

MEMORANDUM

TO: Bill Malinen

FROM: Scott T. Anderson
Eric J. Quiring

DATE: April 8, 2009

SUBJECT: Electronic Communications Policy
File No. 4002(1)-0341

I. Does the Electronic Communications Policy infringe on the First Amendment rights of Council members?

The proposed Policy sets forth restrictions on the use of electronic communications by Council members. These restrictions impact the free speech rights of Council members. The government can only exclude a speaker from a traditional public forum where the exclusion is narrowly tailored and necessary to serve a compelling state interest. Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37 (1983). Notwithstanding this, the government can place viewpoint neutral restrictions on the time, place and manner of the speech taking place in traditional public fora, so long as there are ample alternative channels of communication left open. Id.

As currently revised, the proposed Electronic Communications Policy does not impose a broad prohibition on free speech. Rather, it only limits Council members from communicating with each other outside of public 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. (See Section VI.) In other words, the Policy simply states the law as to what constitutes a violation of the Open Meeting Law. Council members may still express themselves in any other manner that is not violative of the Open Meeting Law. Moreover, Council members may communicate with each other openly on any topic at public meetings.

The Policy has been revised to more narrowly tailor the limitations on electronic communications to go no further than the prohibitions of the Open Meeting Law. As a result, several clauses have been deleted from Sections VI of the revised Policy.

II. Should the Electronic Communications Policy apply to advisory committees?

The Open Meeting Law provides that all meetings, including executive sessions, of the City Council and “of any committee, subcommittee, board, department or commission” of the Council shall be open to the public. Minn. Stat. § 13D.01, subd. 1. The application of the Open Meeting Law to advisory committees depends upon the role and authority of the committee.

In Sovereign v. Dunn, the court held that mediation sessions to discuss the possible resolution of a municipal border dispute were not meetings subject to the Open Meeting Law because the city delegation did not constitute a “committee, subcommittee, board, department, or commission.” 498 N.W.2d 62 (Minn. App. 1993). In that case, the city’s mayor and a city council member attended a series of meetings on the border questions. The court held that a gathering of public officials was not a “committee, subcommittee, board, department or commission” subject to the Open Meeting Law unless the group was capable of exercising decision-making powers of the governing board. Id., at 67. The court found that the city delegation did not exercise any authority on behalf of the council, was created informally without a vote or resolution on the matter, and no powers were granted to the delegation by statute, ordinance, or other formal action. Id. Although the mediation sessions produced a negotiated agreement, this agreement was presented to the city council in an open meeting with ample opportunity for public involvement. Id. at 67-68.

In Minnesota Daily v. University of Minn., the court had to determine whether the University of Minnesota Presidential Search Advisory Committee (“PSAC”) was a committee of the regents. 432 N.W.2d 189, 190 (Minn. App. 1988), review denied (Minn. 1989). PSAC was comprised of faculty, student, and staff members, but no regents. The committee’s purpose was to provide advice and consultation to the regents on the selection of the president. The committee assumed an active role in screening applicants and narrowing the field to a short list of finalists, but its decisions were subject to review by the regents. The court explained that PSAC was not literally a committee of regents because no regent was a member of PSAC. Id. Thus, the court focused on whether PSAC meetings were, in effect, the deliberations of the regents. Id. The court reasoned that while PSAC had the power to make recommendations and the obligation to report to the regents, it had no power to decide who the next president would be. Id. at 193. The court explained that PSAC had no authority to set policy or make the final decision. Id. The court held that the committee’s participation in the process of transacting public business, without more, would not bring PSAC within the Open Meeting Law. Id.

As in the Minnesota Daily case, the determination of whether advisory committees are committees of the City Council depends on the functions and authority of the particular committee. If an advisory committee will not have the power to decide on City business, set policy or make the final decision, the committee would not be subject to the Open Meeting Law. If the Open Meeting Law does not apply to the committee, the

Council may decide there is no reason for the Electronic Communications Policy to apply to that committee. There is no legal requirement to adopt the Policy at all, much less to apply it to advisory committees. However, the Policy should apply to all committees that are governed by the Open Meeting Law if the purpose of the Policy is to ensure compliance with the Open Meeting Law by providing rules for the use of electronic communications.

III. What requirements does the Electronic Communications Policy impose on Council members to retain government records?

Minnesota law requires all cities to make and preserve all records necessary for a full and accurate knowledge of the city's official activities. Minn. Stat. § 15.17. Cities cannot destroy records without statutory authority or in accordance with the record retention schedule. Minn. Stat. § 138.17, subd. 7. It is our understanding that the City follows the State Historical Society's Records Retention Schedule for Minnesota Cities.

"Government records" are defined as a record of the City, including all cards, correspondence, discs, maps, memoranda, microfilms, papers, photographs, recordings, reports, tapes, writings, optical disks, and other data, information, or documentary material, regardless of the physical form or characteristics, storage media, or conditions of use, made or received by an officer or agency of a city or in connection with the transaction of public business by an officer or agency. Minn. Stat. § 138.17, subd. 1(b)(1). Under the record retention laws, there is no difference between electronic communications and regular mail correspondence.

While "government records" are broadly defined to include many types of documents and data, the statute limits them to records made or received in connection with the transaction of public business. *Id.* The statute further expressly defines "records" to exclude data and information that does not become part of an official transaction. Minn. Stat. § 138.17, subd. 1(b)(4). As a result, the only electronic communications that would need to be retained for record retention purposes are those that become part of an official transaction. The Policy has been revised to reflect these limitations. Under the revised Policy, Council Members need only provide the City Manager with an electronic communication that became part of an official City transaction.

Under the record retention statute, there is no requirement to retain multiple copies of government records. As a result, the Policy has also been revised to clarify that Council Members are not obligated to retain or provide any electronic communications that the City already possesses.

The General Records Retention Schedule for Minnesota Cities sets forth records classifications such as Administration, Elections, Utilities, etc. The Administration categories most relevant to Council member communications are the following:

Complaints – General: General city services, maintenance, repair, citizen complaints.

The retention period is 1 year after action completed.

Correspondence – Messages: Transitory messages, e-mail or phone messages of short-term interest which are considered incidental and non-vital correspondence.

The retention period is “Until read.”

Correspondence – Historical: Correspondence to/from mayor, city manager, city administrator. Official correspondence that documents important events or major functions of the office. Usually deals with a specific topic, issue, organization or individual.

The retention period is permanent.

Correspondence – General: No description given.

The retention period is 3 years.

Section VII of the Policy has been revised to provide further guidance about the retention of electronic communications. The revised Policy has Council Members provide any electronic communications that must be retained under the Record Retention Schedule to the City Manager so each Council Member does not need to store the record. Neither the Minnesota Government Data Practices Act nor the record retention law distinguishes between the storage media of government records or data. By having Council Members provide any electronic communications that must be retained to the City Manager, the Council Members can minimize their involvement in the retention of government records. This process should also reduce the likelihood of retaining multiple copies of government records.

RRM: 129573

Attachments: A. Draft Policy
 B. 2/23/09 RCA
 C. 2/23/09 Minutes

APRIL 13, 2009 MEETING DRAFT

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. Communications with members of the public

Members of the public cannot expect confidentiality when electronically communicating with Council Members on matters of City business.
Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient as provided by Minnesota Statutes Section 13.601, subd. 2.

APRIL 13, 2009 MEETING DRAFT

1 IV. Meeting materials

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

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- 7 • Council Members may receive agenda materials, background information, and
8 other materials via email attachment or other electronic means (such as file
9 sharing) from the City Manager.
 - 10 • If a Council Member has questions or comments about materials received, s/he
11 should inquire via electronic means directly back to the City Manager. A Council
12 Member should not copy other Council Members on his/her inquiry.
 - 13 • If the clarification is one of value to other Council Members, the City Manager
14 may send follow-up materials or information to the Council Members.
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17 Electronic communications relating to agenda items of a meeting prepared or distributed
18 by or at the direction of a Council Member or City employees and (1) distributed at the
19 meeting to all members of the Council; (2) distributed before the meeting to all Council
20 members; or (3) available in the meeting room to all Council members must also be made
21 available to the public at the meeting pursuant to Minnesota Statutes Section 13D.01,
22 subd. 6, unless the materials are classified as nonpublic under the Minnesota Government
23 Data Practices Act.

24 25 IV. Communication during Council meetings

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- 27 • Council Members should not communicate with one another via electronic
28 means during a public meeting.
 - 29 • Council Members should not communicate with any member of city staff via
30 electronic means during a public meeting.
 - 31 • Council Members should not communicate with the public via electronic
32 means during a public meeting.
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36 VI. Communications outside of Council meetings

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- 38 • Council Members should act ~~with caution~~ in accordance with the Minnesota
39 Open Meeting Law when using electronic means to communicate with one
40 another, ~~being mindful of the Minnesota Open Meeting Law~~. Council
41 Members shall not communicate with each other outside of Council meetings
42 for the purpose of avoiding public discussion, to forge a majority in advance of

APRIL 13, 2009 MEETING DRAFT

1 public meetings, or to hide improper influences such as personal or pecuniary
2 interests of the Council Member.

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- 4 ~~• If a Council Member wishes to share information with other Council Members,~~
5 ~~s/he should do so through the City Manager. The Council Member may~~
6 ~~request the City Manager distribute materials to others. The communication~~
7 ~~should not invite response to or discussion between any Council Members,~~
8 ~~including replies to the person making the distribution request. This should be~~
9 ~~considered a method for providing one-way information to other Council~~
10 ~~Members.~~

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 - 12 ~~• If a Council Member wishes to address only one other Council Member~~
13 ~~through electronic means on any topic related to City business, s/he can do so~~
14 ~~directly, but should be mindful of the following:~~
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 - 16 ~~○ One to one communication is preferable.~~
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 - 18 ~~○ The recipient of an electronic message or inquiry should reply only to the~~
19 ~~sender, should not copy others on the reply and should not forward the~~
20 ~~original email to other Council Members.~~
 - 21
 - 22 ~~○ The sender of an electronic message should not forward or copy the~~
23 ~~recipient's reply to any other Council Member.~~
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 - 25 ~~○ If a Council Member receives an electronic communication from any~~
26 ~~source related to City business and distributed to multiple Council~~
27 ~~Members (i.e. an email sent to the entire council from a member of the~~
28 ~~public; or an email sent to three Council Members from a local business),~~
29 ~~s/he should reply only to the sender. The reply should not be copied to all~~
30 ~~on the original distribution or forwarded to any other Council Member.~~

 - 31
 - 32 • When communicating via e-mail on City matters, Council Members should
33 include the following disclaimer: “Confidentiality Statement: The information
34 contained in this electronic message and any documents accompanying this
35 transmission may contain information that is private or nonpublic ~~confidential~~
36 ~~and/or legally privileged~~. This information is intended only for the use of the
37 individuals or entities listed above. If you are not the intended recipient, you
38 are hereby notified that any disclosure, copying, distribution, or action taken in
39 reliance on the contents of these documents is strictly prohibited. If you have
40 received this information in error, please notify the sender immediately and
41 arrange for the return or destruction of these documents.”
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APRIL 13, 2009 MEETING DRAFT

- 1 • ~~Council Members and City employees should discourage members of the~~
2 ~~public from replying or forwarding electronic communications with a Council~~
3 ~~Member about matters presently pending before the Council for official action~~
4 ~~to all Council Members. When communicating with members of the public via~~
5 ~~e-mail, Council Members and City employees should include the following~~
6 ~~disclaimer: "Open Meeting Law Notice: Please note that electronic~~
7 ~~communications about matters pending before Council for official action~~
8 ~~which directly or serially include at least three Council Members, including~~
9 ~~forwarding of e-mails or use of 'reply to all,' may be found to violate the~~
10 ~~Minnesota Open Meeting Law, and should be avoided."~~
- 11
- 12 • A quorum of Council Members shall not participate in any electronic
13 discussion forums for the purpose of deliberating on any matters presently
14 pending before the Council that would foreseeably result in the taking of
15 official Council action. If a Council Member receives listserv distributions,
16 electronic newsletters, or participates in electronic discussion forums where
17 other Council Members are also likely to participate (such as chat rooms), the
18 Council Member should not reply to any distribution or comment that could be
19 considered deliberation on a matter presently pending before the Council that
20 would foreseeably result in the taking of official Council action when that
21 reply is copied to the entire distribution group, or any part of the group that
22 might include other Council Members. In those situations, the Council
23 Member should instead respond only to the sender of any message or inquiry.

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25 VII. Classification and Retention of Electronic Communications

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- 27 • ~~Regardless of whether electronic communication by a Council Member is~~
28 ~~taking place on a City provided computer, home computer or other computer~~
29 ~~system, classification of information as public, private or other is governed by~~
30 ~~the Minnesota Government Data Practices Act (Minn. Stat. Chapt. 13) and~~
31 ~~should be treated accordingly.~~
- 32
- 33 • ~~Council Members should retain electronic communications in keeping with~~
34 ~~City policies and procedures, whether such communication takes place on a~~
35 ~~City provided computer, home computer or other computer system.~~
- 36
- 37 • Council Members should provide the City Manager with a copy of any
38 electronic communication not already maintained by the City that was made or
39 received by the Council Member and becomes part of an official City
40 transaction pursuant to the following retention classifications:

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42 Complaints – General: General city services, maintenance, repair, citizen
43 complaints. [Retention period: 1 year after action completed.]

APRIL 13, 2009 MEETING DRAFT

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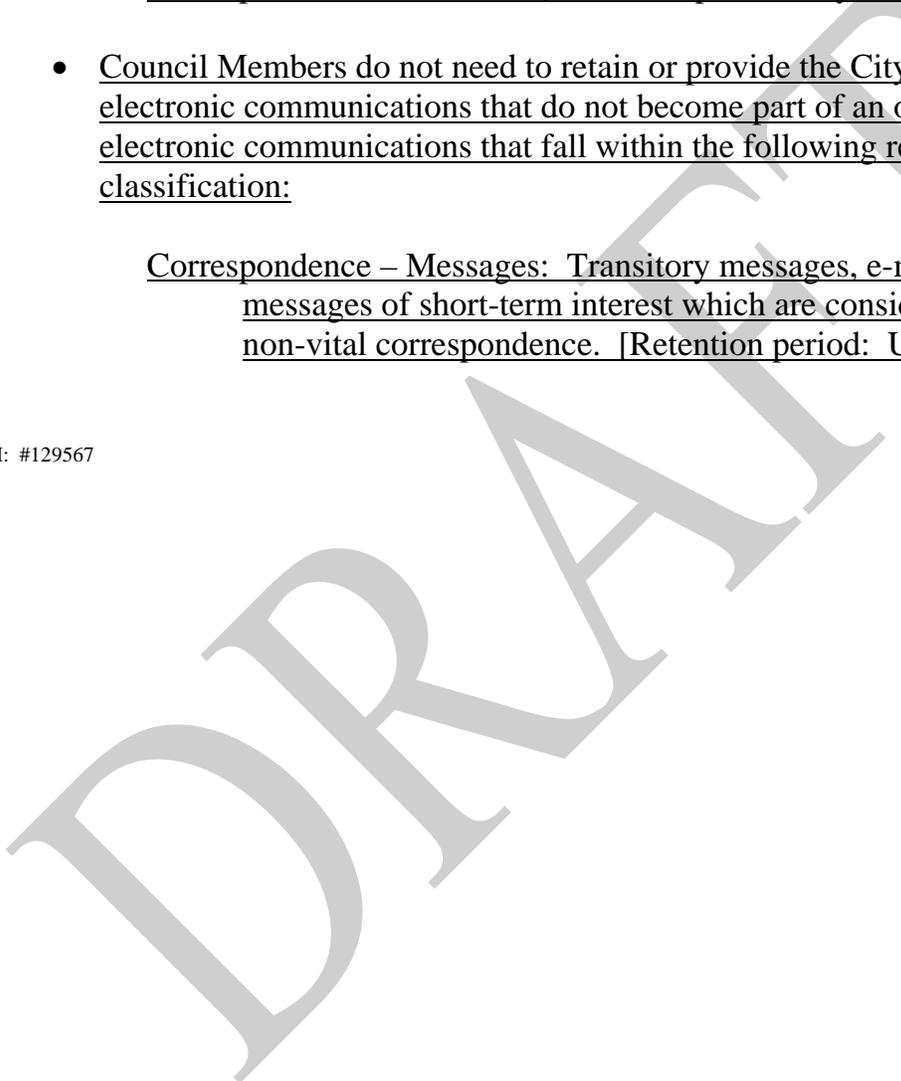
Correspondence – Historical: Correspondence to/from mayor, city manager, city administrator. Official correspondence that documents important events or major functions of the office. Usually deals with a specific topic, issue, organization or individual. [Retention period: Permanent.]

Correspondence – General. [Retention period: 3 years.]

- Council Members do not need to retain or provide the City Manager with electronic communications that do not become part of an official transaction or electronic communications that fall within the following retention classification:

Correspondence – Messages: Transitory messages, e-mail or phone messages of short-term interest which are considered incidental and non-vital correspondence. [Retention period: Until read.]

RRM: #129567



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.

- 13
14 5. Will the Policy apply to Council Members' personal e-mail accounts?

15
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.

- 20
21 6. What electronic communications must be available in the back of the room during
22 Council meetings?

23
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

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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.

- 1 • If a Council Member has questions or comments about materials received, s/he
2 should inquire via electronic means directly back to the City Manager. A Council
3 Member should not copy other Council Members on his/her inquiry.
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- 5 • If the clarification is one of value to other Council Members, the City Manager
6 may send follow-up materials or information to the Council Members.
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8 Electronic communications relating to agenda items of a meeting prepared or distributed
9 by or at the direction of a Council Member or City employees and (1) distributed at the
10 meeting to all members of the Council; (2) distributed before the meeting to all Council
11 members; or (3) available in the meeting room to all Council members must also be made
12 available to the public at the meeting, unless the materials are classified as nonpublic
13 under the Minnesota Government Data Practices Act.
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15 IV. Communication during Council meetings

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- 17 • Council Members should not communicate with one another via electronic
18 means during a public meeting.
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- 20 • Council Members should not communicate with any member of city staff via
21 electronic means during a public meeting.
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- 23 • Council Members should not communicate with the public via electronic
24 means during a public meeting.
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26 V. Communications outside of Council meetings

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- 28 • Council Members should act with caution when using electronic means to
29 communicate with one another, being mindful of the Minnesota Open Meeting
30 Law. Council Members shall not communicate with each other outside of
31 Council meetings for the purpose of avoiding public discussion, to forge a
32 majority in advance of public meetings, or to hide improper influences such as
33 personal or pecuniary interests of the Council Member.
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- 35 • If a Council Member wishes to share information with other Council Members,
36 s/he should do so through the City Manager. The Council Member may
37 request the City Manager distribute materials to others. The communication
38 should not invite response to or discussion between any Council Members,
39 including replies to the person making the distribution request. This should be
40 considered a method for providing one-way information to other Council
41 Members.
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- 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:
 - One-to-one communication is preferable.
 - 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.
 - The sender of an electronic message should not forward or copy the recipient's reply to any other Council Member.
 - 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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- Regardless of whether electronic communication by a Council Member is taking place on a City-provided computer, home computer or other computer system, classification of information as public, private or other is governed by the Minnesota Government Data Practices Act (Minn. Stat. Chapt. 13) and should be treated accordingly.
- Council Members should retain electronic communications in keeping with City policies and procedures, whether such communication takes place on a City-provided computer, home computer or other computer system.

RRM: #128183

2/23/09 – City Council Minutes re: Electronic Communications Policy**13.a Discuss City Council Electronic Communications Policy**

City Manager Malinen provided a first draft of a proposed policy on Councilmember Electronic Communications; along with a review of previous topics discussed at the City Council level. Mr. Malinen advised that this proposed policy language was based on a model from the League of Minnesota Cities (LMC) with suggestions for outlines and content; and that it was provided as a framework for further discussion. Mr. Malinen provided, as a bench handout, additional information related to such a policy.

City Manager Malinen noted that, in discussions with City Attorney Jay Squires, there was some question as to the benefit and/or consistency of a disclaimer for staff e-mails, as addressed on Page 3, line 21; and whether it should be included as a part of that policy.

Discussion included individual Councilmember comments to the proposed policy, as indicated in red, in the draft.

Mayor Klausing expressed concern that City Councilmembers be prohibited from participating in list serves, if items were not being deliberated or pending before the City Council; and, allowing for more public discussion for elected officials with their constituents; and considerations of First Amendment Speech rights and Open Meeting laws.

City Attorney Anderson noted that the draft was prepared from language in the League of Minnesota Cities Insurance Trust (LMCIT) with a concentration on risk analysis and concerns; and that his office been asked to draft language based on previous City Council discussion they would do so with fewer restrictions. Mr. Anderson opined that his office did not necessarily think the draft policy was appropriate as presented, but that it was in keeping with the direction given to them to draft a policy based on LMCIT policy language to initiate discussions and to serve as a talking point. Mr. Anderson advised that his office would take into consideration case law to-date, as identified in his previous April 2, 2009 letter.

Councilmember Pust opined that the City Council needed to seek recommendations of their City Attorney, not just consider what was the best version of LMCIT proposals.

Councilmember Pust requested additional information based on language addressing retention issues for individual home computers, addressed on Page 4, Section VI, and data retention consistent with law, but not in perpetuity.

Councilmember Johnson concurred with Mayor Klausing, asking that more information be provided on First Amendment Rights; expressing concern that freedom of speech rights were being squelched, in addition to not encouraging public discussion. Councilmember Johnson questioned whether, by his serving as part of a governing body, he had given up some of those rights.

Mayor Klausing responded that Councilmember Johnson's concerns were valid from a public policy standpoint, when elected officials should be encouraged to participate through public venues in expressing their viewpoints to their constituency; but opined that any policy should be consistent with state statute and the spirit of public discussions.

City Attorney Anderson noted that this draft was a working draft, and encouraged Councilmember comment and input.

Mayor Klausing concurred with Councilmember Pust's concerns for retention of items on home computers; whether retention was necessary if items had gone through staff at City Hall where they would naturally fall into record retention categories; and whether communication of advisory boards to the City fell within this framework and policy as well.

City Manager Malinen advised that he needed to further consult with the City's Information Technology staff on record retention practices; and referenced comment received from Planning Commissioner Daniel Boerigter related to this matter and advisory commissions.

Councilmember Pust opined that she didn't appreciate the tone or focus of the proposed policy, and the comment about trying not to put things on paper so they could be construed as public data; when it was the intent and interest of the City Council to transparently comply with the Open Meeting Law and Minnesota Data Practice Act.

Further discussion included individual City Councilmember correspondence with citizens, and when it became public information; removal of liability issues for the City once a document was legally obtained from a government entity and came into the public domain; and interpretation of uses of such data or using citizens as surrogates in forging decisions privately and not in the public venue.

Councilmember Ihlan addressed the purpose statement on Page 1, second paragraph; and suggested that the language mirror that of the Data Practices Act related to correspondence between elected officials and individuals.

City Attorney Anderson so noted.

Councilmember Ihlan opined that the disclaimer as addressed by City Manager Malinen, seemed confusing and unnecessary.

Mayor Klausing concurred; and questioned if it actually served a good public policy purpose, and may actually make citizens less willing to correspond with their elected officials if they thought the information was going to be shared.

City Attorney Anderson advised that his firm would work on the confidentiality concerns as discussed; noting that the most common privacy issue was personnel and/or discipline issues; and those would be the only practical things requiring a standard disclaimer.

Councilmember Roe concurred that this statement was overused. Councilmember Roe referred to a recent presentation at Roseville University related to City Policy development on Data Practices and Record Retention that may serve to help clarify the questions and concerns expressed by Councilmember Pust.

Councilmember Roe noted the need to clarify language on Page 2, lines 8 – 13, related to distribution to all City Councilmembers or only a quorum.

City Attorney Anderson noted that this language was word for word from the Open Meeting Law.

Mayor Klausning noted that this policy was designed to distinguish communication, not pending City Council action, going to all Councilmembers.

City Attorney Anderson clarified the need to remind staff that anything specific to an agenda item needed to be included in the agenda packet and provided to the public, unless falling within City Attorney/client privilege. City Attorney Anderson further clarified that, if a member of the public sent each Councilmember communication, there was no requirement in law to provide a public copy of those member materials; only those items prepared and/or distributed at the direction of the governing body or its employees; but that something coming to the City Council from a citizen was not within the provision of law needing to be included in the packet materials.

Mayor Klausning noted that, beyond the statute, but from a policy standpoint to provide for transparency in government and in the spirit of the law, it may be prudent to include that information.

City Attorney Anderson noted that there was nothing prohibiting the City Council from going further than the law required if they so chose that as their policy.

City Attorney Anderson advised that he would take tonight's comments and discussion into consideration for changing this first draft, as well as further researching First Amendment laws.