



CONNECTING & INNOVATING
SINCE 1913

RISK MANAGEMENT INFORMATION
**ELECTRONIC COMMUNICATIONS
BETWEEN COUNCIL MEMBERS**

Electronic communication such as e-mail correspondence, instant messaging, social media, and blogs and microblogs, can be an unintentional conduit for city officials to violate the Minnesota Open Meeting Law. Elected officials and city committee and board members should be aware of the following issues to avoid inadvertent violation of this law.

The Open Meeting Law

Under the Minnesota Open Meeting Law, Minn. Stat. §13D, meetings of at least a quorum of the city council or one of its committees to discuss city business must be publicized and open to the public, subject to a few exceptions. A primary purpose of the law is to make sure information and deliberations about city business are available to the public.

The law applies to any discussion about city business, not just voting or official actions, and to any gathering of a quorum of the council or committee. In most cities a quorum is three or more council or committee members.

It's easy to imagine situations in which a quorum might gather – coffee at the local café, pre- or post-meeting discussions, a wedding reception or community celebration are all common places in which one or more council members might be present. Such a meeting would create an open meeting concern if the group discussed city business.

Although not an obvious meeting, serial meetings also create an open meeting concern if city business was discussed by a quorum. To understand how a serial meeting occurs, imagine that council member A talks to council member B about a city issue, B talks to council member C about that issue, and C talks to A. Serial meetings also can occur through written correspondence, or telephone conference calls. Any of these scenarios could give rise to an open meeting law violation.

Violating the law carries with it penalties including personal liability for up to \$300 per occurrence and forfeiture of office for officials who intentionally violate the law three times. Reasonable costs and attorney fees also can be awarded if the court finds specific intent to violate the law.

Electronic Communications and the Open Meeting Law

The Minnesota Open Meeting Law has a number of tricky aspects, not the least of which results from increasing reliance on e-mail and other electronic communication between council or committee members.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

Electronic communication makes a serial meeting easier by allowing council or committee members to forward messages from one person to the next, to respond to one another via blog comments, or to chat via social media vehicles such as Facebook, MySpace or Twitter. Imagine one council member e-mailing another to suggest the pros and cons of a particular city decision. The recipient forwards the e-mail to another council member, along with his or her own comments and interpretations.

Even if the last council member to receive the e-mail doesn't reply to the originator or the council member who forwarded the message, the three members have still discussed city business outside a public forum.

A similar situation could occur if council members respond to one another's blog, comment about city business on Facebook, or communicate via a micro-blog such as Twitter. A violation could be found where serial electronic communications are used to reach a decision.

Many cities are moving toward electronic meeting packets for councils and committees, often sent via e-mail attachments. This sort of one-way distribution of information is fine in terms of the Minnesota Open Meeting Law, remembering that any materials relating to the agenda items of a meeting distributed to members must also be made available to the public as well.

City officials should start to get concerned, though, when one or more council members use the "reply to all" feature in e-mail to respond to the content of the meeting materials, or otherwise begin a discussion by e-mail about the packet, or discuss agenda items on social media sites. This can begin to look a lot like non-public discussion of city business.

Suggestions

One suggestion is that council members never communicate to one-another using electronic means, but instead treat electronic media such as e-mail only as a way to receive information from the city clerk or administrator.

If a council member has information to share electronically with the rest of the group, he or she might send it to the clerk and ask for it to be distributed from the clerk to everyone else (electronically or in paper form).

Using the clerk as the clearinghouse for information distribution is probably a safer alternative than having council members communicate directly, although it doesn't completely eliminate concerns about violating the open meeting law. Even this clearinghouse concept could provide opportunity for three or more council members to exchange opinions about city business, so it's important that the city clerk be aware of and watch for possible issues. Finally, this model would still present problems in Standard Plan cities, where the clerk is also a member of the council.

Learn More

Read more about risks related to electronic communications between council members, and social media and cities, from the League:

[Open Meeting Law Defense Coverage](#)

[Developing a Computer Use Policy](#)

[Social Media and Cities: Questions and Considerations](#)

These items and more are at in the Resource Library of <http://www.lmc.org>

If council members are engaged in direct electronic discussions, it's probably best to limit it to only two members. A "no forwarding and no copying" rule might be a good way to make sure the Minnesota Open Meeting Law isn't unintentionally violated through electronic conversation.

Finally, be careful when council members participate in a listserv, chatroom, forums and social media. Because these groups may include a quorum of your council, one council member's comments will be viewed by other members. If the topic has to do with city business and other council members reply, it could prove problematic under the Minnesota Open Meeting Law.

Again, the city might consider a "no reply" sort of rule when it comes to these resources, or perhaps have council members send ideas for postings or responses to the city clerk or administrator to manage. Remember, too, that official city committees are subject to the same open meeting requirements and should be similarly educated about correct electronic use.

Regardless of precautions, there may be times when council members find themselves accused of violating the Minnesota Open Meeting Law, perhaps having unintentionally engaged in one of these sorts of conversations. One way to diffuse some concern is to immediately release copies of all electronic correspondence to anyone who wants to see it. While this doesn't negate the possible violation, it shows good faith and lack of specific intent to violate the law.

Draft guidelines for electronic communications between council members

Cities might decide to develop policies clarifying appropriate or preferred e-mail and electronic communications use by and between council members. Even if a city doesn't formally adopt a policy, the guidelines here might be helpful for any elected official or city board member to follow.

The purpose of these draft guidelines is to suggest how members of city councils and other city committees might communicate via email and electronic means. A city should review these draft guidelines along with its normal operating procedures, consult with the city attorney and determine the best course of action.

Tom Grundhoefer / Greg Van Wormer 09/09

**Guidelines for
Electronic Communications between Council Members
in the City of _____**

These guidelines apply to all members of the city council and all members of council and city committees, commissions, sub-committees, etc. in the City of _____.

For purposes of these guidelines, reference to council members includes members of all other city committees and groups subject to the Open Meeting Law. Reference to the council shall include all such groups and meetings.

For purposes of these guidelines, “electronic means” means email, instant messaging, chatrooms, social media, microblogs and related electronic conversation.

For purposes of these guidelines, “city clerk” means the city clerk, manager, administrator or his / her designee.

These guidelines apply regardless of whether the council member is using a city-provided email address and account, his/her personal email address or account, or one provided by his/her employer; and to all social media accounts to which a council member posts.

Meeting materials

Electronic communication of meeting materials should generally be conducted in a one-way communication from the city clerk to the council.

- Council members may receive agenda materials, background information, and other meeting materials via email attachment or other electronic means (such as file sharing) from the city clerk.
- If a council member has questions or comments about materials received, s/he should inquire via electronic means directly back to the city clerk. A council member should not copy other committee members on his/her inquiry.
- If the clarification is one of value to other council members, the city clerk may send follow-up materials or information to the council.

Materials relating to agenda items of a meeting must also be made available to the public at the meeting.

Communication during council meetings

- Council members should not communicate with one another via electronic means during a public meeting.
- Council members should not communicate with any member of city staff via electronic means during a public meeting.
- Council members should not communicate with the public via electronic means during a public meeting.

Communication outside of council meetings

- Council members should generally act with caution when using electronic means to communicate with one another, being mindful of the Minnesota Open Meeting Law.
- If a council member wishes to share information with other members, s/he should do so through the city clerk. The council member may request the city clerk distribute materials to others. The communication should not invite response to or discussion between any council members, including replies to the person making the distribution request. This should be considered a method for providing one-way information to other members of the council. Again remember that materials relating to agenda items for city business must be provided to the public at the meeting.
- If a council member wishes to address only one other member through electronic means on any topic related to city business, s/he can do so directly, but should be mindful of the following:
 - One-to-one communication is ideal.
 - The recipient of an electronic message or inquiry should reply only to the sender, should not copy others on the reply and should not forward the original communication to other council members.
 - The sender of an electronic message should not forward or copy the recipient's reply to any other council member.
 - Neither the recipient or sender should publish such correspondence on any blogs or other social media site unless it is part of an official communication of the whole of the Council, and part of the city-managed electronic communication strategy.
- If a council member receives an electronic communication from any source related to city business and distributed to multiple council members (i.e. an email sent to the entire council from a member of the public; or an email sent to three council members from a local business), s/he should reply only to the sender. The reply should not be copied to all on the original distribution or forwarded to any other council member.
- If a council member receives listserv distributions, electronic newsletters, or participates in electronic discussion forums, chatrooms, or on Facebook, Twitter or blogs where other council members are also likely to participate, the council member should not reply to any distribution or comment so that the reply is copied to the entire distribution group, or any part of the group that might include other council members. The council member should instead respond only to the sender of any message or inquiry.

Classification and Retention of electronic communications

- Regardless of whether electronic communication by a council member is taking place on a city-provided computer, home computer or other computer system, classification of information as public, private or other is governed by the Minnesota Government Data Practices Act (Minn. Stat. Chapt. 13) and should be treated accordingly.
- Council members should retain electronic communications in keeping with city policies and procedures, whether such communication takes place on a city-provided computer, home computer or other computer system.