Record
2 Retention Policy for Cities.

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4 4. Can Council Members participate in listservs and other message
5 boards/chatrooms?

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7 Section V of the draft Policy addresses listservs and electronic discussion forums.
8 The provision cautions against replying to an entire group when the reply could be
9 considered deliberation on a matter presently pending before the Council for
10 official action. For example, any comment that could be seen as a communication
11 with another Council Member to avoid public discussion or to forge a majority in
12 advance of public meetings should not be posted.

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14 5. Will the Policy apply to Council Members' personal e-mail accounts?

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16 The draft Policy applies to all electronic communications containing government
17 data under the Minnesota Government Data Practices Act, regardless of which e-
18 mail address of account is used. The Policy would not apply to any e-mails not
19 containing government data.

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21 6. What electronic communications must be available in the back of the room during
22 Council meetings?

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24 The Minnesota Open Meeting Law requires that any materials relating to the
25 agenda items of the meeting prepared or distributed by or at the direction of the
26 governing body or its employees and: (1) distributed at the meeting to all members
27 of the governing body; (2) distributed before the meeting to all members; or (3)
28 available in the meeting room to all members; shall be available in the meeting
29 room for inspection by the public while the governing body considers their subject
30 matter. Minn. Stat. §13D.01, subd. 6. Section III of the draft Policy addresses the
31 situation in which electronic communications could be "materials" under the Open
32 Meeting Law, and thus, required to be available to the public during meetings.

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34 7. Should electronic communications with members of the public contain a
35 disclaimer?

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37 Section V of the draft Policy addresses the use of a disclaimer when Council
38 Members are communicating with the public regarding matters pending before the
39 Council for official action.

CITY OF ROSEVILLE

Policy on Council Members' Electronic Communications

This Policy applies to all members of the Roseville City Council. For purposes of this Policy, reference to Council Members includes members of all other City committees and groups subject to the Open Meeting Law. Reference to the Council shall include all such groups and meetings.

This Policy applies to all electronic communications containing government data, as defined by the Minnesota Government Data Practices Act, Minn. Chapter 13, regardless of whether the Council Member is using a City-provided email address and account, his/her personal email address or account, or one provided by his/her employer.

I. Purpose

This Policy is adopted to increase awareness of the risks associated with Council Members using electronic communications and to set forth the appropriate restrictions on the use of electronic communications in accordance with the Minnesota Open Meeting Law and Minnesota Government Data Practices Act.

Electronic communications may be classified as public data, and thus, may be subject to public disclosure. Members of the public cannot expect confidentiality when electronically communicating with Council Members on matters of City business.

II. Definitions

“Electronic communications” include email, texting, instant messaging, chatrooms, and related electronic means of communicating with others.

“City Manager” means the City Manager or his/her designee.

III. Meeting materials

Electronic communication of meeting materials should generally be conducted in a one-way communication from the City Manager to the Council Members.

- Council Members may receive agenda materials, background information, and other materials via email attachment or other electronic means (such as file sharing) from the City Manager.

- If a Council Member has questions or comments about materials received, s/he should inquire via electronic means directly back to the City Manager. A Council Member should not copy other Council Members on his/her inquiry.
- If the clarification is one of value to other Council Members, the City Manager may send follow-up materials or information to the Council Members.

Electronic communications relating to agenda items of a meeting prepared or distributed by or at the direction of a Council Member or City employees and (1) distributed at the meeting to all members of the Council; (2) distributed before the meeting to all Council members; or (3) available in the meeting room to all Council members must also be made available to the public at the meeting, unless the materials are classified as nonpublic under the Minnesota Government Data Practices Act.

IV. Communication during Council meetings

- Council Members should not communicate with one another via electronic means during a public meeting.
- Council Members should not communicate with any member of city staff via electronic means during a public meeting.
- Council Members should not communicate with the public via electronic means during a public meeting.

V. Communications outside of Council meetings

- Council Members should act with caution when using electronic means to communicate with one another, being mindful of the Minnesota Open Meeting Law. Council Members shall not communicate with each other outside of Council meetings for the purpose of avoiding public discussion, to forge a majority in advance of public meetings, or to hide improper influences such as personal or pecuniary interests of the Council Member.
- If a Council Member wishes to share information with other Council Members, s/he should do so through the City Manager. The Council Member may request the City Manager distribute materials to others. The communication should not invite response to or discussion between any Council Members, including replies to the person making the distribution request. This should be considered a method for providing one-way information to other Council Members.

- If a Council Member wishes to address only one other Council Member through electronic means on any topic related to City business, s/he can do so directly, but should be mindful of the following:
 - o One-to-one communication is preferable.
 - o The recipient of an electronic message or inquiry should reply only to the sender, should not copy others on the reply and should not forward the original email to other Council Members.
 - o The sender of an electronic message should not forward or copy the recipient's reply to any other Council Member.
 - o If a Council Member receives an electronic communication from any source related to City business and distributed to multiple Council Members (i.e. an email sent to the entire council from a member of the public; or an email sent to three Council Members from a local business), s/he should reply only to the sender. The reply should not be copied to all on the original distribution or forwarded to any other Council Member.
- Council Members and City employees should discourage members of the public from replying or forwarding electronic communications with a Council Member about matters presently pending before the Council for official action to all Council Members. When communicating with members of the public via e-mail, Council Members and City employees should include the following disclaimer: "Open Meeting Law Notice: Please note that electronic communications about matters pending before Council for official action which directly or serially include at least three Council Members, including forwarding of e-mails or use of 'reply to all,' may be found to violate the Minnesota Open Meeting Law, and should be avoided."
- If a Council Member receives listserv distributions, electronic newsletters, or participates in electronic discussion forums where other Council Members are also likely to participate (such as chat rooms), the Council Member should not reply to any distribution or comment that could be considered deliberation on a matter presently pending before the Council that would foreseeably result in the taking of official Council action when that reply is copied to the entire distribution group, or any part of the group that might include other Council Members. In those situations, the Council Member should instead respond only to the sender of any message or inquiry.

1 VI. Classification and Retention of Electronic Communications

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- 3 • Regardless of whether electronic communication by a Council Member is
- 4 taking place on a City-provided computer, home computer or other computer
- 5 system, classification of information as public, private or other is governed by
- 6 the Minnesota Government Data Practices Act (Minn. Stat. Chapt. 13) and
- 7 should be treated accordingly.
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- 9 • Council Members should retain electronic communications in keeping with
- 10 City policies and procedures, whether such communication takes place on a
- 11 City-provided computer, home computer or other computer system.
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