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CITY OF CAMBRIDGE

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**D. MARGARET DRURY
CITY CLERK**

**JOHN E. FLYNN
DEPUTY CITY CLERK**

MEMORANDUM

TO: The Honorable, the City Council

FROM: D. Margaret Drury, City Clerk

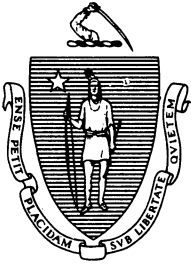
SUBJECT: E-Mail and the Open Meeting and Public Records Laws

DATE: March 14, 1995

As requested by Councillor Triantafillou, I am informing the City Council of the results of my queries to relevant state agencies regarding potential problems with electronic mail. Attached is a letter from Assistant District Attorney Catherine Sullivan, Captain of the Open Meeting Law Team on the issue of electronic mail and the Open Meeting Law, and a directive from the Secretary of State on the issue of e-mail as a public record.

As you will see, there are many unanswered questions. The District Attorney's Office points out the resemblance of e-mail to telephone conversations, while the Secretary of State emphasizes its likeness to other written correspondence.

I hope this information is helpful.



TOM REILLY
DISTRICT ATTORNEY

RECEIVED BY
OFFICE OF CITY CLERK
THE COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX DISTRICT ATTORNEY
1995 MAR -9 AM 10:31
40 THORNDIKE STREET CAMBRIDGE MA 02141
CAMBRIDGE MA.

617 - 494-4050
FAX: 617 - 225-0871

March 7, 1995

Ms. D. Margaret Drury, City Clerk
City of Cambridge
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Ms. Drury:

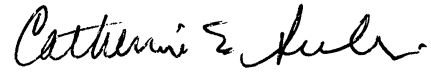
Thank you for your inquiry concerning E-mail. This office has not issued any formal opinions concerning the propriety of the use of E-mail among members of governmental bodies. It is plain, however, from the law and the prohibition against telephone and other private discussion of public business among a quorum of members, that private use of E-mail among a quorum of members would violate the Open Meeting Law, as the public would be deprived of the opportunity to monitor the E-mail "meeting."

For this reason, when the question has come up during Open Meeting Law educational seminars or through our telephone duty line, we have cautioned governmental bodies against using E-mail. If an E-mail message is sent or received by a member of a governmental body, we have further recommended that a hard copy be created and immediately placed in a central file, where it can be provided as a public record on request.

Should E-mail messages eventually encompass a quorum of members, even if hard copies were provided to the public after the fact, serious issues would be raised concerning the public's right to contemporaneously monitor the discussion, and concerning the right of all members of the governmental body to participate in the debate. For these reasons, we recommend that, as with telephone discussions, members of governmental bodies avoid using E-mail, so as to prevent possible violation of the the Open Meeting and Public Records laws.

I appreciate your thoughtful concerns on this issue. Should we have occasion to rule formally on an issue concerning E-mail, I will let you know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine E. Sullivan".

Catherine E. Sullivan
Assistant District Attorney
Captain, Open Meeting Law Team
Tel. (617) 494-4077



The Commonwealth of Massachusetts

Office of the Secretary of State
Michael J. Connolly, Secretary

James W. Igoe
Deputy Secretary of State
Supervisor of Public Records

SPR BULLETIN
NO. 5-92

January 21, 1992

TO: Public Records Custodians

SUBJECT: Electronic mail

EXPIRATION DATE: Until superseded

PURPOSE: This bulletin provides information and requirements for the management and disposition of electronic mail sent and received by public officials.

BACKGROUND:

Electronic mail, sometimes called "e-mail," is the process or result of sending and receiving messages via telecommunications links between computer terminals. Users of a communications network may send messages to any terminal linked to that network; the terminal acts as a mailbox, holding the message until the recipient accesses and responds to it.

FINDINGS:

Electronic mail messages have the same potential to be public records as any other documentary materials created or received by public officials. See G. L. c. 66, s. 1; G. L. c. 4, s. 7 (26) (1990 ed.) (defining "public records" to include all data in whatever form made by public officials). Therefore, when setting policy for the management of electronic mail in their offices, officials must address both preservation and legal issues. The following guidance must be incorporated into appropriate office directives.

ACTIONS:

1. Retention requirements (issued by the Supervisor of Public Records for local government records, and by the Records Conservation Board for records of the executive branch) apply to information created to perform a specific

public purpose, not to media (pursuant to G. L. c. 66, s. 8 and G. L. c. 30, s. 42, respectively). A piece of correspondence performs the same function whether received through the mail, by facsimile transmission, or through electronic mail. Therefore, retention/disposal schedules approved for the office must be applied to electronic mail sent or received by that office, or, if none exist, schedules must be created.

2. Electronic mail which will retain its usefulness for a period longer than three months and any electronic mail on which action is taken must be printed out and filed in accordance with the office's standard filing procedures.
3. As with any public record, electronic mail is subject to access by the public, limited only by statutory restriction. See G. L. c. 4, s. 7 (26) (a)-(1) (defining exemptions from disclosure).

QUESTIONS:

Questions concerning access to electronic mail should be directed to the Public Records Division, 1 Ashburton Place, Room 1719, Boston, MA 02108, (617) 727-2832.

All other questions concerning this bulletin should be directed to the Records Management Unit, Massachusetts Archives at Columbia Point, 220 Morrissey Blvd., Boston, MA 02125, (617) 727-2816.

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Comm. and Reports from City Officers #1

Communication was received from
Middlesex District Attorneys Office
regarding E-Mail, Open Meeting and
Public Record Law.

In City Council March 20, 1995

*Placed on file on
motion of Vice Mayor
Russell*