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Where have all the e-mails gone?

It was clear from comments made at their May 27 meeting that not all council members are following the same rules when it comes to maintaining public records on their home computers.

E-mails that pertain to a matter council is likely to act on are required to be retained as an official public record for three years. But by whom?

Some council members want the clerk's office to be the records custodian, but that isn't what the city agreed to two years ago when it overhauled its recordkeeping system.

That's when a management study resulted in a recommendation approved by council to make the sender of an e-mail or letter (or any communication) the record custodian of the communique.

No longer was the clerk's office the central location for city correspondence. The move made it harder for the media and the public to track down information, but freed the clerk's office from a deluge of recordkeeping, especially in an era of voluminous e-mails and Internet mania.

Today, the clerk's in-box containing hard copies of city correspondence to and from the city manager's office is expunged every two weeks, and e-mails to and from city council members on the city-maintained e-mail system that is open to the public expire roughly every two months.

Record keepers

Council members appeared shocked to learn e-mails generated by themselves or their constituents and sent to the city Web site are not retained.

Some council members assumed that forwarding their e-mails meets their responsibility under the Public Records Law.

"My understanding (of this is) I have e-mails I forward to the city. ... Once they are in the hands of city clerk they are hers," said Mayor Ed Martin. Member John Simmonds echoed the same understanding.

Not so, said City Clerk Lori Stelzer.

The clerk's office doesn't retain forwarded e-mails unless they are identified by the sender as a public record, she explained.

"The sender is the one who has to keep it," Stelzer said.

Otherwise, handling e-mails forwarded by seven city council members would quickly overrun her computer's capacity, she said.

Some council members have been deleting e-mails after they're sent to the clerk's office. Without a backup record, that would constitute a violation of the Public Records Law.

City Attorney Bob Anderson warned members they needed to keep the public records, even if it meant getting a new server or a new file cabinet.

Forewarned

Stelzer conducted public records training earlier this year for each council member, and has sent reminders of the city policy on occasion.

The latest was an e-mail sent May 9 to council members after Stelzer learned some council members had received e-mails from constituents regarding the Cemex rezoning petition.

"I have not received any of those documents from council members to be entered into the quasi-judicial hearing scheduled for May 27, 2008," Stelzer wrote. "Any correspondence you receive/send that should be part of a public hearing should be forwarded to me. I am not copied on many of the e-mails you receive and I do not monitor your e-mails on the media account."

She also reminded council members of city policy: "Remember that as an individual user, you are responsible for maintaining your e-mails in accordance with state laws, specifically retention requirements. The e-mails are not backed up by the (Information Services) department, nor do they stay in the media account.

"Some of the key points are:

1. Keep all e-mails received from constituents. You can create folders in your electronic cabinet.
2. You are allowed (and encouraged) to delete transitory e-mails.
3. Keep all e-mails you send (unless they are transitory)
4. You can delete e-mails from staff, because as originator of that e-mail, they are responsible for maintaining the record.
5. You can print out a hard copy and file it in the traditional way and delete the e-mail."

Records requests

Tuesday's discussion was sparked by a slew of recent public records requests from the media and attorneys for Anthony Lorenzo, a Sarasota resident who last week sued the city and two council members over alleged Sunshine Law violations regarding open meetings.

It was the catalyst for City Attorney Bob Anderson's warning to council on Tuesday: Be timely in bringing forth copies of e-mails that pertain to public records requests, he told council members, or there could be stiff fines.

It wasn't until Mayor Ed Martin shared his procedure for handling e-mails that the misunderstanding surfaced.

The implication is that hundreds of e-mails may have been lost forever because members were under the mistaken assumption the city clerk's office was keeping the only official record.

The misunderstanding could spill over into the Lorenzo lawsuit, since he is charging Martin, Council Member Sue Lang and the city with inadequate meeting notification based on e-mails to and from council members.

Council agreed to discuss the issue at an upcoming meeting with the city attorney.

What are public records?

Section 119.011(11) of the [Florida Statutes](#) defines public records to include: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge, regardless of whether they are in final form. The records must be open for public inspection unless the Legislature has exempted them from disclosure.

Article I, Section 24, of the Florida Constitution establishes a constitutional right of access to any public record made or received in connection with the official business of any public body, officer or employee of the state, or persons acting on their behalf.

Section 119.07(2) requires the custodian to provide safeguards to protect the contents of the public records from unauthorized electronic access or alteration.

Computer records, including e-mail messages made in connection with official business, are public records.

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