



The Freedom of Information Act: Do Emails Qualify as a "Public Record?"

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E-mail has become an increasingly efficient way for township officials to communicate with township officers and employees, township residents, and those doing business with the township. However, the use of e-mail has also caused additional issues with respect to recordkeeping and responding to the Freedom of Information Act requests. Township officials should be aware when they do business by e-mail that their correspondence may be subject to disclosure if requested by a member of the public and they may have an obligation to save certain e-mail correspondence.

The Freedom of Information Act defines a public record as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." MCL 15.232(e). A "writing" is broadly defined as

"handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content."

MCL 15.232(h). Pursuant to these definitions, e-mails (depending on the content) may qualify as a "public record" under the Freedom of Information Act.

Although townships may be aware generally of the duty to keep and retain public documents such as contracts, letters and minutes, the retention of e-mail records in some townships has not been specifically addressed. For example, many township officials conduct "township business" from home computers. As identified above, the definition of "public record" does not specifically provide that documents are only "public records" if they are sent or created on a public computer. The FOIA does not exempt those using private computers from the

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requirements of the Freedom of Information Act. If an e-mail meets the definition of “public record,” then it may be subject to the FOIA regardless of the location where the e-mail originated.

In addition to the FOIA issue, the township should consider its obligation to maintain public documents. Pursuant to Michigan law, the document must be retained by the township in accordance with a properly approved retention and disposal schedule. (Examples of approved record retention and disposal schedules for townships are available from the Department of History, Arts and Libraries’ State of Michigan website.) Further, the township may also have additional retention requirements if the document is subject to an FOIA request or litigation.

Therefore, townships should be aware of these requirements if its officials routinely conduct township business by e-mail from personal computers and do not retain these records. For example, if the township supervisor receives written confirmation that a township contract has been accepted on his home computer, this record should be kept in accordance with the township’s record retention policy. In addition, e-mails should be routinely removed and filed. The township does not want to be in a situation where it must review thousands of e-mails over an extensive period of time to respond to a FOIA request or discovery in litigation. The township should have a policy that applies to all its board members, officers and employees that governs how documents are copied and maintained properly in accordance with the township’s record retention schedule.

