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**FREEDOM OF INFORMATION ACT OVERVIEW**

**CITY OF ANSONIA  
BOARDS and COMMISSIONS**

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## I. E-MAILS AND VOICE MAIL

On April 14, 2004, the Freedom of Information Commission (“FOIC”) issued a draft “Proposed Declaratory Ruling #94 (Email and Voice Mail)” including retention policies (“Report”). It met with so much resistance in Hartford that it was never issued in final form. The political volatility of the issue can be appreciated, in part, by the action of Governor Rell on July 11, 2005 when she vetoed legislation which attempted to shield emails from and to legislators and their employees from disclosure under the FOI Act (House Bill 6774). Nonetheless, it is helpful to consider the analysis contained in the Report when considering how Ansonia might address the issues.

The report identified four issues for attention. These issues and the posited responses follow:

### A. Are e-mail and voice mail communications public records?

**ANSWER:** If they relate to “the conduct of the public’s business,” they constitute public records.

“Public records or files’ means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.” C.G.S.A. § 1-200.

### B. Do e-mail and voice mail communications need to be retained?

**ANSWER:** A qualified “yes” for a discreet period or permanently depending on content. E-mail and voice mail communications from state employees which have administrative, fiscal, legal or historical value should not be destroyed without reference to C.G.S.A. § 11-8a(c) which contains guidelines for disposition. The City might consider establishing guidelines for retention periods.

The Office of Public Records Administrator (“PRA”) has written (General Letter 98-1, June 1, 1998) that e-mails general fall within three broad categories: transitory messages, i.e., casual/routine communications similar to telephone conversations (may be immediately deleted); emails with less than permanent retention period (retained in accordance with established policy); and emails with a permanent or permanent/archival retention period (retained in hard copy). The PRA concluded that voice mail is “transitory in nature.” Most may be deleted at will unless the message “may be potentially used as evidence in a trial, such as a bomb threat, or in some other illegal activity.”

- C. Is the public entitled to access e-mail and voice mail communications upon request?

ANSWER: Yes, to the same extent as any other public record.

- D. Do e-mail and voice mail communications constitute a meeting under the FOI Act?

ANSWER: Yes, if distributed among a quorum of the body and related to a matter over which the body has supervision, jurisdiction, control or advisory power.

“‘Meeting’ means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, *whether in person or by means of electronic equipment*, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. ‘Meeting’ does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.” C.G.S.A. § 1-200(2). [emphasis added]

- E. If e-mail and voice mail communications constitute a public meeting, it is possible to conduct such a meeting in a manner that complies with the FOI Act?

ANSWER: Yes, if the meeting is conducted in a manner that comports with the open meeting requirements of the FOI Act.

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C.G.S.A. § 1-205(f) provides that municipalities may adopt an ordinance concerning the establishment of a “municipal freedom of information advisory board to facilitate the informed and efficient exchange of information between the commission and such municipality.” If established, the Board is charged to act as a “liaison to the FOI Commission for educational purposes” and with providing municipal officials, employees and others with information related to the FOI Act and its interpretation. Although the Board “may attempt to facilitate the

resolution of...disputes,” it does not have adjudicatory authority and cannot “impede” the filing of an appeal to the FOIC.

## II. MEETINGS

### A. What is a meeting?

1. As noted above, a “meeting” means a hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. (Conn. Gen. Stat. § 1-200(2))
2. Note that a meeting does not include “an administrative or staff meeting of a single-member public agency.” For example, a staff meeting of the First Selectman is not a meeting.
3. Also note that a quorum of one public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the FOIA shall not be deemed to be holding a meeting.
4. “Subcommittee”: The definition of meeting includes any “committee” created by the public agency (i.e., subcommittee), so subcommittees created by any board or commission are subject to the same requirements.

### B. Board Investigations

1. There are no absolutely clear guidelines when less than a quorum meets.
2. Law and policy behind law seeks to avoid “fake public meetings” and doing public business in private.
3. One case, Windham v. FOIC, 48 Conn. App. 522 (1998), said simply that if there was no quorum, there is no meeting.
4. Example 1: One Board member meets with head of building committee.
5. Example 2: Board appoints two- or three-person subcommittee to meet with head of building committee.

6. Example 3: One Board member calls a second Board member to meet with head of building committee.

### **III. EXECUTIVE SESSIONS**

- A. Notice must state reason. For example, if the executive session is to discuss litigation, the notice should state the name of the case.
- B. Allowed for:
  1. Appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting;
  2. Strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled;
  3. Security issues;
  4. Discussion of the selection of a site or the lease, sale or purchase of real estate when public discussion would cause a likelihood of an increased price; and
  5. Discussion of any matter which would result in the disclosure of certain other public records that are otherwise exempt from disclosure under Section 1-210 (e.g., certain police records).