



October 6, 2009

MEMORANDUM TO MUNICIPAL CLIENTS

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To: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCIL
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY
CITY AND TOWN CLERK

BOARD OF SELECTMEN

Re: Retention of Electronic Mail

As you may be aware, in recent days there has been intense media scrutiny concerning retention of e-mails by municipalities. As such, we wanted to remind municipal officials of the applicability of the Public Records Law to retention of e-mail and other municipal records.

- All records made or received by a governmental body, official, or employee, regardless of physical form, are public records for purposes of Massachusetts law. Thus, e-mail is a public record and is subject to the maintenance and disclosure requirements imposed by law. G.L. c. 4, §7, clause 26 (definition of public records and exemptions); G.L. c.66, §§8, 10 (retention and disclosure requirements, respectively).
- General Laws c.66, §8 provides that all public records must be maintained for a period of seven years, or for the amount of time specifically provided in an applicable records disposal schedule approved by the Supervisor of Records.
- The Supervisor of Records has approved over 20 departmental disposal schedules, as well as an Administration and Personnel schedule applicable to records held by any department. Copies of all municipal disposal schedules are posted on the Secretary's website at <http://www.sec.state.ma.us/arc/arcrmu/rmurds/rdsmds.htm>.
- To determine how long a record must be maintained, a records custodian must initially review the content of the record (subject matter), rather than the form (letter, e-mail, or video tape). Thus, for example, a complaint filed with a municipal board of health, regardless of whether it is in the form of a paper letter or an e-mail, must be retained for the same period of time.
- Once the content of the record has been identified, a records custodian must first consult the appropriate departmental records disposal schedule. If the record appears on the departmental disposal schedule, then the record must be maintained for the period of time indicated. If the record does not appear on the departmental schedule, then reference must be made to the Administration and Personnel schedule. As indicated above, if the record does not appear on any schedule, then the record must be maintained for a period of seven years.

KOPELMAN AND PAIGE, P.C.

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Page 2

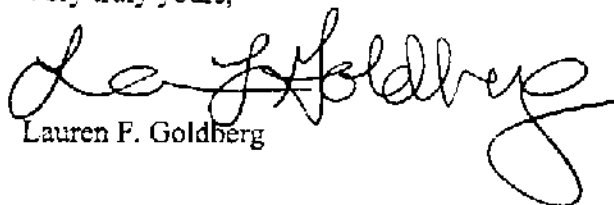
- Reports in the press have suggested that e-mail must be retained for a period of two years. Such a general statement is simply incorrect. Instead, the Administration and Personnel retention schedule provides that "correspondence," which term could include e-mail depending on the content of a particular e-mail, must be maintained for a period of two years only if the content of the e-mail contains "no informational or evidentiary value."
- Subject to very few exceptions, the written approval of the Supervisor of Records must be sought prior to destruction of any public record. G.L. c.66, §8.

The below bulletins, issued by the Supervisor of Records, provide additional information regarding the application of the Public Records Law to e-mail:

- Electronic Mail:
<http://www.sec.state.ma.us/arc/arcrmu/rmubul/bul199.htm>
- Backing Up and Archiving of Electronic Records:
<http://www.sec.state.ma.us/arc/arcrmu/rmubul/bul196.htm>

In summary, for purposes of the Public Records Law, e-mail should be treated in the same manner as paper documents. To ensure compliance with the law, municipalities may wish to consider whether any of the following actions are appropriate: review existing public records retention policies or adopt such a policy; require employees to print all e-mails of a substantive nature or copy e-mails to a specific employee tasked with printing the same; examine whether existing computer systems store data on a routine basis (to preserve data inadvertently deleted from an individual computer).

Very truly yours,



Lauren F. Goldberg

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