

CITY OF JACKSONVILLE

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CHAIR



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ETHICS COMMISSION

THOMAS PAUL
LARRY PRITCHARD
JAMES YOUNG

TRANSPARENCY & OPEN GOVERNMENT

MINUTES

August 20, 2012

Don Davis Room

City Hall

The meeting was called to order by James Young, Chair at 4:38 p.m., a quorum was present.

Attendees: Ywana Allen, Braxton Gillam, Cynthia Irvin, Joe Jacquot, Tom Paul, Larry Pritchard, and James Young

Others in attendance: Carla Miller, Director of the ECO Office; Jason Gabriel, Office of General Counsel; and Susan Stewart, Ethics Coordinator

The minutes from the July 25, 2012 meetings were unanimously approved.

Carla provided an update on the consolidation of meeting notices from the Independent authorities. The links for the Independent Authorities are on the same page as the main calendar. She is exploring adding the Police and Fire Pension fund meetings, as well.

Jason updated the subcommittee on texting and provided a memo on text messaging guidelines. Carla indicated she had communicated with ITD about the phones and read an email from Usha Mohan, Chief of Information Technologies. Discussion followed regarding city cell phones, personal cell phones, devices and retention of text messages.

The Chair inquired if Carla will undertake a review or analysis on the waste aspect of any unused phones (if any), among the 1500 cell phones. Carla indicated she will draft a procedure or policy for the issuing of cell phones.

Carla reported on the lobbyist registration. She has a contact at UNF who will speak with the dean regarding permitting students to assist with programming the on-line lobbyist registration.

Ethics Office

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The Chair reported on the audio/video recording of meetings. In City Hall, video can only be done in Council Chambers. Audio can be digitally recorded and posted to the website.

The Chair inquired about having all boards and commissions on-line? Carla suggested training first because there are between 60-70 boards and commissions and some are very small. She recommended identifying top five boards and ask them to post their audio recordings online. The Commission can ask Ms. Mohan if this will present a server issue with regards to space.

Braxton inquired about an action item from the last Transparency and Open Government Subcommittee regarding a written policy on text messaging. Carla will include this question in her email to Ms. Mohan for an update on the city's text message policy. Also, Independent authorities have their own policies and what the City does may be the starting point or blueprint. Carla will coordinate with the various authorities and agencies and current the Independent authorities are reviewing their own policies and procedures.

Carla will insure that Alexis Lambert, the Mayor's new point person in the Office of Public Accountability, starts the first week of September will be invited to all Ethics Commission meetings.

Carla will call and send an email to Karen Bowling, Mr. Ferguson and Ms. Mohan so all are in the loop as to questions from the Ethics Commission on various issues.

There being no further business, the meeting adjourned at 5:18 p.m.

Susan Stewart, Ethics Coordinator

Date of Approval

This is a summary of the meeting and is not a verbatim transcription. A recording of these proceedings is available in the Duval Legislative Delegation Office at City Hall.

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MEMORANDUM

TO: Karen Bowling, Chief Administrative Officer
Cleveland Ferguson, Deputy Chief Administrative Officer

FROM: Jason R. Gabriel, Assistant General Counsel *JRG*

CC: Cindy A. Laquidara, General Counsel
Carla Miller, ECO Director

RE: Text Messaging Guidance

DATE: August 20, 2012

I. BACKGROUND

At previous meetings of the Ethics Commission, including the Transparency and Open Government Committee (the "Committee") meetings held on July 9, 2012 and July 25, 2012, the nature of text messages and the retention of same in the context of Florida's Public Records laws were discussed. In particular, the Committee discussed both the legal and technological aspects of text messaging, with input from the City's Information Technologies Division, the Department of Intra-Governmental Services as well as the Office of General Counsel. The Committee requested that in light of rapidly evolving technology, coupled with Florida's not-so-quickly modified Public Records laws, guidance should be administered City-wide with regard to the handling of text messages.

II. APPLICABLE LAW

Section 119.011(12), Florida Statutes, defines "public records" to include: "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). Accordingly, "the form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business." Op. Att'y Gen. Fla. 04-33 (2004).

III. ANALYSIS

In March 2010, the Florida Attorney General wrote to the Department of State (which is statutorily charged with the development of public records retention schedules), stating that the “same rules that apply to e-mail should be considered for electronic communications including Blackberry PINS, SMS communications (text messaging, MMS communications [multimedia content]), and instant messaging conducted by government agencies.” The Department of State subsequently revised its records retention schedule to note that text messages may be public records and that retention of text messages could be required depending upon the content of those texts.¹ The 2012 Government-in-the-Sunshine-Manual produced by the Florida Attorney General’s Office (see page 59) also reiterates this view.

There was discussion at previous Ethics Commission Committee meetings about the possibility of “flipping a switch” and automatically retaining all of the text messages of City employees and officers. Owners of city-issued Blackberry devices were immediately identified as users who could, from a technology standpoint, be subject to such an automatic retention. The automatic retention of texts on other devices was the subject of further discussion.

IV. RECOMMENDATIONS

In light of the fact that Florida’s Public Records laws contain broadly defined terms that are liberally interpreted in favor of openness and disclosure, the following recommendations should be advised for City-wide consideration:

(1) All officials and employees through their Department and/or Division heads should be instructed to utilize text messaging for transitory² related communications. In other words, to the extent possible, text messages, due to their fleeting and temporal nature, should not be used for conducting official public business, only for transitory-type communications and personal uses. The Office of Ethics, Compliance and Oversight has developed literature in this area that contains helpful examples of what messages may be considered public business or not.

(2) If an official or employee chooses the medium of text messaging to conduct official public business, they should be instructed to maintain a copy of such text either through the copying or forwarding of same to email or some other recognizable format, or employ a retention mechanism (whether via an application or the like) that may be available depending on their utilized device.

(3) The City should consider the automatic retention of texts on City-issued devices.

V. CONCLUSION

We trust that this memo provides guidance on the issue of text messaging as offered by the Ethics Commission Transparency and Open Government Committee. Please let us know of any other questions or concerns.

¹ See the State of Florida’s General Records Schedule GS1-SL for State and Local Government Agencies, as amended August 1, 2010, which changed language relating to “electronic communications” and “transitory messages”.

² The State of Florida’s General Records Schedule GS1-SL for State and Local Government Agencies, Item #146, sets forth the following for “Transitory messages”: “This record series consists of records that are created primarily to communicate information of short-term value. “Transitory” refers to short-term value based upon the content and purpose of the message, not the format or technology used to transmit it. Examples of transitory messages include, but are not limited to, reminders to employees about scheduled meetings or appointments; most telephone messages (whether in paper, voice mail, or other electronic form); announcements of office events such as holiday parties or group lunches; and recipient copies of announcements of agency-sponsored events such as exhibits, lectures, workshops, etc. Transitory messages are not intended to formalize or perpetuate knowledge and do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt.”

Public Comment

Please note that your comments will not be considered a formal complaint unless you complete and submit an official complaint form. These complaint forms are available on-line and at meetings.

Name: Lory Bates Date: 8/20/12
Address: 5044 Andrew St Phone: _____

Representing: Concerned Taxpayer

Issue: _____

Comments: Stated he was comfortable with progress
to date about Posting meetings notices & Review
of Video Audo availability on line archived.
Will wait to digest progress before more
input

Email: Loribates@gmail.com

Please provide your telephone in case we need to contact you for additional information. Thank you.