

National Personal Email Scandals are a Good Reminder for Governmental Bodies

Amundsen Davis Government Entities Alert
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If anyone has picked up a newspaper in the past year and a half, looked at Twitter or turned on a TV they are aware of the controversy surrounding Hillary Clinton's usage of her family's private email server for official communications. What does this have to do with state and local governmental entities you ask? A lot. While local governmental entities may not be subject to the rules relating to national security they are subject to the Freedom of Information Act (FOIA) and the Open Meetings Act and as such this controversy is a cautionary reminder that what happens on your private server does not necessarily stay on your private server.

The purpose of FOIA is to open government records up to public scrutiny. In order for a communication to be released under FOIA it has to concern public business and either be prepared, used, received, or controlled by a public body. A public body is defined in FOIA as "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof and a School Finance Authority created under Article 1E of the School Code."

While it is easy to understand that government employees performing work on government devices are subject to FOIA with exceptions, the lines get murkier when you factor in personal devices and elected officials. Communications using public officials' personal electronic devices can also be subject to release under FOIA. So where is the line? Government employees using their personal phones, emails and text messages to conduct governmental business is included and elected officials using their personal devices to discuss governmental business is sometimes included. Electronic messages (email and texts etc.) that are sent or received by an individual public official at home on his or her personal device is not subject to FOIA, unless it is forwarded to enough members of the city council to constitute a quorum of the public body. Then bingo, the line is crossed. Along these same lines, when individual council members convene in a city council

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meeting and begin acting in their collective capacity, as a public body, for the duration of that meeting they are also subject to FOIA. As such, e-mails and texts sent and received during the meetings, even on personal devices, that discuss the business of the entity, are public records and are therefore subject to FOIA.

The national personal email scandal serves as a two-fold reminder in our multi-platform device laden world. First, the line between personal and business is ever increasingly blurred, and second, when in doubt don't hit send. Otherwise, snarky mixed with business at a meeting can be the next email gate to engross the local news cycle.

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