

TOWN OF HOPKINTON
E-MAIL POLICY
(Adopted by the Board of Selectmen on 1/31/06)

INTRODUCTION

In light of the proliferation in the use of personal computers in recent years, it has become more common for persons, both at home and at work, to communicate through electronic mail, commonly known as “e-mail.” In order to assist members of governmental bodies to comply with the Open Meeting Law and the Public Record Law in their use of this new technology, the following policies have been prepared. As every case will present its own set of circumstances, these policies must be considered general in nature. Specific questions concerning the proper use of e-mail, or other questions concerning Open Meeting Law, may be directed to the District Attorney’s Open Meeting Law Team at (617) 679-6540 and concerning the Public Records Law to the Supervisor of Public Records at (617) 727-2832.

DISCUSSION

The Open Meeting Law requires that “[a]ll meetings of a governmental body shall be open to the public” and that “no quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.” G.L. c. 39, § 23 B. “Meetings” covered by the Law include discussion or consideration by a quorum of “any public business or public matter over which the governmental body has supervision, control, jurisdiction, or advisory power.” G.L. c. 39, 23A.

Thus, no substantive discussion by a quorum of members of a governmental body about public business within the jurisdiction of the governmental body is permissible except at a meeting held in compliance with the requirements of the Open Meeting Law. Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail “meeting.”

Members of governmental bodies should also be cautious about communicating via e-mail on an individual basis. This is because private, serial conversations may reach a quorum of members without the knowledge of all participants. Private, serial discussions of public business involving a quorum violate the Open Meeting Law regardless of the knowledge or intent of the parties.

In addition, the Public Records Law requires that all persons have a right to access to public information, including the right to inspect copy or obtain copies of public records. The term “public record” is broadly defined and includes all documentary materials or data created or received by an officer or employee of a governmental body, including email correspondence.

Certain housekeeping matters may, of course, be communicated outside of a meeting. Questions concerning meeting cancellations and scheduling often must be discussed outside of a meeting. Similarly, requests to put items on the agenda, so long as no substantive discussion occurs, are properly communicated outside a meeting. Other proper uses of e-mail may be to permit members of a governmental body to communicate with town department heads or staff. Both members of governmental bodies and town employees, however, must take care not to utilize such communications to poll board members or otherwise engage in deliberations.

Committees or Board members who send or receive email communication to other members of their Committee or Town employees which are not of a housekeeping nature and which are related to public business should make a hard copy of the communication for inclusion in the Board or Committee files as the communication could be considered to be a public record. In cases of Boards or Committees that do not have staff or office space, a hard copy of the communication should be given to the Town Clerk for maintaining it as a public record.

CONCLUSION

Despite the convenience and speed of communication by e-mail, its use by members of a governmental body carries a high risk of violating both the Open Meeting Law and the Public Records Law. Not only do private e-mail communications deprive the public of the chance contemporaneously to monitor the discussion, but by excluding non-participating members such communications are also inconsistent with the collegial character of governmental bodies. For these reasons, e-mail messages among members of governmental bodies are best avoided except for matters of a purely housekeeping or administrative nature, otherwise the above procedures should be followed.