

the city only needs to provide copies of existing records.<sup>23</sup> City employees are not required to do research for private individuals.<sup>24</sup>

**Question:** Is the city clerk required to provide information over the phone to a newspaper reporter who is asking “what occurred at the council meeting last night?”

**Answer:** This is not a public disclosure request, because the caller is not asking to review or copy a public record. There is no legal obligation to provide oral information concerning what occurred at the meeting. However, the reporter may request a copy of the minutes of the meeting after they are prepared. It is an administrative decision whether city staff should answer oral requests for non-record information. See also WAC 44-14-04002(2).

## Electronic Data and Records

Increasing amounts of public information are now contained in electronic format, rather than on paper. Public disclosure laws apply to electronic data.<sup>25</sup> The state legislature formed a Public Information Access Policy Task Force in 1994 to examine the issue of providing broad public access to government records by electronic means. After reviewing the recommendations of the task force, the legislature passed legislation strongly encouraging expansion of electronic access to public records:

Broad public access to state and local government records and information has potential for expanding citizen access to that information and for improving government services. Electronic methods for locating and transferring information can improve linkages between and among citizens, organizations, businesses, and governments. Information must be managed with great care to meet the objectives of citizens and their governments.

It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public.<sup>26</sup>

E-mail in particular has been the topic of many questions regarding public records. According to the State Archivist, who is responsible for creating public record retention guidelines,

Individual E-mail messages may be public records with legally mandated retention requirements, or may be information with no retention value. E-mail messages are public records when they are created or received in the transaction of public business and retained as evidence of official policies,

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<sup>23</sup>Smith, 100 Wn. App. at 18.

<sup>24</sup>Bonamy v. City of Seattle, 92 Wn. App. 403, 409 (1993).

<sup>25</sup>See Isabel R. Safora, “Municipal Policies on Internet Usage & E-mail Document Retention,” *Legal Notes* Information Bulletin No. 497, §§ VI–VII (1997) (discussing application of the PDA to e-mail and retention).

<sup>26</sup>RCW 43.105.250.

actions, decisions, or transactions. Such messages must be identified, filed, and retained just like records in other formats.<sup>27</sup>

For guidance, the State Archivist lists the following e-mail messages that are usually public records and must be retained:

- Policy and procedure directives.
- Correspondence or memoranda related to official public business.
- Agendas and minutes of meetings.
- Documents relating to legal or audit issues.
- Messages which document agency actions, decisions, operations and responsibilities.
- Documents that initiate, authorize or complete a business transaction.
- Drafts of documents that are circulated for comment or approval.
- Final reports or recommendations.
- Appointment calendars.
- E-mail distribution lists.
- Routine information requests.
- Other messages sent or received that relate to the transaction of local government business.<sup>28</sup>

Conversely, the State Archivist lists the following e-mail messages which are usually administrative materials with no retention value:

- Information-only copies, or extracts of documents distributed for reference or convenience, such as announcements or bulletins.
- Phone message slips that do not contain information that may constitute a public record.
- Copies of published materials.
- Informational copies.
- Preliminary drafts.
- Routing slips.<sup>29</sup>

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<sup>27</sup>Wash. Secretary of State, *Local Government Agencies of Washington State: Records Management Guidelines*, p. S-62, updated 1/05, available at <http://www.secstate.wa.gov/archives/gs.aspx>.

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

Additional information and guidance for determining whether e-mail is a public record can be found in *Records Management Guidelines for All Local Government Agencies*, a publication by the State Archives Division of the Washington Secretary of State, and available online at <http://www.secstate.wa.gov/archives/gs.aspx>.

As of June 2006 the Model Rules do not contain any provisions concerning the procedures for fulfilling requests for electronic records. The draft Model Rules had contained provisions on that topic, but because of considerable controversy regarding the details, they were not included when the Model Rules were adopted in early 2006. It is expected that those provisions will be added in the future.