



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

Phone: 732-873-1251 - Fax: 908-325-0129

Email: lpsmc@pobox.com

March 5, 2010

President Terry Glennon and members of the
Lopatcong Board of Education
Phillipsburg, New Jersey

(via e-mail only to barnat@lopatcongschool.org)

Dear President Glennon and Board Members:

I write both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to learn whether the Lopatcong Board of Education has an e-mail retention policy that will ensure that official e-mails are retained and archived consistent with State guidelines.

This inquiry was prompted by an October 12, 2009 e-mail (copy attached) that I received in response to a recent records request. As you can see, the e-mail addresses listed for the President Glennon and Board members Taggart, Krusman, Kennedy and Liptak appear to be personal rather than "government agency" e-mail addresses. For example, President Glennon's e-mail address is a Yahoo.com address, which is apparently his personal e-mail address. However, a review of the school district's Internet site¹ shows that every member listed on the Faculty/Staff page has been assigned a "lopatcongschools.org" e-mail address.

This concerns me because it leaves open the possibility that the Board members may be sending and receiving e-mails that are "government records" in accordance with the Open Public Records Act (OPRA)² but which are not being properly retained and archived by the school district's administration.

For example, President Glennon, whose term of office expires in 2010 is receiving e-mails at and presumably sending e-mails from his Yahoo account. Suppose that he is defeated in the upcoming election, relocates out of state and that a year or two from now a citizen requests some e-mails that he sent and received during 2009 that dealt with school district business.

¹ http://serv01.siteground121.com/~lopatcon/index.php?option=com_akostaff&Itemid=84

² E-mails on an elected official's personal computer are government records subject to disclosure under the Open Public Records Act. See Donal Meyers v. Borough of Fair Lawn, GRC Case No. 2005-127 at <http://www.nj.gov/grc/decisions/2005-127.html>

In such a case, would the Board's record custodian be able to produce the requested e-mails from the Board's own files, or would she need to track down former President Glennon and ask him to produce the e-mails from his own files in order to satisfy the records request? If it's the latter, then what would the custodian do if former President Glennon's computer had since crashed or if the e-mails were otherwise not available?


The Board wouldn't have this problem if its elected members had official "lopatcongschools.org" e-mail addresses because every e-mail sent from or to those addresses would presumably be preserved on the Board's server. So, if the Board members had such e-mail addresses, and if the Board created a policy requiring that Board members use only their "lopatcongschools.org" e-mail addresses for official business, then the Custodian could retrieve any requested e-mails from the Board's server without having to contact the Board members who sent or received those e-mails.

As you are probably aware, the Board must comply with the New Jersey Division of Archives and Records Management's "Circular Letter No. 03-10-ST" entitled, "Managing Electronic Mail: Guidelines And Best Practices"³ which, among other things, makes the Board responsible for a) archiving e-mails and ensuring that the e-mail system is reliable enough to meet state and federal "Rules of Evidence" requirements (Sec. 2.6); b) ensuring that e-mails are "indexed in an organized and consistent pattern" (Sec. 2.7); and c) setting forth "agency procedures" so that employees can "understand and carry out their role in managing e-mail." (Sec. 2.8).

Since it appears that the Board members are likely communicating official business via their personal e-mail accounts, I am having difficulty understanding how they are compliant with the Circular Letter. In order to learn more about the Board's compliance with that Circular Letter, please find my OPRA request.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a stylized flourish at the end.

John Paff

³ See, <http://www.njarchives.org/links/circular-letter-03-10-st.html>

Attachments: POS for finance 101209.pdf

From: **Jean Beischer** <beischerj@lopatcongschool.org>

Date: Mon, Oct 12, 2009 at 8:50 AM

Subject: POS survey results

To: Bill Taggart <billtaggart.com>, Ed Krusman <[gmail.com](mailto:@gmail.com)>, Joseph Kennedy <verizon.net>, Judy Liptak <cpsnj.org>, Terry Glennon <yahoo.com>

Cc: Vicki Pede <pedev@lopatcongschool.org>, Teresa Barna <barnat@lopatcongschool.org>

Good Morning:

Please see attached from Mrs. Pede regarding the POS surveys at the ES and MS, including observations by Matt Shea.

Please let me know if you cannot access the attachment, or have any questions.

Thank you,
Jean

--

Jean Beischer
Administrative Secretary
Lopatcong Township School District
908-859-0800 ext. 3300
beischerj@lopatcongschool.org

OPRA Request

Board of Education of Lopatcong

Submitted on 03/06/10 via E-Mail to barnat@lopatcongschool.org

To the Custodian of Records: Please accept this as my request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for my request. I claim entitlement to the records sought under both OPRA and the Common Law right of access.

Requestor's Name: John Paff

Address: DO NOT use regular mail either for replying to this request or or sending me the responsive records.

Please use e-mail or fax instead.

Phone: 732-873-1251

FAX: 908-325-0129

E-Mail: paff@pobox.com

Records Requested:

1. Any policy or other writing presently in force in the Lopatcong school district which addresses the requirements and recommendations set forth in DARM Circular Letter No. 03-10-ST.

Board of Education of Lopatcong Township

**321 Stonehenge Drive
Phillipsburg, New Jersey 08865**

Telephone (908) 213-2995

Fax (908) 213-2875

**Teresa E. Barna, RSBO
Business Administrator/
Board Secretary**

**Board Meets Second Tuesday
of Each Month**

March 12, 2010

EMAIL

John Paff
paff@pobox.com

RE: OPRA Request dated March 6, 2010

Dear Mr. Paff:

This letter is in response to your OPRA request dated March 6, 2010. Attached please find documents responsive to your request.

Please note, effective immediately, all Board members will begin using their board issued e-mail addresses. Please let me know if you would like a list of all Board member e-mail addresses.

Thank you for your attention to this matter.

Very truly yours,

Teresa E. Barna, RSBO
Business Administrator/
Board Secretary

8311 MANAGING ELECTRONIC MAIL

School district e-mail messages, like paper records, must be retained and destroyed according to established records management procedures as required by New Jersey's Division of Archives & Records Management (NJDARM). E-mail messages are electronic documents created and sent or received by a computer system. This definition applies equally to the contents of the communication, the transactional information, and any attachments associated with such communication. Thus, e-mail messages are similar to other forms of communicated messages, such as correspondence and memoranda.

N.J.S.A. 47:3-16, as amended, defines public records as follows:

"Public records" mean any paper, written or printed book, document or drawing, map or plan, photograph, microfilm, data processed or image processed document, sound recording or in a similar device, or any copy thereof, that has been made or required by law to be received for filing, indexing, or reproducing by any officer, commission agency, or authority of the State or any political subdivision thereof, including any subordinate boards thereof, or that has been received in the course of his/her or its official business by such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof, in connection with the transaction of public business and has been retained by such recipient or its successor as evidence of its activities or because of the information contained therein.

An e-mail message that meets the criteria of the definition of public records per N.J.S.A. 47:3-16, as amended, whether it is subject to access by the general public or not, must be retained according to records retention and disposition schedules approved by the State Records Committee. No public record e-mail may be destroyed without prior consent of the NJDARM and the State Records Committee, even if the retention period for a record has expired.

Retention or disposition of e-mail messages must be related to the information they contain or the purpose they serve. The content of e-mail messages may vary considerably and therefore, the content must be evaluated to determine the length of time the message must be retained.

For the purposes of this Policy, there are non-record e-mail messages and public record e-mail messages.



POLICY

LOPATCONG TOWNSHIP BOARD OF EDUCATION

OPERATIONS
8311/page 2 of 2
Managing Electronic Mail

Non-record e-mail messages are personal correspondence that do not meet the criteria of public records as per N.J.S.A. 47:3-16, as amended, and may be deleted at any time unless they become part of some official record as a result of a special circumstance. These types of messages may include personal correspondence not received or created in the course of school district business and may be deleted at any time since it is not an official public record. Non-record e-mail messages are also non-governmental publications that are publications, promotional material from vendors, and similar materials that are publicly available to anyone. These e-mail messages are not public records as defined by N.J.S.A. 47:3-16, as amended, unless specifically incorporated into other official public records, and may also be deleted at any time. However, if an e-mail message is used to justify an expenditure or is included in a proposal, the e-mail message becomes an official public record and must be retained according to records retention and disposition schedules in accordance with the appropriate retention schedules.

All public record e-mail messages shall be maintained by the individual who sends the e-mail message and the primary recipient. The sender and primary recipient are encouraged to print a hard copy of a public record e-mail and file the e-mail in school district files for continued access. The district may establish a district-wide system to facilitate public record e-mail management for continued access and retention. All public record e-mails shall be retained according to records retention and disposition schedules approved by the State Records Committee and no public record e-mail may be destroyed without prior consent of the NJDARM and the State Records Committee, even if the retention period for a record has expired.

An e-mail message that meets the criteria of the definition of a "government record" per N.J.S.A. 47:1A-1.1 must be made available to the public upon request under New Jersey's Open Public Records Act during the required retention period, unless the content of the message falls under one of the exceptions contained in the Act or any other statute, regulation, Executive Order by the Governor, rule of Court, or Federal law, regulation or order.

State of New Jersey – Circular Letter 03-10-ST – Managing Electronic Mail: Guidelines and Best Practices – 7/11/02

Adopted: 18 August 2009



BYLAWS

LOPATCONG TOWNSHIP BOARD OF EDUCATION

BYLAWS

0169/page 1 of 2

Board Member Use of Electronic Mail/Internet

0169 BOARD MEMBER USE OF ELECTRONIC MAIL/INTERNET

The Board of Education is a public body as defined in the New Jersey Open Public Meetings Act, N.J.A.C. 10:4-6 et seq., and the Board and its members are required to comply with the provisions of this Act. It is the right of the public to be present at meetings of public bodies and to witness in full all phases of the deliberations, policy formulation, and decision-making. Board members acknowledge certain discussions between Board members, other than during a Board meeting, may be subject to the provisions of the Open Public Meetings Act.

The Board of Education is also subject to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. The Open Public Records Act requires public agencies/School Boards to make certain governmental records subject to public access. Board members may, by written and/or electronic mail (e-mail), communicate with each other and with certain school staff regarding the school district's public business. "Public business" means and includes all matters that relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business. Board members acknowledge these written communications may be classified as a governmental record and may be subject to public access pursuant to the Open Public Records Act.

In order to ensure the Board and/or individual Board members comply with the requirements of the Open Public Meetings Act and the Open Public Records Act, the following guidance is provided regarding certain discussions and written communications regarding the public business:

1. Written letters, e-mails, and supporting documents regarding school district matters written by Board members to other Board members or written by Board members to school staff, unless the subject matter is specifically exempt under the Open Public Records Law, are governmental records and are subject to public access. Based on the potential for improper/inappropriate disclosure and/or breach of confidentiality that may compromise the Board or Board member, these communications should not involve confidential matters, especially any matter the Board may discuss in executive/private session outside the presence of the public pursuant to the Open Public Meetings Act.
2. Written letters, internet (chat) discussions, e-mails, and supporting documents regarding the school district's public business written by Board members to other Board members shall not replace deliberations that would prevent the public from witnessing in full detail all phases of the Board's deliberations, policy formulation, and decision-making process in accordance with the intent of the Open Public Meetings Act. Therefore, Board members will not engage in any discussion among themselves of how they intend to vote on an issue to the extent it violates the Open Public Meetings Act, except at Board meetings.



BYLAWS

LOPATCONG TOWNSHIP BOARD OF EDUCATION

BYLAWS

0169/page 2 of 2

Board Member Use of Electronic Mail/Internet

3. Internet (chat) discussions or e-mail exchanges between Board members regarding the school district's public business may encourage multiple Board members to engage in a discussion with the potential that a quorum of the Board may be involved, or become involved, in such discussion. Therefore, Board members should refrain from such discussions among themselves.

In the event a Board member(s) fails to comply with the guidance of this Policy, the matter shall be referred to the Board President, who will meet and/or discuss the matter and this Policy with the Board member(s). The Board President may request the Board Attorney participate in this meeting and/or discussion.

N.J.S.A. 10:6-4 et seq.

N.J.S.A. 47:1A-1 et seq.

Adopted: 18 August 2009

