



MEMORANDUM

Date: January 10, 2008
To: Parks & Community Services Board
From: Terry Smith, Assistant Director
Parks & Community Services
Subject: Open Public Meetings Act

In response to recent questions about Board email correspondence, we asked Myrna Basich, City Clerk, for clarification. We found that the Open Public Meetings Act (OPMA) RCW does not specifically address this sort of circumstance, but case law/court decisions have been used to interpret what is intended under the broad tenants of the law.

Please see the internal "protocol" document (attached) that touches on the City's interpretation of the law and provides some direction on management. Under this protocol, communications by staff to the whole or part of the Board do not trip the OPMA. However, internal communications among the Board can if a quorum is involved.

We suggest the following for Boardmembers to avoid overstepping the lines and tripping an inquiry:

- 1) When staff send emails to Boardmembers, in the Subject line include the following language:

FOR YOUR INFORMATION -- PLEASE DO NOT REPLY TO ALL

In lieu of "information" we may substitute "action" or "scheduling" or whatever is appropriate to the message we're sending. The important point is that the all caps and "do not reply to all" triggers the response in the Boardmembers that this is an official communication and, if extended, might trigger the OPMA.

- 2) We suggest that you as Boardmembers that if you have information for sharing with the entire Board, you should provide that information to staff for distribution to the entire group (and then use we will use #1 above).

The OPMA is intended to prevent elected officials (and their extensions like Boards/ Commissions) from sharing viewpoints back and forth on items of business coming before their group for discussion/action outside of the public forum where that business is to be conducted. So as staff or Boardmembers, we would not want to relay a Boardmember's position on a particular item to the rest of the Board, which would set up that kind of forum.

Protocols for City of Bellevue Boards, Commissions, Committees and Task Forces

The construction of the state's Open Public Meetings and Public Records Acts relies on the wording of a 1972 citizen initiative, which provides:

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

The following material summarizes the responsibilities of City Council-appointed Boards, Commissions, Committees and Task Forces in compliance with these laws and in the furtherance of open government.

Meetings

- The Open Public Meetings law applies to all standing, special or advisory boards, commissions, committees or subcommittees appointed by the City Council.
- All meetings must be open to the public, with the exception that Executive Session may be held on topics authorized by State law.
- Staff will assure that proper noticing is provided for regular or special meetings of the Board, Commission, Task Force, or Committee, as well as posting agendas, publishing meeting packet materials, and preparing minutes.
- A meeting takes place when a quorum (a majority of the total number of Board, Commission, Committee or Task Force members) is present and information concerning City business is received, discussed, and/or acted upon.
- No legal action may be taken by the Board, Commission, Committee or Task Force except in a public meeting. At a Special Meeting, action can be taken only on those items appearing on the posted agenda. "Action" is defined as the transaction of the official business ...but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.
- **To avoid possible violations of the Open Public Meetings Act, staff advise that Board, Commission, Committee or Task Force members avoid any back-and-forth exchange of information, viewpoints, positions or other dialogue via email or conference call among a quorum of their membership about the business of their organization. Additionally, email exchanges about City business among less than a quorum which are then relayed by a participant to other members, who together would constitute a quorum, should also be avoided.**

Public Records

- The term “public records” applies to any paper, correspondence, form, bound volume, film, magnetic record, drawing, photograph, audio or video recording, videostream, email or other document (regardless of media) that has been created or received by any state or local government agency (including Boards, Commissions, etc.) during the course of public business.
- To assess a public record’s status, it is necessary to determine the message content. The following guidelines apply to records in general as well as to email correspondence.
 - Examples of emails or documents which usually are public records:
 - Policy and procedure directives
 - Correspondence and/or memoranda related to public business
 - Documents related to legal or audit issues
 - Messages that document City actions, decisions, operations or responsibilities
 - Messages that initiate, authorize, or complete a business transaction
 - Final reports or recommendations
 - Other messages sent or received that relate to the transaction of City business.
 - Examples of emails or documents which usually are NOT public records:
 - Meeting notices or reminders
 - Personal messages not related to official business
 - Announcements or bulletins
 - Informal notes
 - Telephone messages that do not contain information that may constitute a public record
 - Information downloaded from network sources such as web sites or bulletin boards
 - Copies of published materials
 - Duplicate copies
 - Requests for information (but not public disclosure requests)
 - Transmittal memos.
- **Members of Boards, Commission, Committees and Task Forces may be required to produce their personal notes taken at their meetings that relate to the activities and deliberations of the organization in response to a request for inspection and copying of public records (a/k/a a public disclosure request). To the extent those notes contain information that is purely personal or material that is exempt under the Public Disclosure Act, they may not need to be provided to the requestor.**
- **Members of Boards, Commissions, Committees or Task Forces may also be required to produce emails or documents that relate to the activities or operations of the organization in response to a public disclosure request. Staff recommends that**

members of Boards, Commissions, Committees or Task Forces establish a separate, clearly named file within their personal email account and/or on the hard drive of their personal computer to which they file all materials relating to the organization.

- **The City must provide the fullest assistance in response to public disclosure requests. The City's Public Records Officer and a representative of the City Attorney's Office will review any documents which may be exempt from disclosure and will provide the necessary explanations of the exemptions to the requestor if access to particular records is denied. Courts may award monetary penalties should the City not respond promptly or fully.**

- **Public records are the property of the City and must be managed (preserved, stored, transferred, destroyed, etc.) according to the provisions of RCW 40.14. Staff suggests that Board, Commission, Committee and/or Task Force members copy electronic and paper records not already in possession of the City back to City staff periodically (in the case of ongoing Boards and Commissions) or upon completion of their charge (for shorter duration Committees or Task Forces).**

City Clerk's Office
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