Chapter XII

Electronic Mail in the Public Workplace: Issues of Privacy and Public Disclosure

Charles L. Prysby
University of North Carolina at Greensboro, USA

Nicole D. Prysby
Attorney at Law, Charlottesville, Virginia, USA

ABSTRACT

The increasing use of electronic mail in the workplace has generated important legal questions for public organizations. The legal questions concerning e-mail in public institutions and agencies fall into two basic categories: (a) issues of employee privacy regarding e-mail messages; and (b) public access to e-mail under applicable freedom of information legislation. While the employer has broad legal grounds for reading workplace e-mail, at least if there is some legitimate business reason for doing so, employees frequently feel that such monitoring is an excessive invasion of their privacy, and the result sometimes is organizational conflict over these privacy issues. These privacy concerns have generated demands for greater protection of employee privacy in this area, and some states have responded with legislation that covers e-mail in the workplace.

Government organizations also must treat at least some of their e-mail as part of the public record, making it open to public access, but this also can lead to conflict between public administrators, who may feel that much of their e-mail represents thoughts that were not intended for public disclosure, and external groups, such as the press, who feel that all such information belongs in the public domain. State laws vary considerably in terms of how they define the types of e-mail messages that are part of the public record, some being far more inclusive than others. Given the uncertainty and confusion that frequently exist regarding these legal questions, it is essential that public organizations develop and publicize an e-mail policy that both clarifies what privacy expectations employees should have regarding their e-mail and specifies what recording keeping requirements for e-mail should be followed to appropriately retain public records.

INTRODUCTION

The increasing importance of e-mail in the workplace has generated important legal questions, so much so that most experts strongly recommend that organizations adopt explicit policies about e-mail. Public organizations in particular must be concerned about the legal ramifications of e-mail. The legal questions concerning e-mail in public institutions and agencies fall into two basic categories: (a) issues of employee privacy regarding e-mail messages; and (b) public access to e-mail under applicable freedom of information legislation. We discuss both of these topics in this article, attempting not only to outline current legal thinking in the area, but also to raise questions that public managers and policy makers should consider.

Many of the legal issues surrounding the use of e-mail are direct extensions of principles that apply to other forms of communications. In fact, much of the law that governs e-mail is not legislation that was written explicitly to cover this particular form of communication. Issues of the privacy of employee e-mail messages, for example, are analogous to issues of the privacy of employee phone calls or written correspondence. Similarly, the right of the public to have access to governmental e-mail messages is a direct extension of the right to have access to written documents. Of course, there are questions about exactly how legal principles that were established for older communication technologies should be applied to a new one, but our understanding of this topic is broadened if we appreciate the application of legal principles across communication media.