The Open Public Meetings Act and Electronic Communications

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Communicating with today’s technology is faster and easier than ever. But this ease poses new pitfalls for officials subject to the Open Public Meetings Act, 42.30 RCW (“OPMA” or the “Act”). Unless proper safeguards are in place, the careless use of emails, instant message, chat rooms, electronic bulletin boards and other electronic communications can lead to the unintended and unknowing violation of the OPMA. Accordingly, public entities subject to the Act should have rules and procedures in place to ensure that unintended violations do not occur.

The OPMA requires that all “meetings” of a “governing body” be open to the public unless expressly exempt. RCW 42.30.030. Most multimember bodies of public agencies will be subject to the statute. RCW 42.30.020(1)(b). A meeting occurs when a majority of the government body meets to take “action.” RCW 42.30.020(4). The term “action” is expansive and includes not only the transaction of official business, but also simple discussion about official business, and the taking of testimony about official business. Accordingly, the OPMA will usually apply when a majority of any board, commission or council gathers for any official purpose.

Under the plain language of the statute, as well as opinions from the Supreme Court, the Act does not apply if less than a majority meet. The Attorney General and Supreme Court have also recognized that the Act does not apply, even when a majority gather, if no “official business” — business that could come before the governing body for a vote — is conducted. But the Act is not limited to in-person gatherings — a conference call could also amount to a meeting.

Conceptually, emails land in a gray area. Like letters, emails create their own record that is subject to disclosure under the Public Records Act, so they will already be exposed by the sunshine laws. For example, the Virginia Supreme Court held that an email exchange is like an exchange of letters, already subject to public disclosure, but not amounting to a “meeting.” Unlike letters, however, the exchange of emails can be nearly instantaneous, allowing for a practically real-time exchange. For other forms of communication, like chat rooms and instant message, the exchange is instantaneous, and no “record” is necessarily kept.

The one appellate court in Washington to address this issue has found that emails more closely resemble phone calls, and can therefore amount to a “meeting” under the OPMA under some

To amount to a meeting, the email exchange must involve active participation in the exchange by a majority of the governing body.⁶ “[T]he mere passive receipt of email does not automatically constitute a ‘meeting.’”⁷ The Washington Supreme Court has long recognized that “independent and individual examination of documents by commission members prior to [an] open meeting” does not violate the act.⁸ Thus, as long as a majority of the governing body does not respond, exchange will not violate the Act.

The Woods court, however, did not require any instantaneous timing as a requirement for finding a violation of the Act. Instead, it looked to a series of emails over a four-day period to find an illegal meeting.⁹ How far a court would carry this is uncertain, but any email sent to a majority of a governing body creates a risk that one too many members will hit “reply all” and create a potential meeting.

To avoid these risks, governing bodies and those who work with governing bodies, should avoid group emails. If email is to be used to communicate with members of a governing body, the emails should be sent to each member individually. That will not make the use of email fool proof however. If a majority responds, and especially if these responses are shared, it could create the risk of a “chain” meeting. As part of their orientation, members should be instructed not to reply to such informational emails. Any email communication that is sent to a majority of a governing body, even if the emails are sent independently, should also contain an express instruction to the councilmembers not to reply. While such precautions lessen the beneficial uses of emails, they are necessary to ensure there is no unintentional violation of the OPMA.

Additional Resources:
- AGO 2006, No. 6


The more instantaneous technologies of chat rooms and instant messaging will certainly qualify as meetings if a majority participate. Also risky in light of the Wood postings are message boards, and comment sections on web pages.

Wood, 107 Wn. App. at 564.


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